

c + THE LAW
OF
PATENTS, TRADE-MARKS
AND COPY-RIGHTS:

CONSISTING OF THE SECTIONS OF
THE REVISED STATUTES OF THE UNITED STATES,
WITH
NOTES UNDER EACH SECTION,
REFERRING TO THE
Decisions of the Courts and the Commissioner of Patents.

TOGETHER WITH THE
RULES OF THE PATENT OFFICE
AND
A SELECTION OF FORMS.

BY
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PREFACE.

THIS work is prepared with the design of bringing all the law pertaining to patents, trade-marks and copyrights, so far as they depend on statutes, within the compass of a single volume. The plan adopted for this purpose is to give the statutes in their order as they are in the Revised Statutes, and to place notes referring to the decisions under the section construed. For this purpose all the decisions of the courts and of the Commissioner of Patents have been examined. The notes referring to the decisions of the courts are distinguished from those referring to the decisions of the Commissioner by being placed in leaded or more open type. A table has also been prepared showing the time of the repeal of each act, and the place where any analogous provision in the Revised Statutes may now be found, and under each section a reference is given to the prior acts on the same subject. By this means a lawyer may readily ascertain whether a provision in a statute cited in a decision is still in force, or whether a statute has been so modified as to affect the application of a decision. The Rules of the Patent Office and a set of Forms have also been appended. It is believed that the work thus prepared brings within a narrow compass all that a lawyer may desire to know concerning the subject, or refers him to the original sources for further information.

ORLANDO F. BUMP.

BALTIMORE, October 1st, 1877.

ABBREVIATIONS.

A. L. J.....	Albany Law Journal.
A. L. Reg.....	American Law Register.
A. L. Rev.....	American Law Review.
A. L. T.....	American Law Times.
C. L. B.	Cincinnati Law Bulletin.
C. L. N.	Chicago Legal News.
Cent. L. J.....	Central Law Journal.
Dec. Com.....	Decisions of Commissioner.
I. R. R.....	Internal Revenue Record.
Law Rep.....	Law Reporter.
Leg. Int.....	Legal Intelligencer.
Liv. L. J.....	Livingston's Law Journal.
N. Y. Leg. Obs.....	New York Legal Observer.
O. G.	Patent Office Gazette.
Pac. L. R.....	Pacific Law Reporter.
Penn. L. J.....	Pennsylvania Law Journal.
Pitts. L. J.	Pittsburgh Legal Journal.
West. L. J.....	Western Law Journal.
W. N.....	Weekly Notes.

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CONTAINS A LIST OF THE LAWS RELATING TO PATENTS, TRADE-MARKS AND COPYRIGHT, SHOWING THE TIME OF REPEAL AND THE PART OF THE REVISED STATUTES WHERE AN ANALOGOUS PROVISION MAY NOW BE FOUND.

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May 31, 1790	15	1	1	124	Feb. 3, 1831	16	14	4	489	4952, 4953, 4954.
.....	..	2	4964, 4965.
.....	..	3	..	125	4956, 4957.
.....	..	4	4959.
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.....	..	2	..	110	4888, 4891.
.....	..	3	..	111	892.
.....	..	4	4919.
.....	..	5	
.....	..	6	892, 4920.
.....	..	7	..	112	4934.
Feb. 21, 1793	11	1	..	318	July 4, 1836	357	21	3	125	4884, 4886, 4888.
.....	..	2	..	321	
.....	..	3	4889, 4890, 4891, 4892.
.....	..	4	..	322	4898.
.....	..	5	April 17, 1800	25	4	2	38	4919, 629.
.....	..	6	July 4, 1836	357	21	3	125	4920.
.....	..	7	
.....	..	8	
.....	..	9	4904.
.....	..	10	..	323	
.....	..	11	4934.
.....	..	12	
June 7, 1794	58	1	..	393	
April 17, 1800	25	1	2	37	4886.
.....	..	2	..	38	4896.
.....	..	3	4919.
.....	..	4	
April 29, 1802	36	1	..	171	Feb. 5, 1831	16	14	4	489	4962.
.....	..	2	4952.
.....	..	3	4965.
.....	..	4	..	172	4963.
Feb. 15, 1819	19	1	3	481	629, 698, 4921.
Feb. 3, 1831	16	1	4	436	July 8, 1870	230	111	16	216	4952, 4953.
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.....	16	494.
July 8, 1882	162	1	559	4924.
.....	2	4916.
.....	3	4955.
June 30, 1884	157	1	728	4958.
.....	2	475, 476, 477, 481.
July 4, 1886	357	1	5	117	476, 477, 480.
.....	2	118	479.
.....	3	478, 892, 4934.
.....	4	4888, 4884.
.....	5	4886, 4888, 4889, 4890,
.....	6	119	4891, 4892.
.....	7	{ Mar. 8, 1868	102	1	12	796	{ 4886, 4893, 4903,
.....	8	120	{ July 8, 1870	230	111	16	216	{ 4911.
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.....	9	194	4922.
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.....	5	4901.
.....	6	March 2, 1861	88	13	12 249	4900.
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May 27, 1848	47	1	281	July 8, 1870	230	111	16 216	476, 477, 4924, 4926.
.....	2	4934.
.....	3	232	476.
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March 3, 1849	108	2	395	441.
Aug. 30, 1852	107	1	10 75	4911.
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.....	3	76
March 3, 1853	97	3	209	476.
April 22, 1854	52	1	276	476.
Aug. 18, 1856	129	9	11 91	476.
.....	10	476.
.....	169	1	138	4952, 4966.
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.....	8	4948.
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Feb. 18, 1861	37	1	12 130	699.
March 2, 1861	88	1	246	4905, 4906, 4907, 4908.
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.....	3	247	4909.
.....	4	477.
.....	5	485.
.....	6
.....	7	476.
.....	8	488.
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.....	15	July 8, 1870	230	111	16 216	892.
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March 3, 1863	102	1	796
.....	2	477.
.....	3	4885.
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PATENT LAWS AND DECISIONS.

CONSTITUTION,

ART. I, SEC. 8.

THE CONGRESS shall have power * * * to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

The word "secure" does not mean the protection of an acknowledged legal right. *Wheaton v. Peters*, 8 Pet. 591.

No State can in any form interfere with the right of private persons under the copyright laws of the United States. *Little v. Gould*, 2 Blatch. 165, 362.

The Constitution does not authorize the protection of a dramatic composition which is grossly indecent and calculated to corrupt the morals of the people. *Martinetti v. Maguire*, 1 Deady, 216; s. C. 1 Abb. C. C. 356.

In the exercise of this power, Congress is limited to authors and inventors only. This clause, therefore, never can admit of so extensive a construction as to prohibit the respective States from exercising the power of securing to persons introducing useful inventions, without being the authors or inventors, the exclusive benefit of such inventions for a limited time. *Livingston v. Van Ingen*, 9 Johns. 507.

The power is general to grant to inventors, and it rests in the sound discretion of Congress to say when and for what length of time, and under what circumstances, the patent for an invention shall be granted. There is no restriction which limits the power of Congress to cases where the invention has not been known or used by the public. All that is required is that the patentee shall be the inventor. An act which gives a patent for an invention which was in public use and enjoyed by the community at the time of its passage, is not for that reason unconstitutional. *Blanchard v. Sprague*, 2 Story, 164; s. C. 3 Sum. 535; *Evans v. Jordan*, 1 Brock. 248; s. C. 9 Cranch, 199; *Jordan v. Dobson*, 4 Fish. 232; s. C. 7 Phila. 533.

The power thus granted is domestic in its character, and necessarily confined within the limits of the United States. *Brown v. Duchesne*, 19 How. 183.

This constitutional power might have been fully exercised by Congress in

making special grants of patents. Congress might have spent much time by such a course, and may not be the most competent body to investigate the facts and do equal justice to inventors, but this would be a question of expediency and not of constitutional power. *Bloomer v. Stolley*, 5 McLean, 158.

The machinery through which the right to a patent is ordinarily applied for and obtained, may be dispensed with, and the title may be conferred by a legislative grant, and this may be done in regard to the extension of an exclusive right the same as in originally granting it. No constitutional restriction appears to exist against the exercise of this power by Congress. *Bloomer v. Stolley*, 5 McLean, 158.

Congress has the power to confer a new and extended term upon the patentee, even after the expiration of the first. *Jordan v. Dobson*, 4 Fish. 232; S. C. 7 Phila. 533; *Blanchard v. Haynes*, 6 West. L. J. 82; *Blanchard's Factory v. Warner*, 1 Blatch. 258; *Evans v. Robinson*, 1 Car. L. Rep. 209.

The power of Congress to secure the rights and privileges of assignees upon extending a patent is incidental to the general power conferred by the Constitution on Congress to promote the progress of the useful arts by securing to inventors for limited times the exclusive right to their discoveries. The assignees of the original patentee are frequently most instrumental in putting the invention into general use and bringing it successfully before the public by the expenditure of their time and money. More than half, probably, of the useful patented inventions have been thus brought into general public use, the successful results operating directly or indirectly for the benefit and interest of the patentees. Although this would not authorize the renewal of a grant to assignees, as no such power exists in the Constitution, still in exercising the power in favor of the inventor, it would be going too far to say that Congress has no right to regard incidentally the interests of meritorious assignees. *Blanchard's Factory v. Warner*, 1 Blatch. 258.

It is not the province of the judiciary to inquire into the reasons which induced the passage of the law, with the view of testing its validity. If constitutional, it must be enforced without regard to the policy or justice which dictated it. No inquiry as to the expenses and labor need be made when a patent is extended by a special act of Congress. *Bloomer v. Stolley*, 5 McLean, 158.

It does not follow from this power that Congress may, from time to time, as they think proper, authorize an inventor to recall rights which he has granted to others, or reinvest in him rights of property which he has before conveyed for a fair and valuable consideration. *Bloomer v. McQuewen*, 14 How. 539.

Though changes in the patent laws may be retrospective in their operation, that is not a sound objection to their validity. The power of Congress to legislate upon the subject of patents is plenary, by the terms of the Constitution, and as there are no restraints on its exercise, there can be no limitation of their right to modify them at their pleasure, so that they do not take away the rights of property in existing patents. *M'Clurg v. Kingsland*, 1 How. 202.

The property in inventions exists by virtue of the laws of Congress, and no State has a right to interfere with its enjoyment, or to annex conditions to

the grant. If the patentee complies with the laws of Congress on the subject, he has a right to go into the open market anywhere within the United States, and sell his property. An act of a State legislature that attempts to direct the manner in which patent rights shall be sold in the State, is void. *Ex parte Robinson*, 4 Fish. 186; *Hollida v. Hunt*, 70 Ill. 109; *Helm v. First National Bank*, 43 Ind. 167; *Crittenden v. White*, 9 C. L. N. 110.

If a corporation is the owner of a patent, and its transactions in another State are connected with the sale, use or manufacture of the invention described in the patent, it is not subject to the provisions of the State laws relating to foreign corporations. *Grover & Baker S. M. Co. v. Butler*, 53 Ind. 454.

No State can require that the consideration of a note given for a patent shall be expressed on the face thereof, and make such note subject in the hands of third parties to all defenses which could have been made against the payee. *Hollida v. Hunt*, 70 Ill. 109.

A State law regulating the sale of an article manufactured in pursuance of a patented invention, because it is dangerous, is valid, for there is a manifest distinction between the right of property in the patent and the right to sell the property resulting from the invention or patent. *Patterson v. Comm.* 11 Bush, 311.

The end of the statute is to encourage useful inventions, and to hold forth the exclusive use of his invention for a limited period as an inducement to the inventor. The sole operation of the statute is to enable him to prevent others from using the products of his labor except with his consent. But his own right of using it is not enlarged or affected. There remains in him, as in every other citizen, the power to manage his property or give direction to his labor at his pleasure, subject only to the paramount claims of society which require that his enjoyment may be modified by the exigencies of the community to which he belongs, and regulated by laws which render it subservient to the general welfare if held subject to State control. An attempt by the legislature in good faith to regulate the conduct of a portion of its citizens in a matter strictly pertaining to its internal economy is a legitimate exercise of power, although the law may sometimes indirectly affect the enjoyment of rights flowing from the Federal Government. A patent for a medicine does not confer upon the patentee the right to prescribe it for the sick without complying with the State laws for licensing physicians. *Jordan v. Dayton*, 4 Ohio, 294; *Thompson v. Staats*, 15 Wend. 395.

A party who has a patent for a plan of constructing and drawing lotteries has no right to establish a lottery in a State whose laws prohibit lotteries, because they are pernicious and destructive to frugality and industry, and introductive of idleness and immorality, and against the common good and welfare. *Vannini v. Paine*, 1 Harring. 65.

PROVISIONS

FROM THE UNITED STATES REVISED STATUTES.

TITLE IV.

SEC. 178. In case of the death, resignation, absence, or sickness of the chief of any bureau, or of any officer thereof, whose appointment is not vested in the head of the department, the assistant or deputy of such chief or of such officer, or if there be none, then the chief clerk of such bureau, shall, unless otherwise directed by the President, as provided by section one hundred and seventy-nine, perform the duties of such chief or of such officer until a successor is appointed or such absence or sickness shall cease.

Statute Revised—July 23, 1868, ch. 227, § 2, 15 Stat. 168.

Prior Statute—July 4, 1836, ch. 357, § 2, 5 Stat. 118.

The actual incumbent of a public office is presumed to be in the lawful possession of it, and no affirmative proof of his title is required to support his official acts; therefore the contingency upon which the assistant commissioner is authorized to assume the duties of commissioner, is primarily to be taken to exist from his actual discharge of these duties. The burden of showing the non-existence of the prescribed contingency is upon the party who denies the validity of the ostensible officer's acts. *Dorsey Co. v. Marsh*, 6 Fish. 387; s. c. 9 Phila. 395; *Smith v. Mercer*, 5 Penn. L. J. 529; s. c. 4 West. L. J. 49.

SEC. 179. In any of the cases mentioned in the two preceding sections, except the death, resignation, absence or sickness of the attorney general, the President may, in his discretion, authorize and direct the head of any other department or any other officer in either department whose appointment is vested in the President by and with the advice and consent of the Senate, to perform the duties of the vacant office until a successor is appointed, or the sickness or absence of the incumbent shall cease.

Statute Revised—June 22, 1870, ch. 150, § 2, 16 Stat. 162.

Prior Statute—July 23, 1868, ch. 227, § 3, 15 Stat. 168.

TITLE XI.

CHAPTER ONE.

SEC. 440. There shall also be in the department of
the interior, * * * * *

In the patent office :

One chief clerk, at a salary of two thousand five hundred dollars a year.

One examiner in charge of interferences, at a salary of two thousand five hundred dollars a year.

One examiner in charge of trade-marks, at a salary of two thousand five hundred dollars a year.

Twenty-four principal examiners, one of whom shall be librarian,* at a salary of two thousand five hundred dollars a year each.

Twenty-four first assistant examiners, at a salary of one thousand eight hundred dollars a year each.

Twenty-four second assistant examiners (two of whom may be women), at a salary of one thousand six hundred dollars a year each.

Twenty-four third assistant examiners, at a salary of one thousand four hundred dollars a year each.†

One librarian, at a salary of two thousand dollars a year.

One machinist, at a salary of one thousand six hundred dollars a year.

Three skilled draughtsmen, at a salary of one thousand two hundred dollars a year each.

Thirty-five copyists of drawings, at a salary of one thousand dollars a year each.

One messenger and purchasing clerk, at a salary of one thousand dollars a year.

* So amended by act of March 3, 1875, ch. 129, 18 Stat. 365.

† By the act of March 3, 1875, ch. 129, 18 Stat. 365, the grade of third assistant examiner in the patent office was abolished, but appropriations are made for that class of officers in the act of August 15, 1876, ch. 287, 19 Stat. 164, and the act of March 3, 1877, ch. 102, 19 Stat. 314.

One skilled laborer, at a salary of one thousand two hundred dollars a year.

Eight attendants in the model-room, at a salary of one thousand dollars a year each.

Eight attendants in the model-room, at a salary of nine hundred dollars a year each.

* Five clerks of class four, one of whom shall receive two hundred dollars additional for services as financial clerk, and shall give bond in such amount as the Secretary of the Interior may determine.

Statute Revised—July 8, 1870, ch. 230, §§ 2, 3, 16 Stat. 198.

Prior Statutes—July 4, 1836, ch. 357, § 2, 5 Stat. 118.—March 3, 1837, ch. 45, § 10, 5 Stat. 194.—May 27, 1848, ch. 47, §§ 1, 3, 9 Stat. 231, 232.—March 3, 1853, ch. 97, § 3, 10 Stat. 209.—April 22, 1854, ch. 52, § 1, 10 Stat. 276.—August 18, 1856, ch. 129, §§ 9, 10, 11 Stat. 91.—March 2, 1861, ch. 88, §§ 4, 7, 12 Stat. 247.—March 3, 1863, ch. 102, § 2, 12 Stat. 796.—March 29, 1867, ch. 17, § 1, 15 Stat. 10.

CHAPTER TWO.

SEC. 441. The Secretary of the Interior is charged with the supervising of public business relating to the following subjects: * * * * *

Fifth. Patents for inventions.

Statute Revised—July 8, 1870, ch. 230, § 1, 16 Stat. 198.

Prior Statute—March 3, 1849, ch. 108, § 2, 9 Stat. 395.

* So amended, act of March 3, 1877, ch. 102, § 1, 19 Stat. 294.

CHAPTER SIX.

THE PATENT OFFICE.

<p>Sec. 475. Establishment of the patent office. 476. Officers and employees. 477. Salaries. 478. Seal. 479. Bonds of commissioner and chief clerk. 480. Restrictions upon officers and employees. 481. Duties of commissioner. 482. Duties of examiners-in-chief. 483. Establishment of regulations. 484. Arrangement and exhibition of models, &c. 485. Disposal of models on rejected applications. 486. Library. 487. Patent agents may be refused recognition.</p>	<p>Sec. 488. Printing of papers filed. 489. Printing copies of claims, laws, decisions, &c. 490. Printing specifications and drawings. 491. Additional specifications and drawings. 492. Lithographing and engraving. 492A. Copies of specifications and drawings for executive department. 493. Price of copies of specifications and drawings. 494. Annual report of the commissioner. 495. Custody of collections of exploring expeditions. 496. Disbursements for patent office.</p>
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SEC. 475. There shall be in the department of the interior an office known as the patent office, where all records, books, models, drawings, specifications, and other papers and things pertaining to patents shall be safely kept and preserved.

Statute Revised—July 8, 1870, ch. 230, § 1, 16 Stat. 198.

Prior Statute—July 4, 1836, ch. 357, § 1, 5 Stat. 117.

SEC. 476. There shall be in the patent office, a commissioner of patents, one assistant commissioner, and three examiners-in-chief, who shall be appointed by the President, by and with the advice and consent of the Senate. All other officers, clerks, and employees authorized by law for the office shall be appointed by the Secretary of the Interior, upon the nomination of the commissioner of patents.

Statute Revised—July 8, 1870, ch. 230, § 2, 16 Stat. 198.

Prior Statutes—July 4, 1836, ch. 357, § 1, 5 Stat. 117.—March 2, 1861, ch. 88, § 2, 12 Stat. 246.—March 3, 1869, ch. 121, § 1, 15 Stat. 294.

SEC. 477. The salaries of the officers mentioned in the preceding section shall be as follows:

The commissioner of patents, four thousand five hundred dollars a year.

The assistant commissioner of patents, three thousand dollars a year.

Three examiners-in-chief, three thousand dollars a year each.

Statute Revised—July 8, 1870, ch. 230, § 4, 16 Stat. 199.

Prior Statutes—July 4, 1836, ch. 357, § 1, 5 Stat. 117.—March 3, 1837, ch. 45, § 10, 5 Stat. 194.—March 2, 1861, ch. 88, §§ 2, 4, 12 Stat. 246.

SEC. 478. The seal heretofore provided for the patent office shall be the seal of the office, with which letters patent and papers issued from the office shall be authenticated.

Statute Revised—July 8, 1870, ch. 230, § 12, 16 Stat. 200.

Prior Statute—July 4, 1836, ch. 357, § 4, 5 Stat. 118.

SEC. 479. The commissioner of patents and the chief clerk, before entering upon their duties, shall severally give bond, with sureties, to the treasurer of the United States, the former in the sum of ten thousand dollars, and the latter in the sum of five thousand dollars, conditioned for the faithful discharge of their respective duties, and that they shall render to the proper officers of the treasury a true account of all money received by virtue of their offices.

Statute Revised—July 8, 1870, ch. 230, § 6, 16 Stat. 199.

Prior Statute—July 4, 1836, ch. 357, § 3, 5 Stat. 118.

SEC. 480. All officers and employees of the patent office shall be incapable, during the period for which they hold their appointments, to acquire or take, directly or indirectly, except by inheritance or bequest, any right or interest in any patent issued by the office.

Statute Revised—July 8, 1870, ch. 230, § 16, 16 Stat. 200.

Prior Statute—July 4, 1836, ch. 357, § 2, 5 Stat. 118.

SEC. 481. The commissioner of patents, under the direction of the Secretary of the Interior, shall superintend or perform all duties respecting the granting and issuing of patents directed by law; and he shall have charge of all books, records, papers, models, machines and other things belonging to the patent office.

Statute Revised—July 8, 1870, ch. 230, § 7, 16 Stat. 199.

Prior Statute—July 4, 1836, ch. 357, § 1, 5 Stat. 117

SEC. 482. The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, whose duty it shall be, on the written petition of the appellant, to revise and determine upon the validity of the adverse decisions of examiners upon applications for patents and for reissues of patents, and in interference cases; and, when required by the commissioner, they shall hear and report upon claims for extensions, and perform such other like duties as he may assign them.

Statute Revised—July 8, 1870, ch. 230, § 10, 16 Stat. 199.

Prior Statute—March 2, 1861, ch. 88, § 2, 12 Stat. 246.

SEC. 483. The commissioner of patents, subject to the approval of the Secretary of the Interior, may from time to time establish regulations, not inconsistent with law, for the conduct of proceedings in the patent office.

Statute Revised—July 8, 1870, ch. 230, § 19, 16 Stat. 200.

SEC. 484. The commissioner of patents shall cause to be classified and arranged in suitable cases, in the rooms and galleries provided for that purpose, the models, specimens of composition, fabrics, manufactures, works of art, and designs, which have been or shall be deposited in the patent office; and the rooms and galleries shall be kept open during suitable hours for public inspection.

Statute Revised—July 8, 1870, ch. 230, § 13, 16 Stat. 200.

Prior Statute—July 4, 1836, ch. 357, § 17, 5 Stat. 125.

SEC. 485. The commissioner of patents may restore to the respective applicants such of the models belonging to rejected applications as he shall not think necessary to be preserved, or he may sell or otherwise dispose of them after the application has been finally rejected for one year, paying the proceeds into the treasury, as other patent moneys are directed to be paid.

Statute Revised—July 8, 1870, ch. 230, § 14, 16 Stat. 200.

Prior Statute—March 2, 1861, ch. 88, § 5, 12 Stat. 247.

SEC. 486. There shall be purchased for the use of the patent office a library of such scientific works and period-

icals, both foreign and American, as may aid the officers in the discharge of their duties, not exceeding the amount annually appropriated for that purpose.

Statute Revised—July 8, 1870, ch. 230, § 15, 16 Stat. 200.

SEC. 487. For gross misconduct the commissioner of patents may refuse to recognize any person as a patent agent, either generally or in any particular case; but the reasons for such refusal shall be duly recorded, and be subject to the approval of the Secretary of the Interior.

Statute Revised—July 8, 1870, ch. 230, § 17, 16 Stat. 200.

SEC. 488. The commissioner of patents may require all papers filed in the patent office, if not correctly, legibly, clearly written, to be printed at the cost of the party filing them.

Statute Revised—July 8, 1870, ch. 230, § 18, 16 Stat. 200.

Prior Statute—March 2, 1861, ch. 88, § 8, 12 Stat. 247.

SEC. 489. The commissioner of patents may print, or cause to be printed, copies of the claims of current issues, and copies of such laws, decisions, regulations, and circulars, as may be necessary for the information of the public.

Statute Revised—July 8, 1870, ch. 230, § 20, 16 Stat. 200.

SEC. 490. The commissioner of patents is authorized to have printed, from time to time, for gratuitous distribution, not to exceed one hundred and fifty copies of the complete specifications and drawings of each patent hereafter issued, together with suitable indexes, one copy to be placed for free public inspection in each capitol of every State and Territory, one for the like purpose in the clerk's office of the district court of each judicial district of the United States, except when such offices are located in State or territorial capitols, and one in the library of Congress, which copies shall be certified under the hand of the commissioner and seal of the patent office, and shall not be taken from the depositories for any other purpose than to be used as evidence.

Statute Revised—January 11, 1871, Res. No. 5, 16 Stat. 590.

SEC. 491. The commissioner of patents is authorized to have printed such additional numbers of copies of specifications and drawings, certified as provided in the preceding section, at a price not to exceed the contract price for such drawings, for sale, as may be warranted by the actual demand for the same; and he is also authorized to furnish a complete set of such specifications and drawings to any public library which will pay for binding the same into volumes to correspond with those in the patent office, and for the transportation of the same, and which shall also provide for proper custody for the same, with convenient access for the public thereto, under such regulations as the commissioner shall deem reasonable.

Statute Revised—January 11, 1871, Res. No. 5, 16 Stat. 590.

SEC. 492. The lithographing and engraving required by the two preceding sections shall be awarded to the lowest and best bidders for the interests of the Government, due regard being paid to the execution of the work, after due advertising by the congressional printer under the direction of the joint committee on printing; but the joint committee on printing may empower the congressional printer to make immediate contracts for engraving, whenever, in their opinion, the exigencies of the public service will not justify waiting for advertisement and award; or if, in the judgment of the joint committee on printing, the work can be performed under the direction of the commissioner of patents more advantageously than in the manner above prescribed, it shall be so done, under such limitations and conditions as the joint committee on printing may from time to time prescribe.

Statutes Revised—January 11, 1871, Res. No. 5, 16 Stat. 590.—March 24, 1871, ch. 5, § 1, 17 Stat. 2.

SEC. 492 *a*. (Act of March 3, 1875, ch. 130, § 12, 18 Stat. 402.) That it shall be the duty of the commissioner of patents to furnish, free of cost, one copy of the bound volumes of specifications and drawings of patents published by the patent office, to each of the executive departments of Government, upon the request of the head thereof.

SEC. 493. The price to be paid for uncertified printed copies of specifications and drawings of patents shall be determined by the commissioner of patents, within the limits of ten cents as the minimum and fifty cents as the maximum price.

Statute Revised—March 24, 1871, ch. 5, § 2, 17 Stat. 3.

SEC. 494. The commissioner of patents shall lay before Congress, in the month of January, annually, a report, giving a detailed statement of all moneys received for patents, for copies of records or drawings, or from any other source whatever; a detailed statement of all expenditures for contingent and miscellaneous expenses; a list of all patents which were granted during the preceding year, designating under proper heads the subjects of such patents; an alphabetical list of all the patentees, with their places of residence; a list of all patents which have been extended during the year; and such other information of the condition of the patent office as may be useful to Congress or the public.

Statute Revised—July 8, 1870, ch. 230, § 9, 16 Stat. 199.

Prior Statutes—July 3, 1832, ch. 162, § 1, 4 Stat. 559.—March 3, 1837, ch. 45, § 14, 5 Stat. 194.—July 20, 1868, ch. 177, § 7, 15 Stat. 119.

SEC. 495. The collections of the exploring expedition, now in the patent office, shall be under the care and management of the commissioner of patents.

Statute Revised—August 4, 1854, ch. 42, § 8, 10 Stat. 572.

SEC. 496. All disbursements for the patent office shall be made by the disbursing clerk of the Interior Department.

Statute Revised—July 8, 1870, ch. 230, § 69, 16 Stat. 209.

Prior Statute—March 3, 1837, ch. 45, § 14, 5 Stat. 194.—March 3, 1869, ch. 121, § 1, 15 Stat. 294.

TITLE XIII.

CHAPTER SEVEN.

SEC. 629. The circuit courts shall have original jurisdiction, as follows : * * * * *

Ninth. Of all suits at law or in equity arising under the patent or copyright laws of the United States.

Statute Revised—July 8, 1870, ch. 230, §§ 55, 106, 16 Stat. 206, 215.

Prior Statute—February 21, 1793, ch. 11, § 5, 1 Stat. 322.—February 15, 1819, ch. 19, § 1, 3 Stat. 181.—July 4, 1836, ch. 357, § 14, 5 Stat. 123.

This section does not enlarge or alter the powers of the court over the subject-matter of the bill or the cause of action. It only extends its jurisdiction to parties not before falling within it. Before this provision was adopted, it had been held that a citizen of one State could not obtain an injunction in the circuit court for a violation of a patent right against a citizen of the same State, as no act of Congress authorized such suit. This section removed that objection and gave the jurisdiction, although the parties were citizens of the same State. But in the exercise of the jurisdiction in all cases of granting injunctions to prevent the violation of patent rights, the court is to proceed according to the course and principles of courts of equity in such cases. *Sullivan v. Redfield*, 1 Paine, 441; *Evans v. Eaton*, 3 Wheat. 454; S. C. Pet. C. C. 322; *Day v. Newark Manuf. Co.* 1 Blatch. 628.

The jurisdiction thus conferred upon the circuit courts in patent cases in equity exists independently of the local laws of the State, and is the same in its nature and extent as the equity jurisdiction in England, from which it was derived. *Allen v. Blunt*, 1 Blatch. 480.

There is a broad distinction between the jurisdictional right to take cognizance of a complaint and a denial of the relief which the complainant asks. Although the relief invoked may be refused, it does not follow that it is because the court can not inquire into the merits of the cause and adjudge it accordingly. Want of equity does not imply a defect of jurisdiction. But it is only when the court is without power to pass upon the subject-matter of the complaint, or to grant the relief sought, that its jurisdiction may be challenged. *McMillin v. Barclay*, 5 Fish. 189; S. C. 4 Brews. 275.

A patentee is entitled to call upon an infringer for a discovery and an account of the particulars of the infringement, although the patent has expired. The circuit courts have plenary jurisdiction over all actions, suits, controver-

sies and cases in equity and at law arising under the patent laws. A suit demanding a discovery of the extent of an infringement of a patent right and an account of the profits realized from such infringement is manifestly a case arising under the patent law. *Nevins v. Johnson*, 3 Blatch. 80; *Perry v. Corning*, 6 Blatch. 134.

If the patent expires between the time of filing the bill and the hearing, an account can be ordered and other relief granted, although an injunction to restrain the further use can not issue on account of the expiration of the patent. *Imlay v. Railroad Co.* 1 Fish. 340; s. c. 4 Blatch. 227; *Sickles v. Gloucester Manuf. Co.* 1 Fish. 222; s. c. 3 Wall. Jr. 196; *Howes v. Nute*, 4 Fish. 263; *Smith v. Baker*, 31 Leg. Int. 126; s. c. 21 Pitts. L. J. 141; s. c. 19 I. R. R. 149; s. c. 5 O. G. 496; *Wood Paper Co. v. Glens' Falls Co.* 4 Fish. 561; s. c. 8 Blatch. 513; *Jordan v. Wallace*, 5 Fish. 185; s. c. 8 Phila. 165; *Vaughan v. Railroad Co.* 2 C. L. B. 39; s. c. 9 C. L. N. 255; s. c. 11 O. G. 789; *McComb v. Beard*, 6 Fish. 254; s. c. 10 Blatch. 350; s. c. 3 O. G. 33.

If the defendant dies while the action is pending, the complainant may revive it against the personal representative, in order to obtain an account of the profits. *Smith v. Baker*, 5 O. G. 496; s. c. 31 Leg. Int. 126; s. c. 21 Pitts. L. J. 141; s. c. 19 I. R. R. 149; *contra*, *Draper v. Hudson*, 6 Fish. 327; s. c. 1 Holmes, 208; s. c. 3 O. G. 354.

A suit for an account of profits is properly brought in equity. *Dibble v. Augur*, 7 Blatch. 86.

Where the complainant seeks for an account and discovery, a court of equity has jurisdiction of a bill to recover damages for breach of a contract relating to a patent. *Magic Ruffle Co. v. Elm City Co.* 13 Blatch. 151; s. c. 8 O. G. 773.

If a party is compelled to go into a court of equity to obtain a discovery in a case where the ascertainment of damages is complicated and intricate, and an action at law can not be adequately tried without great difficulty, owing to the nature of the account or other circumstances, the court, after a discovery, will proceed to a decree on the merits. *Magic Ruffle Co. v. Elm City Co.* 11 O. G. 501.

A party is at liberty to select his forum, although he seeks a recovery of money only, and neither seeks nor requires a discovery or other ancillary or further relief. No language could be employed to declare the jurisdiction of the courts at law and in equity more completely concurrent or which would more clearly indicate that the party aggrieved may resort to either. *Perry v. Corning*, 7 Blatch. 195; *Anthony v. Carroll*, 9 O. G. 199; *contra*, *Sanders v. Logan*, 2 Fish. 167.

A court of equity has jurisdiction of a bill to enjoin the use of a patented invention, and for an account of profits by the infringer, although an action at law may be maintained to recover damages. *McMillin v. Barclay*, 5 Fish. 189; s. c. 4 Brews. 275.

An action which raises a question of infringement is an action arising "under the law," and one who has a right to sue for the infringement may sue in the circuit court. Such a suit may involve the construction of a contract as well as the patent, but that will not oust the court of its jurisdiction. If the patent is involved, it carries with it the whole case. *Littlefield v. Perry*,

21 Wall. 205; s. c. 7 O. G. 964; *Magic Ruffle Co. v. Elm City Co.* 13 Blatch. 151; s. c. 8 O. G. 773.

Whenever a contract is made in relation to patent rights which is not provided for and regulated by an act of Congress, the court will not, under this section, have any jurisdiction over a dispute arising out of it. *Goodyear v. Day*, 1 Blatch. 565; *Blanchard v. Sprague*, 1 Cliff. 288; *Wilson v. Sandford*, 10 How. 99; *Goodyear v. Union Rubber Co.* 4 Blatch. 63; *Magic Ruffle Co. v. Elm City Co.* 13 Blatch. 151; s. c. 8 O. G. 773.

The jurisdiction of the circuit court under this section does not extend to a controversy which arises under a contract concerning a patent to be subsequently obtained, rather than under the patent law itself. *Nesmith v. Calvert*, 1 W. & M. 34; *Brooks v. Stolley*, 3 McLean, 523.

If an infringement is proved jurisdiction is conferred, and having power to protect the rights of a party under a patent, the court will take cognizance of other matters as incidental to the infringement. Hence the court has jurisdiction if the defendant has forfeited his right under a license. *Bloomer v. Gilpin*, 4 Fish. 50; *Brooks v. Stolley*, 3 McLean, 523.

A bill to determine the meaning of a license to the complainant, or to ascertain whether the defendant has done an act upon which the right to a reduction of the license fee arises, and thereupon to decree that the complainant is only bound to pay the reduced rent, can not be sustained. An apprehension that the defendant under a condition in the license will deny the right of the complainant to use the licensed invention, or that the defendant threatens to give notice of his election to terminate the license, will not justify an application to a court of equity. *Florence Co. v. Singer Co.* 4 Fish. 329; s. c. 8 Blatch. 113.

Jurisdiction is not controlled solely by the pleadings, but the case itself must be one within the cognizance of the court where the suit is brought. Where it appears at the trial that there is no question involved in the case which it is competent for the court to decide under the pleadings, the case will be dismissed, notwithstanding, the allegations of the bill may be sufficient to authorize the court to take cognizance of the suit. *Blanchard v. Sprague*, 1 Cliff. 288.

If a patentee sells the thing patented to a purchaser in violation of the license, the licensee can not maintain a bill in equity against the patentee and purchaser in the circuit court, without regard to the citizenship of the parties, for his rights arise under contract. *Hill v. Whitcomb*, 1 Holmes, 317; s. c. 5 O. G. 430.

If the parties are citizens of the same State, the circuit court has no jurisdiction over a bill to obtain the cancellation of a license on account of the invalidity of the patent. *Merserole v. Union Collar Co.* 3 Fish. 483; s. c. 6 Blatch. 356.

If the parties are citizens of the same State, the circuit court can not entertain a bill to compel the specific performance of a contract to assign a patent. *Burr v. Gregory*, 2 Paine, 426.

The mere fact that a bill prays for an account of the profits, in asking for a specific performance, will not give the court jurisdiction. *Burr v. Gregory*, 2 Paine, 426.

A junior patentee can not maintain an action against a prior patentee for the purpose of obtaining an adjudication that his patent does not conflict with the prior patent. *Celluloid Manuf. Co. v. Goodyear, D. V. Co.* 13 Blatch. 375; s. c. 10 O. G. 41.

The circuit court has no jurisdiction over any proceeding to vacate a patent and declare it null *ab initio*, upon the ground of false suggestion, or the ground that the government has undertaken to grant that which by law it can not grant. *Att. General v. Rumford Works*, 9 O. G. 1062.

The attorney general has no authority, as such and in his own name, to file an information or commence proceedings by bill in equity to annul a patent. *Att. General v. Rumford Works*, 9 O. G. 1062.

The circuit court may have jurisdiction over a controversy on account of the residence of the defendant, even if it has not on account of the subject. *Nesmith v. Calvert*, 1 W. & M. 34.

If the parties are citizens of different States, and the amount claimed and in controversy exceeds five hundred dollars, the court has jurisdiction over a claim arising from a contract. *Bloomer v. Gilpin*, 4 Fish. 50.

If the circuit court in a patent case has jurisdiction over the subject-matter and parties, the correctness of the decree can not be called in question collaterally. *Allen v. Blunt*, 1 Blatch. 480.

Copyright.

A court of equity has jurisdiction of a bill for an infringement of a copyright, although there is a remedy at law, for that is less appropriate, efficient and ample. *Pierpont v. Fowle*, 2 W. & M. 23.

The title of the complainant and the infringement may be adjudicated in a court of equity, without having been first determined at law. *Farmer v. Calvert Publishing Co.* 5 A. L. T. 168; s. c. 5 C. L. N. 1.

A court of equity has no jurisdiction to enforce penalties and forfeitures incurred under the statute relating to copyrights. *Stevens v. Gladding*, 17 How. 447; *Stevens v. Cady*, 2 Curt. 200.

If the controversy in regard to a copyright arises out of a contract, and not under the statute, the circuit court has no jurisdiction over it. *Pulte v. Derby*, 5 McLean, 328; *Little v. Hall*, 18 How. 165.

The circuit court has no jurisdiction of a bill in equity to protect the rights of an author at common law, where both parties are citizens of the same State. *Boucicault v. Hart*, 13 Blatch. 47.

CHAPTER ELEVEN.

SEC. 699. A writ of error may be allowed to review any final judgment at law, and an appeal shall be allowed from any final decree in equity hereinafter mentioned, without regard to the sum or value in dispute.

First. Any final judgment at law or final decree in equity of any circuit court or of any district court acting

as a circuit court, or of the Supreme Court of the District of Columbia, or of any territory, in any case touching patent rights or copyrights.

Statute Revised—July 8, 1870, ch. 230, §§ 56, 107, 16 Stat. 207, 215.

Prior Statutes—Feb. 15, 1819, ch. 19, § 1, 3 Stat. 781.—July 4, 1836, ch. 357, § 16, 5 Stat. 123.—Feb. 18, 1861, ch. 37, § 1, 12 Stat. 130.

General Principles.

An appeal or writ of error is allowed to all parties, without regard to the sum in controversy. *Philip v. Nock*, 13 Wall. 185.

Whenever a contract is made in relation to patents, which is not provided for and regulated by Congress, the parties, if any dispute arises, stand upon the same ground with other litigants as to the right of appeal, and the decree can not be revised unless the matter in dispute exceeds five thousand dollars. *Wilson v. Sandford*, 10 How. 99.

Citation.

A citation signed by the clerk and not by the judge is irregular. *Chaffee v. Hayward*, 20 How. 208.

An appearance of the defendant in error without making a motion to dismiss during the first term is a waiver of any irregularity in the citation, and is an admission that he has received notice to appear to the writ of error. *Chaffee v. Hayward*, 20 How. 208.

The absence of counsel is no excuse for the omission to move to dismiss the writ of error. *Chaffee v. Hayward*, 20 How. 208.

If the defendant in error appears in the Supreme Court, and pleads to entitle him to appear by counsel and argue the cause, it is too late after the case has been remanded to the circuit court to raise the objection that no writ of error was sued out to remove the record into the Supreme Court, and that the judgment is, therefore, still in force and unreversed. It will be presumed that all formal objections, and particularly one to the want of a writ, were waived by consent of parties. *Evans v. Eaton*, 3 Wash. C. C. 443; S. C. 7 Wheat. 356.

If the defendant in error does not elect to have the writ of error dismissed on account of the failure of the plaintiff to appear, but files an argument, the court will decide the case. *New York v. Ransom*, 1 Fish. 252; S. C. 23 How. 487.

Bill of Exceptions.

The bill of exceptions affords the only means of ascertaining the precise state of facts on which an instruction was given. Whether the report of the evidence as set forth in the bill of exceptions may or may not be incomplete or imperfectly stated, can not be known in an appellate court. Bills of exception, when properly taken and duly allowed, become a part of the record, and as such can not be contradicted. *Chaffee v. Boston Belting Co.* 22 How. 217.

The Supreme Court can not notice the rules of the inferior courts, unless they are made a part of the bill of exceptions. *Packet Co. v. Sickles*, 19 Wall. 611.

Exceptions to Evidence.

If no exception is taken to the competency or sufficiency of evidence, either generally or for any particular purpose, there is no necessity for putting any portion of it in the bill of exceptions, when the opinion of the court presents a general principle of law. *Pennock v. Dialogue*, 2 Pet. 1; s. c. 4 Wash. C. C. 538.

If a witness is rejected as incompetent, and the facts which the witness offered to prove are not stated in the bill of exceptions, the exception can not be disregarded upon the idea that the testimony could not have been material or could not have changed the result of the verdict. *Vance v. Campbell*, 1 Fish. 483; s. c. 1 Black, 427.

Parties are not at liberty to desert the purpose stated by them, and to show the pertinency or relevancy of the evidence for any other purpose not then suggested to the court. *Phila. & Trenton R. R. Co. v. Stimpson*, 14 Pet. 448.

It is incumbent on those who insist upon the right to put particular questions to a witness, to establish that right beyond any reasonable doubt, for the very purpose stated by them. *Phila. & Trenton R. R. Co. v. Stimpson*, 14 Pet. 448; *Blanchard v. Putnam*, 3 Fish. 186; s. c. 8 Wall. 420; s. c. 2 Bond, 84.

It is incumbent on the party objecting to the ruling to show his right to introduce the rejected evidence. *Silsby v. Foot*, 14 How. 218; s. c. 1 Blatch. 445.

A party is not deprived of any right if a paper was not legal evidence upon the particular point for which alone it was offered, or if its reception, accompanied by proper instructions to the jury concerning its legal effect, must necessarily have assisted the opposite party. *Silsby v. Foot*, 14 How. 218; s. c. 1 Blatch. 445.

If a party is not deprived of any right by the rejection of evidence, it is not cause for reversing a judgment that an erroneous reason was assigned for rejecting it. *Silsby v. Foote*, 14 How. 218; s. c. 1 Blatch. 445.

Exceptions to Instructions.

The exceptions to the charge of the court should be to the points ruled by the court, and not to the charge as published at length. *Stimpson v. West Chester R. R. Co.* 4 How. 380.

An omission of the court to instruct the jury upon particular points is not a ground for a bill of exceptions. *Allen v. Blunt*, 2 W. & M. 121.

A direction to the jury to render a verdict in favor of the defendant is only proper where it is entirely clear that the plaintiff can not recover. *Klein v. Russell*, 19 Wall. 433.

It is no ground of reversal that the court below omitted to give directions to the jury upon any points of law which might arise in the cause, where it was not requested by either party at the trial. It is sufficient that the court has given no erroneous directions. If either party deems any point presented by the evidence to be omitted in the charge, it is competent for such party to require an opinion from the court upon that point. If he does not, it is a

waiver of it. The court can not be presumed to do more in ordinary cases than to express its opinion upon the questions which the parties themselves have raised at the trial. *Pennock v. Dialogue*, 2 Pet. 1; s. c. 4 Wash. C. C. 538.

The substance only of the charge is to be examined, and if it appears upon the whole that the law was justly expounded to the jury, general expressions which may need and would receive qualification if they were the direct point in judgment, are to be understood in such restricted sense. *Evans v. Eaton*, 7 Wheat. 356; s. c. 3 Wash. C. C. 443.

It is clearly error for the court in its instruction to the jury to assume a material fact as proved, of which there is no evidence in the case, and when the finding of the jury accords with the theory of the instruction thus assumed without evidence, the error is of a character to deserve correction. *Chaffee v. Boston Belting Co.* 22 How. 217.

It is unnecessary and inconvenient, to spread the charge *in extenso* upon the record. *Evans v. Eaton*, 7 Wheat. 356; s. c. 3 Wash. C. C. 443.

Practice.

The admission or rejection of evidence after a case has been closed, is a matter of discretion and practice, in respect to which the Supreme Court possesses no authority to revise the decision of the circuit court. *Phila. & Trenton R. R. Co. v. Stimpson*, 14 Pet. 448.

It rests in the discretion of the court, when a juror is withdrawn on account of sickness before any evidence is given, whether such withdrawal shall be treated simply as occasioning a vacancy on a still existing panel, or as breaking up the panel altogether, and no error can be assigned upon it. *Silby v. Foot*, 14 How. 218; s. c. 1 Blatch. 445.

On a writ of error, a point can not be considered which was not made in the court below. *Klein v. Russell*, 19 Wall. 433.

If the damages are too large, the fault lies with the jury, when they are properly instructed, and can not be corrected in the Supreme Court on a writ of error. *Hogg v. Emerson*, 11 How. 587; s. c. 2 Blatch. 1.

The Supreme Court may take cognizance of a case where judgment is entered upon an agreed statement of the parties, without any express or specific exceptions to the rulings of the circuit court. *Stimpson v. Balt. & Sus. R. R. Co.* 10 How. 329.

If the merits of the controversy have been determined in a previous case, the cause will be remanded without argument upon mere technical questions. However the points of special pleading may be ruled, they can have no material influence on the ultimate decision of the case, because if it is found that errors in pleading have been committed by either party injurious to his rights, an opportunity will be afforded him to correct them in some subsequent proceeding, so as to bring the real points in controversy fairly before the court. *Smith v. Ely*, 15 How. 137; s. c. 5 McLean, 76.

After a case has been carried to the Supreme Court, and decided, and a mandate issued to the court below, if a second writ of error is sued out, it brings up for revision nothing but the proceedings subsequent to the mandate.

None of the questions which were before the court on the first writ of error can be reheard or re-examined upon the second. *Sizer v. Many*, 16 How. 98.

If one party pays the counsel fees on both sides, both in the court below and on appeal, he will be deemed to have such control over both the preparation and argument of the cause as to make the suit collusive, and on motion a decree of affirmance may be rescinded, the mandate recalled, and the bill dismissed. *Gardner v. Goodyear Dental Vulcanite Co.* 6 Fish. 329; S. C. 3 O. G. 295.

If the complainant buys in the patent under which the suit is defended, and thus owns both sides of the litigation, the suit will be dismissed on the motion of a third party, whose rights would be seriously affected if the question of law were decided in the manner that both parties to the suit desire it to be. They have the same interests, and those interests are in conflict with the interest of such third party, and for that reason the case should not be heard. *Wood Paper Co. v. Hest*, 3 Fish. 316; S. C. 8 Wall. 333.

Appeal.

An appeal can only be taken from a final decree. A decree is not to be considered final for the purposes of appeal, until after the coming in of the master's report. *Potter v. Mack*, 3 Fish. 428.

A decree for a perpetual injunction, with a reference to a master to ascertain the damages by reason of the infringement, is not a final decree. *Barnard v. Gibson*, 7 How. 650.

A motion to file an answer after default is generally addressed to the discretion of the court, and is not subject to revision in the Supreme Court. *Dean v. Mason*, 20 How. 198.

A motion by a party to whom the complainant's title has been assigned since the commencement of the suit for leave to file a supplemental bill is in the discretion of the court, and not a subject of revision. *Dean v. Mason*, 20 How. 198.

The granting of permission to retract an admission made in the answer is a matter in the discretion of the circuit court, and will not be reviewed in the Supreme Court. *Jones v. Morehead*, 1 Wall. 155.

Costs and expenses are not matters positively limited by law, but are allowed in the exercise of a sound discretion. No appeal lies from a mere decree respecting costs and expenses. *Canter v. Am. Ins. Co.* 3 Pet. 307.

An objection to the misjoinder of parties complainant, taken for the first time in the Supreme Court in a case where the parties consented to a decree, come too late. *Livingston v. Woodworth*, 15 How. 546.

Exceptions taken to a master's report by a party who does not appeal can not be considered. *Rubber Co. v. Goodyear*, 9 Wall. 786; S. C. 2 Fish. 499; 2 Cliff. 351.

If the master's report is in any particular erroneous, it is incumbent on the party to point out the error by an exception filed pursuant to the rules on that subject. If no exception is filed, it is too late to object to the error in the Supreme Court for the first time. *Kinsman v. Parkhurst*, 18 How. 289; S. C. 1 Blatch. 488.

The appeal and bond given in pursuance thereof do not vacate or suspend the order of injunction. They affect only the amount adjudged as damages and costs. *Mowry v. Whitney*, 3 Fish. 157; S. C. 14 Wall. 620.

The defendant must procure sureties to sign the bond, although he is amply responsible for the whole decree. *American Pavement Co. v. Elizabeth*, 6 O. G. 772.

The practice of requiring bond in double the amount of the decree need not be always followed, for the law does not require that the security shall be in any fixed proportion to the decree. *American Pavement Co. v. Elizabeth*, 6 O. G. 772.

The taking of an appeal and the filing of an appeal bond will not prevent the enforcement of that part of the decree which provides for the payment to the master of the fees due him for services rendered for the defendant. *Myers v. Dunbar*, 8 O. G. 321.

CHAPTER TWELVE.

SEC. 711. The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned shall be exclusive of the courts of the several States. * * * * *

Fifth. Of all cases arising under the patent right or copyright laws of the United States.

The exclusive right of the inventor to make and vend his newly-discovered implement is wholly statutory. Where a statute confers a right and prescribes adequate means for protecting it, the proprietor is confined to the statutory remedy. A State court can not, therefore, entertain a bill in equity to enjoin an infringement. *Dudley v. Mayhew*, 3 N. Y. 9; *Parkhurst v. Kinsman*, 6 N. J. Eq. 600; *Kempton v. Bray*, 99 Mass. 350; *Tomlinson v. Battel*, 4 Abb. Pr. 266.

If two patents have been issued to different parties, the State courts have no jurisdiction to settle their conflicting claims, or to enjoin the subsequent patentee at the instance of the prior patentee. *Gibson v. Woodworth*, 8 Paige, 132.

A State court has no jurisdiction of an action brought by a patentee to restrain another from issuing circulars warning parties against purchasing a certain article, if the latter claims the right to do so under a patent. *Hovey v. Rubber Tip Pencil Co.* 33 N. Y. Sup. 522; S. C. 57 N. Y. 119.

The jurisdiction vested in the circuit courts is exclusive, and a State court has no jurisdiction over an action for an infringement of a patent. *Parsons v. Ballard*, 7 Johns. 144.

If a contract for a sale of a patent right is rescinded, and a note given for the return of the money paid thereon, the defendant in an action on the note

can not plead the damages sustained by the plaintiff's infringement after the rescission as a set-off to the note. *Smith v. McClelland*, 11 Bush, 523.

A State court has no jurisdiction over an action of assumpsit to recover upon a *quantum valebat* for the use of a patented invention. *Batten v. Kear*, 2 Phila. 301.

A State court has no jurisdiction of an action by an assignee to enjoin an infringer or recover damages. *Stone v. Edwards*, 35 Tex. 556.

A State court can not entertain a bill for discovery and an injunction against an execution issued upon a judgment for damages rendered in an action for the infringement of a patent. *Kendall v. Winsor*, 6 R. I. 453.

If a State court has jurisdiction over the rights of parties arising out of a contract relating to a patent, it may incidentally inquire into the validity of the patent. *Burrall v. Jewett*, 2 Paige, 134; *Sherman v. Champlain Co.* 31 Vt. 162; *Lindsay v. Roraback*, 4 Jones Eq. 124; *Slemmer's Appeal*, 58 Penn. 155; *Parkhurst v. Kinsman*, 6 N. J. Eq. 600; *Rich v. Atwater*, 16 Conn. 409; *Middlebrook v. Broadbent*, 47 N. Y. 443; *Rice v. Garnhart*, 34 Wis. 453; *Saxton v. Dodge*, 57 Barb. 84. *Contra*, *Elmer v. Pennel*, 40 Me. 430.

In an action in a State court to recover the price agreed to be paid for a patent right, the defendant, for the purpose of showing a want or failure of consideration, may prove that the patent is void for want of novelty or utility. *Rice v. Garnhart*, 34 Wis. 453, *Street v. Silver*, Brightly, 96.

A State court has jurisdiction over an action to recover damages for fraud in the sale of a patent right. *Hunt v. Hoover*, 24 Iowa, 231; *Warren v. Cole*, 15 Mich. 265.

If a party who has discovered a process without taking out a patent therefor, imparts the secret to another, under an agreement not to divulge it, he may maintain an action in a State court for an injunction and for damages for breach of the contract by the latter. *Hammer v. Barnes*, 26 How. Pr. 174.

If an inventor employs a mechanic to perfect his invention, under an agreement that the latter shall take out patents for the improvements, and assign them to the former, he may maintain an action in a State court to obtain an assignment, and recover the profits received in violation of the agreement. *Binney v. Annan*, 107 Mass. 94.

A State court has jurisdiction of an action to rescind a contract for a sale of an interest in a patent on the ground of fraud. *Page v. Dickerson*, 28 Wis. 694.

A State court has jurisdiction of an action by a manufacturer against a patentee, for falsely and intentionally advertising that his manufactures were an infringement of the patent. *Snow v. Judson*, 38 Barb. 210.

If a patentee in an assignment warrants the novelty of the invention, a State court has jurisdiction of an action for the breach of a warranty. *Wright v. Wilson*, 11 Rich. 144.

A State court has jurisdiction over a suit to rescind a contract for the sale of a patent right, on account of a fraud on the part of the patentee in the sale thereof. *Lindsay v. Roraback*, 4 Jones Eq. 124.

A State court has jurisdiction of an action by a patentee to recover damages for breach of an agreement not to use the thing patented. *Billings v. Ames*, 32 Mo. 265.

A State court has jurisdiction of an action by an inventor to recover the consideration stipulated to be paid to him by another for the privilege of taking out a patent therefor in his own name. *Lockwood v. Lockwood*, 33 Iowa, 509.

If a party agrees to improve machinery for a certain purpose, and the other party agrees to pay a certain price therefor, the defendant in an action on the contract for the stipulated price, may show that the alleged improvement for which the patent was granted is worthless. *McDougall v. Fogg*, 2 Bosw. 387.

The statute does not make the jurisdiction of the Federal courts over actions for the protection of the rights of authors at common law in their manuscripts exclusive, or deprive State courts of jurisdiction over such actions. At most it gives parties within its provisions, and not claiming the benefits of a copyright under the laws of the United States, a cumulative remedy and a choice of tribunals. The jurisdiction of the State courts in cases in which it had before been exercised, is not taken away or in any respect impaired. *Palmer v. DeWitt*, 47 N. Y. 532; S. C. 40 How. Pr. 293; S. C. 5 Abb. Pr. (N. S.) 13; S. C. 36 How. Pr. 22; S. C. *Sweeny*, 530; *Woolsey v. Judd*, 4 Duer, 379; *Jones v. Thorne*, 1 N. Y. Leg. Obs. 408.

CHAPTER SEVENTEEN.

SEC. 892. Written or printed copies of any records, books, papers, or drawings belonging to the patent office, and of letters patent, authenticated by the seal and certified by the commissioner or acting commissioner thereof, shall be evidence in all cases wherein the originals could be evidence; and any person making application therefor, and paying the fee required by law, shall have certified copies thereof.

Statute Revised—July 8, 1870, ch. 230, § 57, 16 Stat. 207.

Prior Statutes—Apr. 10, 1790, ch. 7, §§ 3, 6, 1 Stat. 111.—July 4, 1836, ch. 357, § 4, 5 Stat. 118.—March, 3, 1837, ch. 45, § 2, 5 Stat. 191.—March 2, 1861, ch. 88, § 15, 12 Stat. 249.

A certified copy of an assignment is *prima facie* evidence of the genuineness of the original, and is competent evidence, and absolute evidence of the correctness of the copies from the record. *Lee v. Blandy*, 2 Fish. 89; S. C. 1 Bond, 361; *Parker v. Haworth*, 4 McLean, 370; *Brooks v. Jenkins*, 3 McLean, 432.

A certified copy of a transfer of an interest in a patent which is not required by law to be recorded is not legal proof of such transfer. *Sherman v. Champlain Co.* 31 Vt. 162.

A copy of a specification alone is not competent evidence to prove what was contained in the patent, for it affords no proof of the granting, or of the

existence of a patent based upon the specification. Nor is the mere certificate of the commissioner, though authenticated by his official seal, that such patent was issued and remains in full force, competent evidence of the facts so certified. The proper evidence of the patent is a copy of the patent itself duly authenticated by the official seal and certificate of the commissioner. *Davis v. Gray*, 17 Ohio St. 330.

Patents are public records. All persons are bound to take notice of their contents, and consequently should have a right to obtain copies of them. These records being in the care and custody of the commissioner of patents, it is his duty to give authenticated copies to any person who shall demand the same, as soon as he conveniently can, on payment of the legal fees. Where there is a right on the one side and a corresponding duty on the other, a refusal to perform such duty on the reasonable request of the party entitled to demand it, will subject the officer to an action. But the party entitled to such services, must request in a proper manner. He has no right to accompany his demand with personal insult or vulgar abuse of the officer. Those to whom the people have committed high trusts are entitled at least to common courtesy, and are not bound to submit to the insolence or ill temper of those who disregard the decencies of social intercourse. A demand accompanied with rudeness and insult is not a legal demand. *Boyden v. Burke*, 14 How. 575.

The commissioner is in error in refusing to comply with a second demand on account of former misconduct, or to enforce an apology by withholding the party's rights. Ill manners or bad temper do not work a forfeiture of men's civil rights. While the want of an apology for previous rudeness and insult may well justify the commissioner in refusing all social intercourse with the party, yet it cannot release him from the obligations imposed upon him by his official station, or entitle him to disregard the rights guaranteed to others by the laws of the land. *Boyden v. Burke*, 14 How. 575.

A clerk whose employment consists chiefly in making examinations in relation to assignments and other papers recorded and filed in the office, is a competent witness to prove that no assignment has ever been recorded. *Stone v. Palmer*, 28 Mo. 539.

SEC. 893. Copies of the specifications and drawings of foreign letters patent, certified as provided in the preceding section, shall be *prima facie* evidence of the fact of the granting of such letters patent, and of the date and contents thereof.

Statute Revised—July 8, 1870, ch. 230, § 57, 16 Stat. 207.

A certificate of the commissioner of the correctness of a translation of a foreign patent contained in a volume in the library of the patent office is not competent evidence. *Gaylord v. Case*, 1 C. L. B. 382.

SEC. 894. The printed copies of specifications and

drawings of patents, which the commissioner of patents is authorized to print for gratuitous distribution, and to deposit in the capitols of the States and Territories, and in the clerks' offices of the district courts, shall, when certified by him and authenticated by the seal of his office, be received in all courts as evidence of all matters therein contained.

Statute Revised—Jan. 11, 1871, Res. 5, 16 Stat. 590.

SEC. 972. In all recoveries under the copyright laws, either for damages, forfeitures, or penalties, full costs shall be allowed thereon.

Statute Revised—July 8, 1870, ch. 230, § 108, 16 Stat. 218.

Prior Statute—Feb. 3, 1831, ch. 16, § 12, 4 Stat. 438.

SEC. 973. When judgment or decree is rendered for the plaintiff or complainant, in any suit at law or in equity, for the infringement of a part of a patent, in which it appears that the patentee, in his specification, claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the original and first inventor, no costs shall be recovered, unless the proper disclaimer, as provided by the patent laws, has been entered at the patent office before the suit was brought.

Statute Revised—July, 8, 1870, ch. 230, § 60, 16 Stat. 207.

Prior Statute—July 4, 1836, ch. 357, § 15, 5 Stat. 123.

If the verdict was rendered upon all the claims, affirming their validity and the novelty of the invention claimed in each, the mere fact that the plaintiff disclaimed one or more of the claims after the trial and verdict, does not deprive him of his right to costs. *Peek v. Frames*, 5 Fish. 211.

TITLE LX.

PATENTS, TRADE-MARKS, AND COPYRIGHTS.

CHAPTER ONE.

PATENTS.

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Sec. 4883. All patents shall be issued in the name of the United States of America, under the seal of the pat-

ent office, and shall be signed by the Secretary of the Interior and countersigned by the commissioner of patents, and they shall be recorded, together with the specifications, in the patent office, in books to be kept for that purpose.

Statute Revised—July 8, 1870, ch. 230, § 21, 16 Stat. 200.

Prior Statutes—April 10, 1790, ch. 7, § 1, 1 Stat. 109.—Feb. 21, 1793, ch. 11, § 1, 1 Stat. 318.—July 4, 1836, ch. 357, § 5, 5 Stat. 118.

Principles of Construction.

Patent laws should be liberally construed to meet the wise and beneficent object of the legislature. Patentees are a meritorious class, and the courts will give them all the aid and protection which the law allows. *Commissioner v. Whiteley*, 4 Wall. 522; *Brooks v. Jenkins*, 3 McLean, 432; *Grant v. Raymond*, 6 Pet. 218.

The right of property which a patentee has in his invention, and his right to its exclusive use, are derived altogether from the statute. An inventor has no right of property in his invention upon which he can maintain suit, unless he obtains a patent for it according to the statute, and his rights are to be regulated and measured by its provisions, and can not go beyond them. *Brown v. Duchesne*, 19 How. 183; s. c. 2 Curt. 371.

When Congress are legislating to protect inventors, their attention is necessarily attracted to the authority under which they are acting, and it ought not lightly to be presumed that they intended to go beyond it, and exercise another and distinct power conferred on them for a different purpose. *Brown v. Duchesne*, 19 How. 183; s. c. 2 Curt. 371.

A special act extending a patent must be construed in connection with the statute. They are statutes *in pari materia*, and all relate to the same subject, and must be construed together. *Bloomer v. McQuewen*, 14 How. 539; *Jordan v. Dobson*, 4 Fish. 232; s. c. 7 Phila. 533; s. c. 2 Abb. U. S. 398.

A special act of Congress in favor of a patentee, extending the time beyond that originally limited, must be considered as engrafted on the general law. *Bloomer v. McQuewen*, 14 How. 539.

An act of Congress which gives a patent for an invention will, if it is ambiguous, be construed to give damages for the construction or use of the invention only after the grant of the patent, so that it may not be deemed to create rights retrospectively, or make men liable for damages for acts lawful at the time when they were done. *Blanchard v. Sprague*, 2 Story, 164; s. c. 3 Sumner, 535.

The courts can never presume that Congress intended to decide that an individual is an author or inventor in a general act, the words of which do not render such a construction unavoidable. *Evans v. Eaton*, 3 Wheat. 454; s. c. Pet. C. C. 322.

The grant of an exclusive privilege to an invention for a limited time does not imply a binding and irrevocable contract with the people that at the expiration of the period the invention shall become their property. Congress may renew the patent right at the end of the period or decline to do so. *Evans v. Eaton*, 3 Wheat. 454; s. c. Pet. C. C. 322.

Signature.

As the Secretary of the Interior must by law sign the patent, as well as the commissioner, should the patent be altered after he signs it, he must be made aware of any such subsequent alteration and sanction it before his signature can be regarded as verifying the amended patent. The entry of his sanction upon the letters patent themselves would be a convenient mode of perpetuating the evidence of it, but in principle nothing seems to be demanded beyond his assent or ratification. *Woodworth v. Hall*, 1 W. & M. 389.

SEC. 4884. Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make, use, and vend the invention or discovery throughout the United States, and the Territories thereof, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

Statute Revised—July 8, 1870, ch. 230, § 22, 16 Stat. 201.

Prior Statutes—April 10, 1790, ch. 7, § 1, 1 Stat. 109.—February 21, 1793, ch. 11, § 1, 1 Stat. 318.—July 4, 1836, ch. 357, § 5, 5 Stat. 118.—March 2, 1861, ch. 88, § 16, 12 Stat. 249.

Rules of Construction.

Patents for inventions under the fair application of the rule *ut res magis valeat quam pereat*, are, if practicable, to be so interpreted as to uphold and not to destroy the right of the inventor. *Turrill v. Railroad Company*, 1 Wall. 491; *Stover v. Halstead*, 13 Blatch. 95; s. c. 8 O. G. 558; *Ryan v. Goodwin*, 3 Sumner, 514; *Russell v. Klein*, 19 Wall. 433; *Allen v. Hunter*, 6 McLean, 303; *Ingels v. Mast*, 6 Fish. 415; *Davoll v. Brown*, 1 W. & M. 53; *Union Paper Bag Co. v. Nixon*, 6 Fish. 402; s. c. 4 O. G. 691; *Rubber Co. v. Goodyear*, 9 Wall. 788; s. c. 2 Fish. 499; s. c. 2 Cliff. 351; *Goodyear v. Berry*, 3 Fish. 439; s. c. 2 Bond, 189; *Goodyear Dental Co. v. Gardner*, 4 Fish. 224; *Brown v. Guild*, 23 Wall. 181.

This principle is not to be carried so far as to exclude what is in it, or to interpolate anything which it does not contain. *Rubber Co. v. Goodyear*, 9 Wall. 788; s. c. 2 Fish. 499; s. c. 2 Cliff. 351.

The rights secured by a patent for an invention or discovery are as much property as anything else real or incorporeal. The titles by which they are held, like other titles, should not be overthrown upon doubts or objections capable of a reasonable and just solution in favor of their validity. *Blandy v. Griffith*, 3 Fish. 609.

Patents for inventions are treated as a just reward to ingenious men, and as highly beneficial to the public, not only by holding out suitable encouragement to genius, and talents, and enterprise, but as ultimately securing to the

whole community great advantages from the free communication of secrets and processes, and machinery, which may be most important to all the great interests of society, to agriculture, to commerce, and to manufactures, as well as to the cause of science and art. Specifications are therefore clearly entitled to a liberal construction, since they are granted not as restrictions upon the rights of the community, but "to promote science and useful arts." *Blanchard v. Sprague*, 2 Story, 164; S. C. 3 Sumner, 535; *Bussey v. Wagoner*, 9 O. G. 300; S. C. 23 Pitts. L. J. 131; *Treadwell v. Parrott*, 3 Fish. 124; S. C. 5 Blatch. 369; *Dennis v. Cross*, 6 Fish. 138; S. C. 3 Biss. 389; *Potter v. Holland*, 1 Fish. 382; S. C. 4 Blatch. 238; *Carew v. Boston Elastic Fabric Co.* 5 Fish. 90; S. C. 1 Holmes, 45; S. C. 1 O. G. 91; *Singer v. Walmsley*, 1 Fish. 555; *Birdsell v. McDonald*, 6 O. G. 682; *Corning v. Burden*, 15 How. 252; *Goodyear v. Central R. R. Co.* 1 Fish. 626; S. C. 2 Wall. Jr. 356; *Winans v. Denmead*, 15 How. 330; 4 Am. L. J. 498; *Allen v. Hunter*, 6 McLean, 303; *Parker v. Stiles*, 5 McLean, 44; *Ames v. Howard*, 1 Sumner, 482; *Lea v. Shawk*, 1 Fish. 465; S. C. 1 Bond, 259; *Bloomer v. Stolley*, 5 McLean, 158; *Parker v. Haworth*, 4 McLean, 370; *Waterbury Brass Co. v. N. Y. Brass Co.* 3 Fish. 43; *Hogg v. Emerson*, 6 How. 437; S. C. 2 Blatch. 1; *Ames v. Howard*, 1 Sumner, 482; *Davoll v. Brown*, 1 W. & M. 53; *Seymour v. Osborne*, 11 Wall. 516; S. C. 3 Fish. 555.

It is the duty of the court in construing a patent, to so construe it, if it can without doing violence to the language used, as not to defeat the claim of the patentee, but to give to the patentee what he has actually invented, and all that he has actually invented—in other words, to make the claim commensurate with the invention which has been actually made by the patentee. *Ransom v. New York*, 1 Fish. 252; *Swift v. Whisen*, 3 Fish. 343; S. C. 2 Bond, 115; *Parker v. Stiles*, 5 McLean, 44; *Coffin v. Ogden*, 3 Fish. 640; S. C. 7 Blatch. 61; *Union Sugar Refinery v. Mathiessen*, 2 Fish. 600; *Whipple v. Middlesex Co.* 4 Fish. 41; *Roots v. Hyndman*, 6 Fish. 439; S. C. 4 O. G. 29; *Rogers v. Sargent*, 7 Blatch. 507; *Hovey v. Stevens*, 3 W. & M. 17; *Andrews v. Carman*, 13 Blatch. 307; S. C. 9 O. G. 1011; *Estabrook v. Dunbar*, 10 O. G. 909; *Judson v. Moore*, 1 Fish. 544; S. C. 1 Bond, 285; *Johnson v. Linen Co.* 33 Conn. 436; *Smith v. Fay*, 6 Fish. 446; *Clark v. Kennedy Manuf. Co.* 11 O. G. 68; *Goodyear v. Providence Rubber Co.* 2 Fish. 499; S. C. 9 Wall. 788; S. C. 2 Cliff. 35; *Hamilton v. Ives*, 6 Fish. 244; S. C. 3 O. G. 30; *Francis v. Mellor*, 5 Fish. 153; S. C. 8 Phila. 157; S. C. 5 A. L. T. (U. S.) 237; S. C. 1 O. G. 48; *Union Paper Bag Co. v. Nixon*, 6 Fish. 402; S. C. 4 O. G. 31.

A patent should be construed in such a way, if possible, as to conform to the actual invention. *Hale v. Stimpson*, 2 Fish. 565; *Stimpson v. Woodman*, 3 Fish. 98; S. C. 10 Wall. 317; *Taylor v. Garretson*, 5 Fish. 116; S. C. 9 Blatch. 156; *Bussey v. Wagoner*, 9 O. G. 300; S. C. 23 Pitts. L. J. 131; *Barnes v. Straus*, 5 Fish. 531; S. C. 9 Blatch. 553; S. C. 2 O. G. 62; *Gallahue v. Butterfield*, 6 Fish. 203; S. C. 10 Blatch. 232; 2 O. G. 645.

The patentee may so restrict his claim as to cover less than what he invented, yet such an interpretation should not be put upon his claim if it can fairly be construed otherwise. *Winans v. Denmead*, 15 How. 330; S. C. 4 Am. L. J. 498.

The intention of the inventor so as to effect the object designed, is to govern the construction of the language he employs. Inventors are not always educated or scientific men. Some most useful inventions have sprung from an illiterate source. Genius is not always blessed with the power of language. Courts look to the manifest design in order to remove any ambiguity arising from the terms employed; but this ambiguity must not be such as would perplex an ordinary mechanic in the art to which it applies. *Page v. Ferry*, 1 Fish. 298.

There may be a liberality of construction very injurious to the public, especially if it permits a patentee to couch his specification in such ambiguous terms that its claims may be contracted or expanded to suit the exigency. *Parker v. Sears*, 1 Fish. 93.

The same exact rule of interpretation is not to be applied at all times, but such in each case as will best enable the court to arrive at the meaning intended. *Welling v. Rubber Co.* 7 O. G. 606.

It is not necessary to classify a claim and to draw deductions from such classification. That is generally an unsafe mode of reasoning. *Howe v. Morton*, 1 Fish. 586.

• **What may be Referred to.**

It is the duty of the patentee to sum up his invention in clear and determinate terms, and his summing up is conclusive upon his right and title. *Wyeth v. Stone*, 1 Story, 274; *Dennis v. Cross*, 3 Biss. 389; *Hovey v. Stevens*, 3 W. & M. 17; *Wheeler v. McCormick*, 6 Fish. 551; S. C. 11 Blatch. 334; 4 O. G. 692.

The patentee is restricted to his claim. It is true that the whole patent, including the specifications and the drawings, is to be taken into consideration, but the court looks at them only for the purpose of placing a proper construction on the claim. *Pitts v. Wemple*, 2 Fish. 10; S. C. 1 Blatch. 168; *Johnson v. McCullough*, 4 Fish. 170; *Brooks v. Fisk*, 15 How. 212; *Rich v. Close*, 4 Fish. 279; S. C. 8 Blatch. 1.

The claim is the attempt on the part of the inventor to describe the very thing which he supposes he has invented, and for which he asks the patent. *Many v. Jagger*, 1 Blatch. 372.

The claim must be construed as favorably to the patentee as the language of the claim, the state of the art, and the extent and character of his actual invention will allow. *Burdin v. Corning*, 2 Fish. 477.

The claim contained in a patent is to be construed with reference to the state of the art at the time of the invention. *Pitts v. Wemple*, 2 Fish. 10; S. C. 1 Biss. 87; *Tilghman v. Mitchell*, 2 Fish. 518; *Goodyear v. Wait*, 3 Fish. 242; S. C. 5 Blatch. 468; *Whipple v. Middlesex Co.* 4 Fish. 41; *Goodyear Dental Co. v. Gardner*, 4 Fish. 224; *Rogers v. Sargent*, 7 Blatch. 507.

In construing a patent, the courts, in the first place, generally look to the claim, which by law is required to be a summing up of the particulars of the invention for which the applicant desires a patent. If that claim is vague and uncertain, then reference is made to the specification and drawings, together with such other exhibits as may aid in giving a construction to the patent.

Haselden *v.* Ogden, 3 Fish. 378; Whipple *v.* Baldwin Manuf. Co. 4 Fish. 29; Whipple *v.* Middlesex Co. 4 Fish. 41; Johnson *v.* Root, 1 Fish. 351.

In order to determine what the patentee claims as his invention, the court must look to the specification annexed to the patent, which is made by law a portion of the patent. In determining the construction of the claim, it is proper that the court should refer to the whole specification, and consider the whole of it in connection. Ransom *v.* New York, 1 Fish. 252; Carter *v.* Messinger, 11 Blatch. 34; Hovey *v.* Stevens, 1 W. & M. 290; Hudson *v.* Draper, 4 Fish. 256; s. c. 4 Brews. 260; 1 O. G. 204; Page *v.* Ferry, 1 Fish. 298; Roberts *v.* Dickey, 4 Fish. 532; Judson *v.* Cope, 1 Fish. 615; s. c. 1 Bond, 327; Howe *v.* Morton, 1 Fish. 586; Rogers *v.* Sargent, 7 Blatch. 507; Vance *v.* Campbell, 1 Fish. 483; s. c. 1 Black, 427; Davoll *v.* Brown, 1 W. & M. 53; Carver *v.* Braintree Manuf. Co. 2 Story. 432; Seymour *v.* Osborne, 11 Wall. 516; s. c. 3 Blatch. 209; Coffin *v.* Ogden, 3 Fish. 640; s. c. 7 Blatch. 61; Francis *v.* Mellor, 5 Fish. 153; s. c. 8 Phila. 157; 1 O. G. 48; 5 A. L. T. 237; Suffolk Co. *v.* Hayden, 4 Fish. 86; s. c. 3 Wall. 315.

The patent, the specification, and the drawings may be referred to in ascertaining the extent of the patentee's claim. While it is true that the court is to look at the summing up to discover what parts of the machine he claims to have invented, still, if anything is needed to enable it to determine the proper meaning of the expressions used in the claim, it must refer to the previous portion of the specification for such explanations as may be necessary to understand the office and purpose of that which is claimed as new. Forbes *v.* Barstow Stove Co. 2 Cliff. 379; Morris *v.* Barrett, 1 Fish. 461; s. c. 1 Bond, 254; Ingels *v.* Mast, 2 Cent. L. J. 349; s. c. 9 Pac. L. R. 189; Judson *v.* Moore, 1 Fish. 544; s. c. 1 Bond, 285; Turrill *v.* Railroad Company, 1 Wall. 491; Washburn *v.* Gould, 3 Story, 122; Pitts *v.* Edmonds, 2 Fish. 52; s. c. 1 Biss. 168; Union Sugar Refinery *v.* Mathiessen, 2 Fish. 600; Birdsall *v.* McDonald, 6 O. G. 682; Geir *v.* Goettinger, 7 O. G. 563; Earle *v.* Sawyer, 4 Mass. 1; Whitney *v.* Emmett, Bald. 303; Kittle *v.* Merriam, 2 Curt. 475; Goodyear Dental Co. *v.* Gardner, 4 Fish. 224; Doughty *v.* Day, 5 Fish. 224; s. c. 9 Blatch. 262.

A petition is always required to be presented by an inventor. The specification is required to be prepared and filed before the patent issues. The specification is incorporated expressly and at length into the letters patent themselves, and must be regarded as a component part by the statute. Hogg *v.* Emerson, 6 How. 437; s. c. 2 Blatch. 1.

The specification and the claim emanate from the same pen—the one can not contradict the other. Page *v.* Ferry, 1 Fish. 298.

If the claim and specification do not altogether agree, the claim governs the patent. Haselden *v.* Ogden, 3 Fish. 378.

The different parts of the patent must be compared with each other, and the instrument considered as a whole. Union Sugar Refinery *v.* Mathiessen, 2 Fish. 600.

The drawings are to be deemed a part of the specification, and may be referred to for the purpose of adding anything to the specification or claim not specifically contained therein. Washburn *v.* Gould, 3 Story, 122.

The specification governs, and the drawings merely illustrate. Hogg *v.*

Emerson, 11 How. 587 ; s. C. 2 Blatch. 1 ; Hamilton *v.* Ives, 6 Fish. 244 ; s. C. 3 O. G. 30.

If the claim refers to other parts of the specification and drawings, those parts are to be examined in connection with it, in order to ascertain what is claimed in the summary as the new improvement. *Hovey v. Stevens*, 3 W. & M. 17 ; *Heinrich v. Luther*, 6 McLean, 345.

Mere matters of adjustment of the individual elements of a combination are not limited or controlled by the drawings, unless : 1. They are expressly so limited by the specifications as well ; or, 2. Such limitation and control are necessary to maintain the integrity of the specifications taken as a whole, or of some essential part or parts thereof ; or, 3. Such limitation and control are essential to produce the result claimed. *Hamilton v. Ives*, 6 Fish. 244 ; s. C. 3 O. G. 30.

The courts will look at the model, which is as much a part of the patent as the specification, and which the statute requires to be preserved, in order to illustrate anything that may be doubtful to the mechanic who undertakes to make the machine from the patent after the patent has expired. *Hoffheins v. Brandt*, 3 Fish. 218 ; *Goodyear Dental Co. v. Gardner*, 4 Fish. 224.

Where the construction of the patent and specification as to the subject of the grant is doubtful, the affidavit, if more precise, may be resorted to in order to explain the ambiguity. *Pettibone v. Derringer*, 4 Wash. C. C. 215.

The patent must be construed without reference to the previous correspondence and previously rejected applications, especially if the patent issued correctly describes the invention. *Piper v. Brown*, 4 Fish. 175 ; *Johnson v. Root*, 1 Fish. 351 ; *Goodyear Dental Co. v. Gardner*, 4 Fish. 224.

The construction of a patent must certainly depend on the words of the instrument, but where the words are ambiguous there may be circumstances which ought to have great influence in expounding them. The intention of the parties, if that intention can be collected from sources which the principles of the law permit courts to explore, are entitled to great consideration. The parties are the Government, acting by its agents, and the patentee. *Evans v. Eaton*, 3 Wheat. 454 ; s. C. Pet. C. C. 322.

Whether the specification is for a principle or not is to be decided in view of the art, the character of the machine, the entire specifications, drawings, and claims. Few cases constitute precedents for others. Because some tribunals in a particular case decided that certain words, when used in connection with their accompanying incidents, did import a claim for a result or principle, another tribunal should not treat these decisions as setting up a formula in all circumstances involving a similar meaning. They assert no such rule. All go upon a full critical review of the accompanying facts in reference to which they have been used, excluding the idea that other courts are not to perform the same duty. Words identical should be rendered as diversely as the conditions in which they are employed demand, in order not to defeat the fairly presumed intention of those who use them. *Union Paper Bag Co. v. Nixon*, 6 Fish. 402 ; s. C. 9 O. G. 691.

Whether the thing claimed to have been invented is sufficiently described in the patent is in its nature a question of law, for it depends upon the construction of a written instrument. If technical terms are used peculiar to

mechanics in describing the invention, evidence may be heard in explanation of those terms, and in such case a jury may be necessary. Unless the thing claimed to be invented is so described as to be known from every other thing, the patent is void, and this must be determined by the court. *Brooks v. Jenkins*, 3 McLean, 432; *Davis v. Palmer*, 2 Brock, 298; *Washburn v. Gould*, 3 Story, 122; *Davoll v. Brown*, 1 W. & M. 53.

The construction seldom rests on facts to be proved by parol, unless they are so referred to as to make a part of the description, and to govern it; and when it does at all depend on them, and they are proved or admitted, and are without dispute, it is the duty of the court on these facts to give the legal construction to the instrument. *Davoll v. Brown*, 1 W. & M. 53.

The description of the operation and effect of each separate element of a combination must be read and construed with reference to the entire combination and its results, and the effect which the operation of each element has upon that of each of the others. *Hamilton v. Ives*, 6 Fish. 244; S. C. 3 O. G. 30.

The description or title of the invention ought not to be repugnant to the specification, but provided it honestly sets forth, in few words, the "nature and design" of the patent, it is sufficient. The specification must be looked to for the full disclosure of the discovery, and the extent of the inventor's claims. While the specification is usually, and always ought to be, drawn with the assistance of learned and able counsel, the short description or title in the patent is usually suggested by the commissioner of patents. The extent of the patentee's rights must be judged from the whole instrument taken together, and not from any one sentence. *Sickles v. Gloucester Manuf'g Co.* 1 Fish. 222; S. C. 3 Wall. Jr. 196; *Goodyear v. Cental R. R. Co.* 1 Fish. 626; S. C. 2 Wall. Jr. 356; *Hogg v. Emerson*, 6 How. 437; S. C. 11 How. 587; 2 Blatch. 1; *Matthews v. Skates*, 1 Fish. 602; *Whittemore v. Cutter*, 1 Gall. 429.

The patentee is not controlled by his title, but the patent, specifications and drawings are all to be examined, and are all to have a fair and liberal construction in determining the nature and extent of the invention. *Bell v. Daniels*, 1 Fish. 372; S. C. 1 Bond, 212; *Parker v. Stiles*, 5 McLean, 44; *Pitts v. Whitman*, 2 Story, 609; *Locomotive Co. v. Railway Co.* 6 Fish. 187; S. C. 10 Blatch. 292; 3 O. G. 93.

The patent and specification are connected together and dependent on each other for support. The specification should maintain the title of the patent. The latter should not indicate one thing and the former describe another, as the subject of the grant. *Sullivan v. Redfield*, 1 Paine, 441.

Construction.

A patent can not be construed to cover parts which have been omitted, although such omission will not vitiate it, unless they were made with a view to deceive the public. *Burden v. Corning*, 2 Fish. 477.

The courts have no power to correct a mistake in letters patent. Their duty is to construe the specification and claim as they stand, and determine the legal effect of the claim. *Kittle v. Merriam*, 2 Curt. 475.

If enough is left after the rejection of an erroneous description to clearly

and certainly identify the mode of constructing the machine, the rule *error demonstrationis non nocet* applies. *Kittle v. Merriam*, 2 Curt. 475.

A defect should be clear and palpable to justify a court in saying that a patent is a nullity. It is subject to scrutiny before it passes into the hands of the patentee. The whole claim of the inventor is subjected to an officer who acts under oath, and who is usually a man well skilled in natural philosophy and mechanical science generally, and who would not be justified in granting a patent to any person unless, in his judgment, the specification was sufficiently clear. *Judson v. Moore*, 1 Fish. 544; s. C. 1 Bond, 285.

No court of justice is at liberty to strike out any words which are sensible in the place where they occur, and are capable of a distinct application. Effect is to be given, if practicable, to all the words as containing a distinct expression of the intention of the party. *Ames v. Howard*, 1 Sum. 482.

An error of expression apparent on the face both of the patent and specification, by which no person could be misled, will not invalidate the patent. *Kneass v. Schuylkill Bank*, 4 Wash. C. C. 9.

It is the province and duty of the court to settle the meaning of the patent, and if that can not be ascertained satisfactorily upon the face of the specification, the law declares it insufficient for ambiguity and uncertainty. The specification is laid before the jury as defined and settled by the exposition of the court, and the matters of fact presented by the respective parties to support or defeat the patent are then to be examined and applied, as if the construction fixed by the court had been incorporated in the specification. *Hogg v. Emerson*, 2 Blatch. 1; s. C. 11 How. 587; 6 How. 437.

Although there is some ambiguity and uncertainty in a 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 Sum. 514; *Swift v. Whisen*, 3 Fish. 343; s. C. 2 Bond, 115; *Middletown Co. v. Judd*, 3 Fish. 141.

Whether a claim is vague and uncertain, is a question of law to be determined by the rules of construction applied in the light of the state of the art. *Blake v. Stafford*, 3 Fish. 294; s. C. 6 Blatch. 195.

A description, though in some respects obscure, imperfect, or not so intelligible as to fully answer all the objects of the law, is good if it enables the court to specify the improvement or invention patented from the face of the patent and accompanying papers. It is enough if there is a substantial description of the thing patented, though defective in form or mode of explanation. *Whitney v. Emmett*, Bald. 303; *Judson v. Moore*, 1 Fish. 544; s. C. 1 Bond, 285; *Wane v. Holmes*, 2 Fish. 20; *Blake v. Stafford*, 3 Fish. 294; s. C. 6 Blatch. 195.

The patentee is not to be bound down to any precise form of words, and it is sufficient if the court can clearly ascertain by fair interpretation what he intends to claim, and what his language truly imports, even though the expressions are inaccurately or imperfectly drawn. *Wyeth v. Stone*, 1 Story, 273.

The meaning of letters patent, like other grants or written instruments, must be ascertained by the language employed as applied to the subject-matter. *Goodyear Dental Co. v. Gardner*, 4 Fish. 224.

Where the language employed is clear and unambiguous, it must speak its own construction in the specification of a patent, as well as in any other grant issued by public authority. *Mitchell v. Tilghman*, 4 Fish. 599; S. C. 19 Wall. 287; 5 O. G. 299.

Language invoked to support a particular theory must be such as is fit, when it is compared with the whole instrument, to express the imputed intention, else the theory can not be supported. *Mitchell v. Tilghman*, 4 Fish. 599; S. C. 19 Wall. 287; 5 O. G. 299.

Particular passages in the description must not be separated from what precedes or follows in the same connection, but one part of the instrument must be compared with another, and the whole considered together, in order to determine whether it is incomplete and ambiguous, or sufficient to uphold the claim of the patent. *Howes v. Nut*, 4 Fish. 263.

Whether a patent claims too much is a question of law to be determined by the rules of construction, applied in the light of the state of the art. *Blake v. Stafford*, 3 Fish. 294; S. C. 6 Blatch. 195.

If a combination is expressly claimed in one claim by apt and appropriate language, it must be inferred that if it had been intended to claim a combination merely in another claim, appropriate language to indicate such intention would have been used. *Burden v. Corning*, 2 Fish. 477.

In construing a claim, the court can not look to a single phrase only, to the exclusion of all the residue of the writing. *Kittle v. Merriam*, 2 Curt. 475.

The disclaimer at the close of a specification estops the patentee from setting up any privilege to the part disclaimed, and the summary is equally binding on him as a limitation to the thing patented. *Whitney v. Emmett*, Bald. 303.

Where mere changes of form become patentable by reason of involving functional differences, the patent should be so construed as to allow subsequent inventors to devise other changes of form involving other functional changes, where the same result is not attained in substantially the same way. *Swain Manuf. Co. v. Ladd*, 11 O. G. 153.

Similar substance means a substance having the same property, and not a substance having the same chemical constituents. *Roots v. Hyndman*, 6 Fish. 439; S. C. 4 O. G. 29.

A literal construction is not to be adopted where it would be repugnant to the manifest sense and reason of the instrument. *Brown v. Guild*, 23 Wall. 181; S. C. 6 O. G. 392; 7 O. G. 739.

The patentee's rights depend on the claim in the patent according to its proper construction, and not upon what he may erroneously suppose it covers. If at one time he insists on too much, and at another time on too little, he does not thereby work any prejudice to the rights actually secured to him. *Masury Anderson*, 6 Fish. 457; S. C. 11 Blatch. 162; 4 O. G. 55.

The words of a specification are to be taken together, and they are to be so construed as to give effect to the meaning and intention of the person using them. Words are not to be distorted from their meaning so as to effect what may be supposed to have been the intention of the person using them; but they are to have a reasonable construction as connected with the sentence in

which they are used. *Allen v. Hunter*, 6 McLean, 303; *Russell Manuf. Co. v. Mallory*, 5 Fish. 632; S. C. 10 Blatch. 140; 2 O. G. 495.

It is material to ascertain what was in point of fact the invention, for there is a reasonable presumption that the intention of the inventor was to obtain, and of the Government to concede to him, the exclusive right to what he actually invented. *Kittle v. Merriam*, 2 Curt. 475.

The construction should not be broader than the whole subject-matter and description and nature of the case indicate as designed. It should not be fancied, but rather what is natural and clear considering what already exists on the subject. *Smith v. Downing*, 1 Fish. 64; *Trader v. Messmore*, 7 O. G. 385.

There is no artificial or universal rule of interpretation beyond that which common sense furnishes, which is to construe the instrument as a whole, and to extract from the descriptive words and the claim what the invention is which is intended to be patented, and how far it is capable of exact ascertainment, and how far it is maintainable in point of law. *Carver v. Braintree Manuf. Co.* 2 Story, 432.

An amended specification which is not completed may be considered as an explanation by the patentee of his intended meaning, and can be referred to in considering whether the words, as used in the original specification, carry out clearly or not what is said to have been intended. *Hovey v. Stevens*, 3 W. & M. 17.

Where the fair interpretation of the words employed to describe an invention includes matters not in the mind of the patentee at the time, he is as fully authorized to claim the unlooked for as the anticipated result. *Welling v. Rubber Co.* 7 O. G. 606.

The legal construction of every general claim is that the patentee means to limit the same to his described method or process; or, if it be a machine, to his described means of obtaining or accomplishing the described results. Usually the claim contains the words "as described," or "substantially as described," or words of like import, which are everywhere understood as referring back to the descriptive parts of the specification. Words of such import, if not expressed in the claim, must be implied. *Mitchell v. Tilghman*, 4 Fish. 599; S. C. 19 Wall. 287; 5 O. G. 299.

The words "substantially as described and shown," relate only to material features of the combination specified, and these are to be ascertained by considering the object or purpose of the machine, and what are the elements of the combination which create its distinctive character, and are effective in producing the peculiar result for which the contrivance is made. *Waterbury Brass Co. v. Miller*, 15 Fish. 48; S. C. 9 Blatch. 77; *Knox v. Murtha*, 9 Blatch. 205.

The phrase "substantially the same," means the same in all important particulars. *Adams v. Edwards*, 1 Fish. 1.

On account of the great vagueness and indefiniteness of the language used in describing the various arts, machines, manufactures, and compositions of matter, it is almost impossible to describe the real nature of many discoveries or processes in language free from ambiguity or misconstruction. Different persons looking at it from different points of view, would describe it in differ-

ent terms. Still, if the patentee has fully set forth his invention, he has done all that the law requires, and is entitled to its protection. The patent should be carefully examined to find the thing discovered; and if it be clearly set forth, the patentee should not suffer for the imperfection or vagueness of the language used in describing its true extent and nature. *Goodyear v. Central R. R. Co.* 1 Fish. 626; s. c. 2 Wall, Jr. 356.

There are few things more difficult, even for well-educated and practiced lawyers, than to describe a new invention clearly, and point out the principle which distinguishes the subject of it from all things known before. As inventors are rarely experts either in philology or law, it has long been established as a rule that their writings are to be scanned with a good degree of charity. But it is easy to abuse this liberality to the purposes of fraud. The public has rights to be guarded also, and these exact that the patentee's specification shall set forth his invention so fully and definitely that it can not be readily misunderstood. *French v. Rogers*, 1 Fish. 133.

A patent for a gold pen can not be extended beyond the peculiar shape, form, or mode of construction which the patentee alleges he has invented. *Rapp v. Bard*, 1 Fish. 196.

What is the character of the grant made by the patent is a question of law, and must be determined by the court, and the jury must consider that the patent purports to grant that which the court shall determine it to grant. *Serrell v. Collins*, 1 Fish. 289; *Buck v. Hermance*, 1 Blatch. 398; *Magic Ruffle Co. v. Douglass*, 2 Fish. 330; *Union Sugar Refinery v. Matthiessen*, 2 Fish. 600; *Teese v. Phelps*, 1 McA. 48; *Clark Patent Co. v. Copeland*, 2 Fish. 227; *Case v. Brown*, 2 Fish. 268; s. c. 2 Wall. 320; 1 Biss. 382; *Waterbury Brass Co. v. N. Y. Brass Co.* 3 Fish. 43; *Winans v. Denmead*, 15 How. 330; s. c. 4 Am. L. J. 498; *Conover v. Roach*, 4 Fish. 12; *Cahoon v. Ring*, 1 Fish. 397; s. c. 1 Cliff. 592; *Conover v. Rapp*, 4 Fish. 57; *Foss v. Herbert*, 2 Fish. 31; s. c. 1 Biss. 121; *Matthews v. Skates*, 1 Fish. 602.

The interpretation of the specification is for the court. Experts are examined only to aid in interpreting the language of art, as other translators are. *Batten v. Clayton*, 2 Whart. Dig. 363.

SEC. 4885. Every patent shall bear date as of a day not later than six months from the time at which it was passed and allowed and notice thereof was sent to the applicant or his agent; and if the final fee is not paid within that period the patent shall be withheld.

Statute Revised—July 8, 1870, ch. 230, § 23, 16 Stat. 201.

Prior Statutes—July 4, 1836, ch. 357, § 8, 5 Stat. 120.—March 3, 1863, ch. 102, § 3, 12 Stat. 796.

SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improve-

ment thereof, not known or used by others in this country, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceedings had, obtain a patent therefor.

Statute Revised—July 8, 1870, ch. 230, § 24, 16 Stat. 201.

Prior Statutes—Feb. 21, 1793, ch. 11, § 1, 1 Stat. 318.—April 17, 1800, ch. 25, § 1, 2 Stat. 37.—July 4, 1836, ch. 357, §§ 6, 7, 5 Stat. 119.

Invention.

Discovery is synonymous with invention. A discovery which merely consists in bringing to light that which existed before, but was not known, is not the subject of a patent. No discovery will entitle the discoverer to a patent which does not in effect amount to the contrivance or production of something which did not exist before. *Ex parte John F. Kemper*, Cranch Pat. Dec. 89.

Invention in the sense of the patent law is the finding out, contriving, devising, or creating something new and useful, which did not exist before, by an operation of the intellect. *Ransom v. New York*, 1 Fish. 252; *Conover v. Roach*, 4 Fish. 12; *Potter v. Whitney*, 3 Fish. 77; s. c. 1 Lowell, 87.

A subject-matter to be patentable must require invention, but is not necessarily the result of long and painful study, or embodied alone in complex mechanism. A single flash of thought may reveal to the mind of the inventor the new idea, and a frail and simple contrivance may embody it. Some inventions are the result of long and weary years of study and labor pursued in the face of abortive experiments and baffled attempts, and finally reached after the severest struggles, while others are the fruit of a single happy thought. *Magic Ruffle Co. v. Douglass*, 2 Fish. 330; *Matthews v. Skates*, 1 Fish. 602; *Many v. Sizer*, 1 Fish. 17; *Furbush v. Cook*, 2 Fish. 668; *Carstaedt v. U. S. Corset Company*, 13 Blatch. 371; s. c. 10 O. G. 3; *Earle v. Sawyer*, 4 Mason, 1; *Blake v. Stafford*, 3 Fish. 294; s. c. 6 Blatch. 195; *Carr v. Rice*, 1 Fish. 198; *Middletown Co. v. Judd*, 3 Fish. 141.

If with the knowledge that the public had at the time of the alleged discovery, it required no invention, but simply the ordinary skill and ingenuity of a mechanic to produce the invention—in other words, if the inventive faculty was not at work at all, and was not needed to produce the alleged invention, then the patent would be void because there would be no invention to be secured to the patentee. *Carter v. Messinger*, 11 Blatch. 34; *Ransom v. New York*, 1 Fish. 252; *Kirby v. Beardsley*, 3 Fish. 265; s. c. 5 Blatch. 418; *Stimpson v. Woodman*, 3 Fish. 98; s. c. 10 Wall. 117; *Spaulding v. Tucker*, Deady, 649; *Larrabee v. Cortlan*, 3 Fish. 5; s. c. Taney, 180; *Knox v. Murtha*, 5 Fish. 174; s. c. 9 Blatch. 205; *Haselden v. Ogden*, 3 Fish. 378; *Day v. Telegraph Co.* 5 Fish. 268; s. c. 9 Blatch. 345; 10 O. G. 551; *Wood Paper Co. v. Hest*, 3 Fish. 316; s. c. 8 Wall. 333; *Dane v. Chicago Manuf.*

Co. 6 Biss. 130; S. C. 3 Biss. 380; 2 O. G. 677; 7 O. G. 924; Dunbar v. Myers, 11 O. G. 35; Needham v. Washburn, 7 O. G. 648.

It is exceedingly difficult to draw a line between what may be regarded by the eye as a small improvement or invention, and one of magnitude. Oftentimes, improvements and discoveries the most important in their consequences and in their beneficial effects on the business interests of the community are among the simplest ideas of the mind. On the other hand, improvements of less magnitude in their consequences and beneficial effects, indicate a most laborious and complex action of the mind of the inventor. Seymour v. McCormick, 19 How. 96; S. C. 3 Blatch. 209.

The difficulty is in drawing the line between invention and mere construction. There are some things that everybody knows. The common uses of common materials are supposed to be known. If a man merely makes a machine out of iron that has been made out of wood, that is no invention, because every body knows that a constructor can make a machine of iron instead of wood. There may even be a discovery which is not an invention, as for instance, the application of a machine to a new use. The man who made the first invention made it for all the uses to which it is applicable. Stimpson v. Woodman, 3 Fish. 98; S. C. 10 Wall. 117; Kirby v. Beardsley, 3 Fish. 265; S. C. 5 Blatch. 438.

The difficulty of drawing the line of distinction between invention and mere obvious manual changes following the beaten track of mechanical experience, has inclined courts to give a liberal construction to the law so as to protect every contrivance that can be called new, which proves at all useful. Care has been taken to give the benefit of doubt as to originality or creative thought to the inventor, so as to nourish inventive enterprise by lending encouragement to every degree of merit. Kirby v. Beardsley, 3 Fish. 265; S. C. 5 Blatch. 438; Tuck v. Bramhill, 3 Fish. 400; S. C. 6 Blatch. 95; Whipple v. Middlesex, Co. 4 Fish. 41; McMillin v. Barclay, 5 Fish. 189; S. C. 4 Brews. 275; Stanley Works v. Sargent, 4 Fish. 443; S. C. 8 Blatch. 344; Penn Salt Co. v. Thomas, 5 Fish. 148; S. C. 8 Phila. 144.

With regard to the degree of mental labor and inventive skill required in the work of invention, the law has no nice or rigid standard. There must be some inventive skill exercised, but the degree of that skill is not material. It not unfrequently happens in the progress of the mechanic arts, that the time arrives when the whole atmosphere of inventive thought is quickened with the life of an approaching discovery; that many lines of investigation and experiment converging for a long time toward the point, almost but not quite reach it, when at last some mind by a happy thought supplies some new element or instrument, or mode of organization, and instantly gives birth to the organized idea. Clark Patent Co. v. Copeland, 2 Fish. 221.

The simplicity of an invention, so far from being an objection to it, may constitute its great excellence and value. Indeed, to produce a great result by very simple means before unknown or unthought of, is not unfrequently the peculiar characteristic of the very highest class of minds. Ryan v. Goodwin, 3 Sum. 514; In re J. L. Pennock, 1 McArthur, 531; S. C. 5 O. G. 668; Lorillard Co. v. McDowell, 34 Leg. Int. 78; S. C. 24 Pitts. L. J. 119; 11 O. G. 640.

The superiority of an invention in utility and effect over what preceded it, is proof tending to establish the fact of novelty. *Birdsell v. McDonald*, 6 O. G. 682; *S. & B. Manuf. Co. v. Coke Co.* 7 O. G. 829.

If a novel and useful result has been obtained, neither the simplicity of the structure, nor the greater or less amount of invention or intellect employed as an element are of importance in determining the validity of the patent. The distinction is that where there is a mere application of an old thing to a new use, it is not patentable; but where there is exhibited an inventive faculty in the process, it is. *Teese v. Phelps*, 1 McA. 48; *Barnes v. Straus*, 5 Fish. 531; s. c. 9 Blatch. 553; 2 O. G. 62.

Unless more skill and ingenuity are required in the discovery than are possessed by an ordinary mechanic acquainted with the business, there is an absence of that degree of skill and ingenuity which constitute essential elements of every invention. In other words, the improvement is the work of the skillful mechanic, not that of the inventor. *Hotchkiss v. Greenwood*, 11 How. 248; s. c. 4 McLean, 456; *Teese v. Phelps*, 1 McA. 48; *Fisher v. Craig*, 3 Saw. 69; *Treadwell v. Parrott*, 3 Fish. 124; s. c. 5 Blatch. 369; *Reed v. Reed*, 12 Blatch. 366; s. c. 8 O. G. 193.

The accidental making of an article, without any knowledge on the part of the producer of how to accomplish it, with utter inability on his part to produce another like it, is not invention. A single fortuitous success is not invention within the protection of the patent law. *Pelton v. Waters*, 21 I. R. R. 125; s. c. 7 O. G. 425; *Monce v. Adams*, 12 Blatch. 1; s. c. 7 O. G. 177.

The degree of labor and thought may be sometimes evidence upon the question of invention. *Many v. Sizer*, 1 Fish. 17.

The validity of a patent does not depend on an opinion formed after the event, respecting the ease or difficulty of attaining it. *Furbush v. Cook*, 2 Fish. 668.

An invention in mechanics consists not in the discovery of new principles, but in new combinations of old principles. *Tyler v. Devel*, 1 A. L. J. 248; *Stainthorp v. Humiston*, 1 Fish. 475.

If the new device has displaced other devices which had been used previously for analogous purposes, this fact may be considered, and when the other facts leave it doubtful whether the device involves a patentable invention, this is sufficient to turn the scale. *Smith v. G. D. V. Co.* 93 U. S. 486; s. c. 1 Holmes, 354; 5 O. G. 585; 11 O. G. 246; 4 A. L. T. (N. S.) 74; *Weston v. Nash*, 1 Holmes, 488; s. c. 7 O. G. 1096.

If the device produces a new result, this is evidence of invention. *Smith v. G. D. V. Co.* 93 U. S. 486; s. c. 1 Holmes, 354; 5 O. G. 585; 11 O. G. 246; 4 A. L. T. (N. S.) 74.

Whenever a change or device is new and accomplishes beneficial results, the courts look with favor upon it. The law in such cases has no nice standard by which to gauge the degree of mental power or inventive genius brought into play in originating the new device. *Middletown Co. v. Judd*, 3 Fish. 141; *Jones v. Sewall*, 6 Fish. 343; s. c. 3 O. G. 630; *In re J. L. Pennock*, 1 McArthur, 531; s. c. 5 O. G. 668; *Potter v. Holland*, 1 Fish. 382; s. c. 4 Blatch. 238.

The questions of invention, novelty, or prior use are all questions of official judgment, and are all settled by the judgment of the commissioner. His

judgment goes to the same extent on each question. He determines and decides for the purpose of issuing or refusing a patent. When the patent is sought to be enforced, the questions, and each of them, are open to judicial examination. *Reckenderfer v. Faber*, 92 U. S. 347; s. c. 12 Blatch. 68; 5 O. G. 697; 10 O. G. 71; *Grant v. Raymond*, 6 Pet. 218.

The result which has been produced may be considered in connection with the change, because the result, if greatly more beneficial than it was with the old contrivance, reflects back and tends to characterize in some degree the importance of the change. *Hall v. Wiles*, 2 Blatch. 194; *Locomotive Truck Co. v. R. R. Co.* 6 O. G. 927; s. c. 31 Leg. Int. 324; 1 W. N. 16; *Stimpson v. Woodman*, 3 Fish. 98; s. c. 10 Wall. 117.

When the patent is granted, it becomes, to a certain extent, a contract upon the part of the Government, with the party named in the patent, that it will through its courts and in the ordinary course of the administration of justice, protect him in the exercise of the exclusive privilege which his patent gives to him. There would be no justice in granting to a party an exclusive privilege to use what he did not invent, because he would pay no consideration for the grant if he did not by his invention add to the stock of useful knowledge which may be applied for the benefit of the citizen. *Ransom v. New York*, 1 Fish. 252.

A patentable invention is a mental result. Everything within the domain of the conception belongs to him who conceived it. *Smith v. Nichols*, 6 Fish. 61; s. c. 21 Wall. 112; 1 Holmes, 172; 2 O. G. 649.

A mere carrying forward or new or more extended application of the original thought, a change only in degree, doing substantially the same thing in the same way, by substantially the same means, with better results, is not such an invention as will sustain a patent. *Smith v. Nichols*, 6 Fish. 61; s. c. 21 Wall. 112; 1 Holmes, 172; 2 O. G. 649.

If a new idea is engrafted upon an old invention, and is distinct from the conception that preceded it, it is patentable. *Rice v. Heald*, 13 Pac. L. R. 33.

Invention in Reference to Change.

If the application of a method of corrugation to a new article, requires experiment and invention to determine whether it can be made usefully, and develops a new mode of operation, as well as a new effect, it is patentable. *Grosjean v. Peck*, 11 Blatch. 54.

The use of a well-known substance in a particular but well-known form, is not patentable, although the substance has never been used in that form before. *Tarr v. Webb*, 5 Fish. 593; s. c. 10 Blatch. 96; 2 O. G. 568.

If the principle is embodied in a machine used for a different purpose, the change from motion given by the hand to an automatic machine, makes no difference, and the party is not entitled to a patent. *Singer v. Walmsley*, 1 Fish. 558.

The mere reduction of an article of bulk to one of a smaller size, is not in general the subject of a patent as a new manufacture, unless the properties of the article are improved by the introduction of some new ingredient or by the subtraction of one or more of the ingredients of the original article, by which

the new product is improved or made more useful. *M. & H. Glue Co. v. Upton*, 6 O. G. 837.

Particular changes may be made in the construction and operation of an old machine so as to adapt it to a new and valuable use not known before, and to which the old machine had not been and could not be applied without those changes, and under those circumstances if the machine, as changed and modified, produces a new and useful result, it may be patented. *Seymour v. Osborne*, 3 Fish. 555; s. c. 11 Wall. 516.

The placing of two or more letters on each block is not a patentable improvement in spelling blocks, although the inventor was the first one to place them systematically with a view to enlarge the usefulness of the blocks. *Hill v. Houghton*, 6 O. G. 3.

A slight change sometimes of a known machine, or in some of its parts, will effect surprising results, and to protect a party who, by inventing such change, has produced a new and useful result, is one of the objects of the patent laws. *Turrill v. Ill. Cent. R. R. Co.* 3 Fish. 330; s. c. 3 Biss. 66.

An improvement in the mode of constructing a stone pavement is a patentable invention. *Guidet v. Barber*, 5 O. G. 149.

If the patentee is not the inventor of the material, he can not obtain a patent for an article made therefrom which is similar to those made from other materials. *Collar Co. v. Van Deusen*, 5 Fish. 597; s. c. 10 Blatch. 109; 2 O. G. 361; 23 Wall. 530; 7 O. G. 919.

If the patentee is the inventor of the back, he may take out a patent for a brush and a patent for a hand mirror, where the application of the back to each purpose involves invention. *Clark v. Scott*, 15 Fish. 245; s. c. 9 Blatch. 301; 1 O. G. 4.

If two inventions differ in principle, and there is a substantial difference in the product in which the invention is embodied and the purposes to which the product is to be applied, the latter invention is patentable. *Jenkins v. Walker*, 5 Fish. 347; s. c. 1 Holmes, 120; 1 O. G. 359.

The application of hollow legs to support portable furnaces, is not patentable. *In re Dewitt C. Baxter*, 1 McArthur, 520.

If the inventor invented the proper mode of enameling the proper quality of paper, the claim for a collar made from such enameled paper, as a new article of manufacture, is valid. *Hoffman v. Stiefel*, 3 Fish. 638; s. c. 7 Blatch. 58; *Hoffman v. Aronson*, 4 Fish. 456; s. c. 8 Blatch. 324; 4 A. L. T. (N. S.) 110.

The transfer of flanges from an iron hub to a wooden hub, would not be patentable unless it required some ingenuity or contrivance to adapt it to use in its new position. *Sarven v. Hall*, 5 Fish. 415; s. c. 9 Blatch. 524; 1 O. G. 437.

The discovery of an elastic erasive pencil head which consists merely of a piece of india rubber with a hole in it, can not be the subject of a patent. *Rubber Pencil Co. v. Howard*, 5 Fish. 377; s. c. 9 Blatch. 490; 20 Wall. 498; 1 O. G. 407; 9 O. G. 172.

A staple made in a certain shape by the action of dies is patentable. *Rogers v. Sargent*, 7 Blatch. 507.

Printing with copper plates on the reverse face of bank notes, is an art.

The patent is not for an effect but for the kind of printing by which the effect is produced. *Kneass v. Schuylkill Bank*, 4 Wash. C. C. 9.

An invention of a peculiar form of a last is patentable. *Mabic v. Haskell*, 2 Cliff. 507.

The mere substitution of an equivalent is not patentable. *Cochrane v. Waterman*, Cranch Pat. Dec. 121.

A contrivance which does not require the exercise of inventive power, is not patentable. *Brown v. Guild*, 23 Wall. 181; s. c. 6 O. G. 392; 7 O. G. 739.

An improved paper bag, made by means of softening and rendering the upper portion of the bag flexible, is patentable. *Arkell v. Paper Bag Co.* 7 Blatch. 475.

The omission of an ingredient commonly supposed to be essential to a composition, may be patentable. *Tarr v. Folsom*, 1 Holmes, 312; s. c. 5 O. G. 92.

Quere. Is the making of the case which incloses the internal works of a lock with two faces just alike, and so well finished off in point of style that either side may be presented outwards, a matter which can be patented? *Jones v. Morehead*, 1 Wall. 155.

A mere change of form is not patentable, because it involves no invention. It is simply the device of a mechanic. *Sangster v. Miller*, 2 Fish. 563; s. c. 5 Blatch. 243; *Wicks v. Stevens*, 2 Woods, 310; *Winans v. Dermead*, 15 How. 330; s. c. 4 Am. L. J. 498; *Evans v. Eaton*, Pet. C. C. 323; s. c. 3 Wheat. 454; 3 Wash. C. C. 443; *Delano v. Scott*, Gilp. 489; *Barrett v. Hall*, 1 Mason, 447; *Dixon v. Moyer*, 4 Wash. C. C. 68; *Smith v. Pearce*, 2 McLean, 176; *Pettibone v. Derringer*, 4 Wash. C. C. 215; *Flood v. Hicks*, 4 Fish. 156; s. c. 2 Biss. 169; *Brown v. Selby*, 4 Fish. 363; s. c. 2 Biss. 457.

A formal change, such as a change in proportions, a mere change of form, or a different shape, is not a change within the meaning of the law. *Hall v. Wiles*, 2 Blatch. 194; *Ex parte Lewis Cutting*, 11 O. G. 110; *Buck v. Hermance*, 1 Blatch. 398; *Woodcock v. Parker*, 1 Gallis. 438; *Day v. Telegraph Co.* 5 Fish. 268; s. c. 9 Blatch. 345; 1 O. G. 551.

The safest guide to accuracy in making the distinction between what constitutes form and what principle, is first to ascertain what is the result to be obtained by the discovery, and whatever is essential to that object, independent of the mere form and proportions of the things used for the purpose, may generally, if not universally, be considered as the principles of the invention. *Treadwell v. Bladen*, 4 Wash. C. C. 703.

The enlargement of the organization of a machine does not afford any ground in the sense of the patent law, for a patent. This is done every day by the ordinary mechanic in making a working machine from the patent model. *Phillips v. Page*, 24 How. 164.

A structural change of form and proportion, although it improves the operation without changing the mode of operation, and produces a better result, but of the same kind, is not patentable. *Greely v. Commissioner*, 6 Fish. 575; s. c. 1 Holmes, 284; 4 O. G. 612.

If the change in form and location involves a functional difference beyond mere mechanical perfection and adjustment, and produces an improved product, it is patentable. *Pearl v. Ocean Mills*, 11 O. G. 2.

Sometimes form is of the very substance of an invention, and change of form is the invention itself. *Dennis v. Eddy*, 4 Fish. 423.

If by changing the form and proportion, a new effect is produced, there is not simply a change of form and proportion, but a change of principle also, and the invention is patentable. *Davis v. Palmer*, 2 Brock. 298; *Aiken v. Dolan*, 3 Fish. 197.

To change the form of an existing machine, and by means of such change to introduce and employ other mechanical principles or natural powers, or, as it is termed, a new mode of operation, and thus attain a new and useful result, is the subject of a patent. *Winans v. Denmead*, 15 How. 330; s. c. 4 Am. L. J. 498; *Cahoon v. Ring*, 1 Fish. 397; s. c. 1 Cliff. 593; *Parham v. Sewing Machine Co.* 4 Fish. 468.

The mere change of location of an old device is not patentable if the result is the same, and nothing new is required to adapt an apparatus in its new location. *Marsh v. Dodge & Stevenson Manuf. Co.* 6 Fish. 562; s. c. 5 O. G. 398.

Where change of location involves the employment of new devices to adapt an apparatus for use in the new position, and a beneficial result is produced, the location, in connection with such new devices, is patentable. *Marsh v. Dodge & Stevenson Manuf. Co.* 6 Fish. 562; s. c. 5 O. G. 398; *G. & B. Manuf. Co. v. Tirrell*, 12 Blatch. 144; s. c. 8 O. G. 2; *Carstaedt v. U. S. Corset Co.* 13 Blatch. 119; s. c. 9 O. G. 151; *G. & B. Manuf. Co. v. Walworth*, 9 O. G. 746.

The mere change of the location of the parts of a mechanism, so long as no different or additional function is performed, does not make the mechanism patentable. *Dane v. Ill. Manuf. Co.* 6 Fish. 124; s. c. 3 Biss. 374; 2 O. G. 680.

The substitution of one material for another is not invention if the result is only greater cheapness and durability of product. A machine made in whole or in part of materials better adapted to the purpose than the materials of which the old one is constructed, and for that reason better and cheaper, can not be distinguished from the old one, or entitle the manufacturer to a patent. The difference is formal and destitute of ingenuity or invention. It may afford evidence of judgment and skill in the selection and adaptation of the materials in the manufacture of the instrument for the purposes intended, but nothing more. *Hotchkiss v. Greenwood*, 11 How. 248; s. c. 4 McLean, 456; *Hicks v. Kelsey*, 18 Wall. 670; s. c. 5 O. G. 94; *Holbrook v. Small*, 10 O. G. 508; *Smith v. G. D. V. Co.* 93 U. S. 486; s. c. 1 Holmes, 354; 5 O. G. 585; 11 O. G. 246; 4 A. L. T. (N. S.) 74.

If the substitution of one material for another involves a new mode of construction, or develops new uses or properties of the article formed, it may amount to invention. The substitution may be something more than formal. It may require contrivance, in which case the mode of making it would be patentable, or the result may be the production of an analogous, but substantially different article. *Smith v. G. D. V. Co.* 93 U. S. 486; s. c. 1 Holmes, 354; 5 O. G. 585; 11 O. G. 246; 4 A. L. T. (N. S.) 74; *Putnam v. Weatherbee*, 8 O. G. 320; *Putnam v. Yerrington*, 9 O. G. 689; *Dalton v. Nelson*, 13 Blatch. 357; s. c. 9 O. G. 1112; *Goodyear D. V. Co. v. Root*, 6 O. G. 154; *Goodyear D. V. Co. v. Willis*, 7 O. G. 41.

The mere transfer of a mode of constructing wooden slides to metallic slides is not invention. *Carter v. Messinger*, 11 Blatch. 34.

The substitution of an india rubber covering for one of cloth may be an invention if it is important and valuable. *Washing Machine Co. v. Lincoln*, 4 Fish. 379.

A machine or apparatus, or other mechanical contrivance, in order to give the party a claim to a patent therefor, must in itself be substantially new. If it is old and well known, and applied only to a new purpose, that does not make it patentable. A coffee mill applied for the first time to grind oats or corn, or mustard, would not give a title to a patent for the machine. In short, the machine must be new, not merely the purpose to which it is applied. A purpose is not patentable; but the machinery only, if new, by which it is to be accomplished. In other words, the thing itself which is patented must be new, and not the mere application of it to a new purpose or object. *Bean v. Smallwood*, 2 Story, 408; *Winans v. Bost. & Prov. R. R. Co.* 2 Story, 412; *Ames v. Howard*, 1 Sum. 482; *Phillips v. Page*, 24 How. 164; *Sawyer v. Bixby*, 5 Fish. 283; s. c. 9 Blatch. 361; 1 O. G. 165; *Tucker v. Spaulding*, 5 Fish. 297; s. c. 13 Wall. 453; 1 O. G. 144; *Smith v. Elliott*, 5 Fish. 315; s. c. 9 Blatch. 400; 1 O. G. 331; *Brown v. Hall*, 3 Fish. 531; s. c. 6 Blatch. 401; *Gallahue v. Butterfield*, 6 Fish. 203; s. c. 10 Blatch. 232; 2 O. G. 645; *Roberts v. Ryer*, 91 U. S. 150; s. c. 6 Fish. 293; 11 Blatch. 11; 3 O. G. 550; 10 O. G. 204; *Ex parte Philip Hufeland*, 1 O. G. 278; *Northwestern Co. v. Philadelphia Co.* 6 O. G. 34; s. c. 31 Leg. Int. 148; *Consolidated Fruit Jar Co. v. Wright*, 12 Blatch. 149; s. c. 6 O. G. 327; 9 C. L. N. 313; *Rice v. Heald*, 13 Pac. L. R. 33.

Invention or discovery is required as the proper foundation for a patent, and where both are wanting the applicant can not legally secure the privilege. Consequently where the claim rests merely upon the application of an old machine to a new use or to a new purpose, or upon the application of an old process to a new result, the patent can not be sustained because, under those circumstances, the patentee has not invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement, or any art, machine, manufacture, or composition of matter not known or used by others, for which alone a patent can be legally granted. *Bray v. Hartshorn*, 1 Cliff. 538; *Conover v. Roach*, 4 Fish. 12.

A mere new use or application of a material or composition previously known is not a new invention. *Matthews v. Skates*, 1 Fish. 602.

The application of an old process to a new purpose is not patentable. *Piper v. Moon*, 6 Fish. 180; s. c. 10 Blatch. 264; 3 O. G. 4; *Howe v. Abbott*, 2 Story, 190; *Meyer v. Pritchard*, 12 Blatch. 101; s. c. 7 O. G. 1012.

The production of an old result by new means is patentable. *Heinrich v. Luther*, 6 McLean, 345.

There is scarcely a patent granted that does not involve the application of an old thing to a new use, and that does not, in one sense, fail to involve anything more. But the merit consists in being the first to make the application, and the first to show how it can be made, and the first to show that there is utility in making it. *Strong v. Noble*, 3 Fish. 586; s. c. 6 Blatch. 477.

Old instruments placed in a new and different organization, producing in such new organization different results, or the same results by a new and dif-

ferent mode of operation, do not prevent such newly organized mechanism from being patentable. *Clark Patent Co. v. Copeland*, 2 Fish. 221.

The application of an old process to a new subject without any exercise of the inventive faculty, and without the development of any idea which can be deemed new or original, is not patentable. *Brown v. Piper*, 91 U. S. 37; s. C. 1 Holmes, 20; 10 O. G. 417.

A discovery of a new mode of operating an old machine to produce a new result does not give the discoverer the right to a monopoly of the old machine, although he may be entitled to a patent for the process. *Boston E. F. Co. v. Rubber Thread Co.* 1 Holmes, 372; s. C. 5 O. G. 696.

A person who takes something old and applies it in a new way or a new form, so as to produce a particular result, can not be protected beyond the particular way, or form, or device, and the application which he has made. *Fuller v. Yentzer*, 6 Biss. 203; s. C. 11 O. G. 551.

The discovery of a new effect produced by old agents operating by old means upon old subjects, however novel and important, is not patentable. It is nothing more in the eye of the law than the application of a well known agent by well known means, to a new or more perfect use. *Morton v. N. Y. Eye Infirmary*, 2 Fish. 320; s. C. 5 Blatch. 116.

A party can not obtain a patent for a plan of packing ice by putting the blocks on the edge, although he was the first to discover the beneficial effects of that mode, for it is a mere discovery of a new effect of that which existed before. *Ex parte John F. Kemper*, Cranch Pat. Dec. 89.

A person who not merely supplies the public with a new article, but demonstrates unknown susceptibilities of the material out of which it is made, does something more than merely apply an old thing to a new purpose. He produces a new device by giving a new form to an old substance, and by suitable manipulation makes its peculiar properties available for a use to which it had not been before applied, thereby distinguishing it from all other fabrics of the class to which it belongs. *Union Paper Collar Co. v. White*, 32 Leg. Int. 143.

A new composition of matter to which an old contrivance has been applied, and which results in a new and useful article, is the proper subject of a patent. The novelty consists in the new composition made practically useful for the purposes of life by the means and contrivances mentioned. It would be a new manufacture, and none the less so within the meaning of the patent law, because the means employed to adapt the new composition to a useful purpose was old or well known. *Hotchkiss v. Greenwood*, 11 How. 248; s. C. 4 McLean, 456.

There is nothing new in the multiplication of parts. *Wilbur v. Beecher*, 2 Blatch. 132.

Duplication, producing a new and useful result, may be patentable. It is often the material part of a discovery, because it may be that which renders useful what was previously useless. A number of rollers acting in pairs may be patented, though a single pair could not be. *Parker v. Hulme*, 1 Fish. 44.

Suggestions.

Suggestions from another, in order that they may be sufficient to defeat a patent subsequently issued, must embrace the plan of the improvement, and

must furnish such information to the person to whom the communications are made, that they will enable an ordinary mechanic, without the exercise of any ingenuity and special skill on his part, to construct and put the improvement in successful operation. *Agawam Co. v. Jordan*, 7 Wall. 583; *Slemmer's Appeal*, 58 Penn. 155; *Putnam v. Hickey*, 5 Fish. 334; S. C. 3 Biss. 157; *Matthews v. Skates*, 1 Fish. 602; *Alden v. Dewey*, 1 Story, 336; *Thomas v. Weeks*, 2 Paine, 92; *Pitts v. Hall*, 2 Blatch. 229; *Dixon v. Moyer*, 4 Wash. C. C. 68.

Although the idea of the invention and hints concerning it came to the patentee from others, still, if he was the first who gave to that idea a useful and practical form, his rights are not to be defeated. *Teese v. Phelps*, 1 McA. 48; *Bell v. Daniels*, 1 Fish. 372; S. C. 1 Bond, 212; *Matthews v. Skates*, 1 Fish. 602; *Roberts v. Dickey*, 4 Fish. 532; S. C. 4 Brews. 260; 1 O. G. 4; *Spaulding v. Tucker*, Deady, 649; *McMillin v. Barclay*, 5 Fish. 189; S. C. 4 Brews. 275.

Neither the inquiries that may have been made, nor the information or advice that may have been received from men of science in the course of the patentee's researches, can impair his right to the character of an inventor. No invention can possibly be made consisting of a combination of different elements of power, without a thorough knowledge of the properties of each of them, and the mode in which they operate on each other. It can make no difference in this respect whether he derives his information from books or from conversation with men skilled in the science. If it were otherwise, no patent in which a combination of different elements is used could ever be obtained, for no man ever made such an invention without having first obtained this information, unless it was discovered by some fortunate accident. *O'Reilly v. Morse*, 15 How. 62; *Hubbell v. U. S.* 5 N. & H. 1.

If the suggestions simply aided the inventor in arriving at the useful result, but fell short of suggesting an arrangement that would constitute a complete machine, and if after all the suggestions there was something left for him to devise and work out by his own skill or ingenuity in order to complete the arrangement, then he is in contemplation of law to be regarded as the first and original discoverer. *Pitts v. Hall*, 2 Blatch. 229.

Although improvements in the form or proportions are adopted in consequence of the suggestions of others, before the invention is brought to perfection, they are not inventions or improvements for which a patent can be obtained, and can not invalidate the patent for the thing to which they are applied. *Pennock v. Dialogue*, 4 Wash. C. C. 538; S. C. 2 Pet. 1; *Barker v. Woodruff*, 1 O. G. 256.

It is not the man who may form an imperfect machine which may suggest to a higher and more practical order of mind valuable ideas, but the man who embodies those ideas in a practical and working form, whom the law protects. *Pitts v. Edmonds*, 2 Fish. 52; S. C. 1 Biss. 168.

If the whole or any of the essential parts and principles of the machine are invented by another, and introduced into the machine upon his suggestion, the whole patent is void. *Watson v. Bladen*, 4 Wash. C. C. 580; *Pitts v. Hall*, 2 Blatch. 229; *Agawam Co. v. Jordan*, 7 Wall. 583.

Where the suggestions of an employee go to make up a complete and per-

fect machine, embracing the substance of all that is embodied in the patent subsequently issued to the party to whom the suggestions were made, the patent is invalid, because the real invention or discovery belonged to another. *Agawam Co. v. Jordan*, 7 Wall. 583; *Berdan F. A. Manuf. Co. v. Remington*, 3 O. G. 688; *Collar Co. v. Van Deusen*, 23 Wall. 530; s. C. 10 Blatch. 109; 7 O. G. 919; 5 Fish. 597; 2 O. G. 361.

Where an employer has conceived the plan of an invention, and is engaged in experiments to perfect it, no suggestions from an employee, not amounting to a new method or arrangement which in itself is a complete invention, is sufficient to deprive the employer of the exclusive property in the perfected improvement. *Agawam Co. v. Jordan*, 7 Wall. 583; *Andrews v. Carman*, 13 Blatch. 307; s. C. 9 O. G. 1011.

Where a person has discovered an improved principle in a machine, manufacture or composition of matter, and employs other persons to assist him in carrying out that principle, and they, in the course of experiments arising from that employment, make valuable discoveries ancillary to the plan and preconceived design of the employer, such suggested improvements are in general to be regarded as the property of the party who discovered the original improved principle, and may be embodied in his patent as a part of his invention. *Agawam Co. v. Jordan*, 7 Wall. 583; *Dental Vulcanite Co. v. Wetherbee*, 3 Fish. 87; s. C. 2 Cliff. 555; *Blandy v. Griffith*, 3 Fish. 609; *Cogswell v. Burke*, 1 O. G. 380.

If a workman merely suggests some alterations in the form or proportions of the machine as designed by the inventor, this will not be sufficient to deprive the inventor of the merit of the invention, or affect the validity of his patent. If a contrary doctrine were to be maintained, very few, if any, patents could be upheld, unless in those cases where the inventor is also the mechanic who constructs the machine. His genius may be equal to the task of conceiving all the principles as well as the general structure and form of the machine, but he may be unacquainted with the use of tools, and be quite unable to anticipate in what manner the contemplated form of any particular part of the machine should be made until the work is in progress, and the materiality of form can then be practically discerned. The workman is most likely to perceive the necessity of the alteration, and to suggest it, and such suggestions will not invalidate the patent. *Watson v. Bladen*, 4 Wash. C. C. 580.

Invention is the work of the brain, and not of the hand. If the conception is practically complete, the artisan who gives it reflex and embodiment in a machine is no more the inventor than the tools with which he works. Both are instruments in the hands of him who sets them in motion and prescribes the work to be done. Mere mechanical skill can never rise to the sphere of invention. The latter involves higher thought, and brings into activity a different faculty. Their domains are distinct. The line which separates them is sometimes difficult to trace; nevertheless in the eye of the law it always subsists. The mechanic may greatly aid the inventor, but can not usurp his place. *Blandy v. Griffith*, 3 Fish. 609; *Warner v. Goodyear*, Cranch Pat. Dec. 125.

A party who merely states that a certain article is wanted for a certain purpose, can not obtain a patent for the article if it is prepared by another. *Collar Co. v. Van Deusen*, 5 Fish. 597; s. C. 10 Blatch. 109; 2 O. G. 361; 23 Wall. 530; 7 O. G. 919.

The fact that others, by their zeal, public spirit and money, caused the discovery to be made, can not deprive the patentee of his rights as inventor, if in fact he is the inventor. *Pennock v. Dialogue*, 4 Wash. C. C. 538; S. C. 2 Pet. 1.

If an officer in the military service, not specially employed to make experiments with a view to suggest improvements, devises a new and valuable improvement in arms, tents, or any other kind of war material, he is entitled to letters patent for the improvement equally with any other citizen not engaged in the service. *U. S. v. Burns*, 12 Wall. 246.

Joint Invention.

In a joint invention each party must invent or discover something essential to the whole result. *Slemmer's Appeal*, 58 Penn. 155.

A joint patent may well be granted upon a joint invention. There is no difficulty in supposing in point of fact, that a complicated invention may be the gradual result of the combined mental operations of two persons acting together *pari passu* in the invention. As neither of them could justly claim to be the sole inventor in such a case, it must follow that the invention is joint, and that they are jointly entitled to a patent. *Barrett v. Hall*, 1 Mason, 447; *Stearns v. Barrett*, 1 Mason, 153.

If the invention patented by persons as joint inventors is the sole invention of one of the patentees only, and not the joint invention of all, the patent is void. *Ransom v. New York*, 1 Fish. 252; *Hotchkiss v. Greenwood*, 4 McLean, 456; S. C. 11 How. 248; *Barrett v. Hall*, 1 Mason, 447; *Slemmer's Appeal*, 58 Penn. 155.

A joint patent for an invention is utterly inconsistent with several patents for the same invention by the same patentees, for it is impossible that any person can be at the same time the joint and sole inventor of the same invention. *Barrett v. Hall*, 1 Mason, 447.

A person who is a joint inventor, can not have a patent as sole inventor. *Arnold v. Bishop*, Cranch Pat. Dec. 103.

Novelty.

However new an invention may be, it can not be legally patented unless it is also useful; and however useful it may be, it can not be legally patented unless it is new. If it is either not new or not useful, the patent is void. *Matthews v. Skates*, 1 Fish. 602; *Clark Patent Co. v. Copeland*, 2 Fish. 221; *Roberts v. Ward*, 4 McLean, 565; *Tillotson v. Munson*, 5 Biss. 426.

There must be novelty in the invention created by the mind of the person claiming to be the inventor, and in connection with that species of novelty there must be utility. This novelty worked out by the mind of the inventor, connected with utility, constitutes the essence of a patentable subject under the law. *Seymour v. McCormick*, 19 How. 96; S. C. 3 Blatch. 209.

Articles of manufacture may be new in the commercial sense when they are not new in the sense of the patent law. New articles of commerce are

not patentable as new manufactures, unless it appears in the given case that the production of the new article involved the exercise of invention or discovery beyond what was necessary to construct the apparatus for its manufacture or production. *Collar Co. v. Van Deusen*, 23 Wall. 530; s. c. 10 Blatch. 119; 5 Fish. 597; 2 O. G. 361; 7 O. G. 919; *Union Paper Collar Co. v. Leland*, 1 Holmes, 427; s. c. 7 O. G. 221; *M. & H. Glue Co. v. Upton*, 6 O. G. 837.

To give an exclusive right, there must be what is called a new principle invented, not a new principle in an abstract sense, for none such is likely to be discovered, but a new combination or mode. If there is nothing different in the alleged discovery from a known mode, there can be no invention which gives a new right to the inventor. The ground on which a patent may be claimed is that something new and useful has been invented—a thing which did not exist before—a machine, for instance, differing from all other machines in its structure, movement or effect, by reason of the introduction of some new mechanical combination or principle. *Hotchkiss v. Greenwood*, 4 McLean, 456; s. c. 11 How. 248.

The principle or essential character of an invention involves two elements: 1st. The object obtained; 2d. The means by which it is obtained. If either of these is new, it may be the subject of a patent. *Wilton v. R. R. Co.* 2 Whart. Dig. 358; *Batten v. Clayton*, 2 Whart. Dig. 359.

The novelty required by the patent law does not refer to the materials out of which the article is made, or merely to the form or workmanship of the parts, or the use of one known equivalent for another. To be new in the sense of the patent law some new mode of operation must be introduced. *Furbush v. Cook*, 2 Fish. 668.

The novelty need not consist in the materials used, or the powers employed. But there must be a discovery of new principles, or the employment of old ones in a new proportion, or in a new process, or to a new purpose. *Holden v. Curtis*, 2 N. H. 61.

A new application of a principle by new mechanical contrivances and apparatus, by means of which a new and beneficial result is produced in the use of the article to which it has been thus applied, is patentable. *Silsby v. Foote*, 1 Blatch. 445; s. c. 14 How. 218; *Mowry v. Whitney*, 5 Fish. 515; s. c. 14 Wall. 620; 1 O. G. 499.

One invention may be better than the other, but that fact is not to be taken into account. The one that is alleged to be prior must, however, have been an apparatus of some practical utility; but whether it was superior or inferior in degree is not a question. *Silsby v. Foote*, 2 Blatch. 260; s. c. 20 How. 378; *Smith v. Elliott*, 5 Fish. 315; s. c. 9 Blatch. 400; 1 O. G. 331; *Blandy v. Griffith*, 3 Fish. 609; *Fisher v. Craig*, 3 Saw. 69.

If there is nothing new in the process, or the machinery for applying it, the result is not patentable. *Collar Co. v. Van Deusen*, 5 Fish. 597; s. c. 10 Blatch. 109; 2 O. G. 361; 23 Wall. 530; 5 O. G. 919.

Novelty in principle may consist in a new and valuable mode of applying an old power, effecting it not merely by a new instrument or form of the machine, but by something giving a new or greater advantage. *Hovey v. Stevens*, 1 W. & M. 290.

The test of novelty as applied to a combination seems to be whether the

application of the powers of nature by such means and appliances as the patentee claims to have invented, had been before known. *Bell v. Daniels*, 1 Fish. 372; s. C. 1 Bond, 212.

Whether the one device is the same in substance or principle as another, depends on whether it is the same kind of instrument or not, and whether it acts in the same way in substance, and produces the same result in substance. *Colt v. Mass. Arms Co.* 1 Fish. 108; *Platt v. Manufac. Co.* 5 Fish. 265; s. C. 9 Blatch. 342; 1 O. G. 524; *Rumford Works v. Lauer*, 5 Fish. 615; s. C. 10 Blatch. 122; 3 O. G. 349; *Singer v. Braunsdorf*, 7 Blatch. 521; *Wilcox v. Komp*, 7 Blatch. 126; *Springer v. Stanton*, 2 O. G. 2.

The question of identity does not depend upon the appearance or form of the two structures claimed to be identical, but simply upon the question whether they are the same in their mode and principle of operation, and whether one is a mechanical equivalent for the other. *Blanchard v. Putnam*, 3 Fish. 186; s. C. 8 Wall. 420; 2 Bond, 84; *Whipple v. Baldwin Manuf. Co.* 4 Fish. 29.

Change of form is not material when the form does not contribute towards the new result. When it does the forms must be alike in all important particulars. *Adams v. Edwards*, 1 Fish. 1.

In order to determine whether the mechanism of two machines is the same; an examination should be made not only of the mechanism itself, that is, the devices and their arrangement, but also of their mode of operation and their effects and results. *Eames v. Cook*, 2 Fish. 146; *Suffolk Co. v. Hayden*, 4 Fish. 86; s. C. 3 Wall. 315; *Stainthorp v. Humiston et al.* 4 Fish. 107; *Cook v. Ernest*, 5 Fish. 396; s. C. 1 Woods, 195; 2 O. G. 189; *Waterbury Brass Co. v. Miller*, 5 Fish. 48; s. C. 9 Blatch. 77.

The question is not whether the alleged prior machine was of the same kind as that of the patentee, but whether it was substantially the same. *Washburn v. Gould*, 3 Story, 122; *Smith v. Higgins*, 1 Fish. 537; *Fisk v. Church*, 5 Fish. 540; s. C. 1 O. G. 634; *Bray v. Hartshorn*, 1 Cliff. 538; *Roberts v. Schuyler*, 12 Blatch. 444; *Robertson v. Blake*, 11 O. G. 877; *Butch v. Boyer*, 8 Phila. 57; s. C. 28 Leg. Int. 396; *Ex parte Samuel Van Syckel*, 1 O. G. 330; *Waterbury Brass Co. v. Miller*, 5 Fish. 48; s. C. 9 Blatch. 77; *Dalton v. Jennings*, 93 U. S. 271; s. C. 12 Blatch. 96; 5 O. G. 15; 11 O. G. 111; *Chase v. Sabin*, 1 Holmes, 395; s. C. 6 O. G. 728; *Dane v. Chicago Manuf. Co.* 6 Fish. 130; s. C. 3 Biss. 380; 2 O. G. 677; 7 O. G. 924; *Tufts v. Machine Co.* 1 Holmes, 459; s. C. 8 O. G. 239; *Decker v. Silverbrandt*, 8 O. G. 944; *G. & B. Manuf. Co. v. Walworth*, 9 O. G. 746; *Lyman V. & R. Co. v. Chamberlain*, 10 O. G. 588; *Boomer v. Power Co.* 13 Blatch. 107; *Fuller v. Yentzer*, 11 O. G. 597; *Plastic Slate Roofing Co. v. Moore*, 1 Holmes, 167; *U. S. Nickel Co. v. Keith*, 1 Holmes, 328; s. C. 5 O. G. 272; *Cochrane v. Waterman*, Cranch Pat. Dec. 121; *Cundell v. Parkhurst*, Cranch Pat. Dec. 128; *Warner v. Good-year*, Cranch Pat. Dec. 125.

There must be a substantial difference in the principle and the application of it to constitute such an improvement in a machine as the law will protect. The principle here spoken of is not a new mechanical power. No new power in mechanics has been discovered for centuries, but the powers known have been so modified and combined as to produce the most extraordinary results.

The principle consists in the mode of applying or combining mechanical powers to produce a certain result. *Smith v. Pearce*, 2 McLean, 176.

Strong resemblances in external appearances, similarity of products or operation, are not separately tests of the identity of the plan, construction or purpose of machines, nor is a superiority in products or in operation in one over the other, proof of an essential difference, because the slightest change of a machine which effects a real improvement in it may be patentable, while great apparent variations may be only disguises under which an older discovery is attempted to be employed and appropriated. *Carr v. Rice*, 1 Fish. 198; *Howes v. Nutt*, 4 Fish. 263.

An invention which is valuable for its simplicity and economy can not be antedated by more complex and expensive combinations. *King v. Hammond*, 4 Fish. 488.

The previous use of a structure bearing some resemblance in some respects to the invention of the patentee, and which might have been suggestive of ideas, or have led to experiments resulting in the discovery and completion of his invention, will not invalidate his claim under his patent. *Parker v. Stiles*, 5 McLean, 44; *Livingston v. Jones*, 1 Fish. 521.

Making a prior device which will serve the like useful purpose, is not necessarily anticipating an invention. Where the mechanical means employed are different, and the mechanical result is different, one does not anticipate the other. *Buerk v. Valentine*, 5 Fish. 366; s. c. 9 Blatch. 479; 2 O. G. 295.

A device for applying a mechanical force or power to a new purpose can not be avoided by proving that the mechanical force or power is old. The application of a special spring to operate a churn dash may be new, although the spring is old. *Dunbar v. Marden*, 13 N. H. 311.

If the mechanical combination of the members of two machines is such that the action and mode of operation differ in the two machines, then one is something more than a mere mechanical equivalent for the other, although each element of the combination in one may, under some circumstances, be regarded as the equivalent of the corresponding element in the other, when the elements are separately considered. *Blake v. Rawson*, 6 Fish. 74; s. c. 1 Holmes, 200; 3 O. G. 122.

Where two machines or things are made to operate substantially in the same way, so as to produce a similar result, they are the same in principle. *Roberts v. Ward*, 4 McLean, 565.

If the invention is substantially different from anything before known in its mode of operation, it is new. *Lowell v. Lewis*, 1 Mason, 182; *Ex parte W. B. Barton*, 1 O. G. 329; *Parker v. Hatfield*, 4 McLean, 61.

If the mechanism in two machines is substantially different, then they are not the same, although they may produce the same result, for the same end may be attained by different processes or instrumentalities. *Eames v. Cook*, 2 Fish. 146.

If the mode of operation of two machines is different, it is evidence that the mechanism is different. *Eames v. Cook*, 2 Fish. 146; *Ex parte A. F. Jones*, 1 O. G. 329.

In a doubtful case, the fact that the defendant has obtained possession of one of the alleged prior machines, and has not produced it, can not but exer-

cise great influence on the determination. *Washing Machine Co. v. Lincoln*, 4 Fish. 379.

When a new invention is sought to be intercepted by a former one, the production of a former machine is of very great importance, showing that it does not rest merely in the recollection of witnesses that there was such a thing. *Howe v. Underwood*, 1 Fish. 160; *Murphy v. Eastham*, 5 Fish. 306; s. c. 1 Holmes, 113; 2 O. G. 61; *Orr v. Badger*, 7 Law Rep. 465; *Chase v. Wesson*, 6 Fish. 516; s. c. 1 Holmes, 274; 4 O. G. 476; *Baldwin v. Schultz*, 5 Fish. 75; s. c. 9 Blatch. 494; 2 O. G. 315; *Moody v. Taber*, 1 Holmes, 325; s. c. 5 O. G. 273; *Smith v. G. E. F. Co.* 1 Holmes, 340; s. c. 5 O. G. 429; *La Baw v. Hawkins*, 6 O. G. 724; *Hawes v. Antisdell*, 8 O. G. 685.

The doctrine of equivalents should be critically scanned where there may be a difference in relation to two machines which in some respects operate by equivalent devices, and in other respects do not, to ascertain whether one has become a practical machine while the other is not. *Sayles v. Railroad Co.* 2 Fish. 523.

The results produced constitute a safe kind of evidence which may be relied upon with some degree of certainty in order to ascertain whether the same means are used. Like means, provided the machine is in perfect order, will in a measure produce like results. If like results can not be produced by two separate devices, it is good evidence to consider in determining whether the means are the same, because, as a general rule, like results are produced by like means, and if like results are not produced by two separate devices, it is fair to infer that the means may not be alike in kind or character. *Waterbury Brass Co. v. New York Brass Co.* 3 Fish. 43; *Suffolk Co. v. Hayden*, 4 Fish. 86; s. c. 3 Wall. 315.

It is decisive evidence, though not the only evidence, that a new mode of operation has been introduced if the practical effect of the invention is either a new effect or a materially better effect, or as good an effect more economically attained by means of the change made by the patentee. A new, or improved, or more economical effect attributable to the change made by the patentee in the mode of operation of existing machinery, proves that the change has introduced a new mode of operation which is the subject-matter of a patent. *Furbush v. Cook*, 2 Fish. 668.

If a materially different result is reached, it is evidence of some new cause or means, although the mechanism may apparently be substantially the same. Hence a greater degree of utility being achieved by one machine is evidence, and sometimes conclusive evidence, of novelty in the means or instrumentalities which are used. *Eames v. Cook*, 2 Fish. 146; *Roberts v. Dickey*, 4 Fish. 532; s. c. 4 Brews. 260; 1 O. G. 4.

If the patented invention produce a result decidedly and clearly different from any which has been produced by the action of any prior invention, and is decidedly superior to any other in its operation, it affords a ground for the presumption that the thing itself has not been known before. *Judson v. Dope*, 1 Fish. 615; s. c. 1 Bond, 327.

New capabilities important to the practical use of a machine, are some evidence that the subsequent invention is different from the prior one. *Eames v. Cook*, 2 Fish. 146; *Masury v. Anderson*, 6 Fish. 457; s. c. 11 Blatch. 162;

4 O. G. 55; *Child v. Bost. & F. Iron Works Co.* 6 Fish. 606; s. c. 1 Holmes, 303; 5 O. G. 61.

If the same effects are produced by two machines by the same mode of operation, the principles of each are the same. *Whittemore v. Cutter*, 1 Gallis. 478; *Odiorne v. Winkley*, 2 Gallis. 51.

If the same effects are produced, but by combinations of machinery operating substantially in a different manner, the principles are different. *Whittemore v. Cutter*, 1 Gallis. 478.

Novelty in Combinations.

When the patent is for a combination, it is immaterial whether the patentee is the inventor of any of the elements or ingredients. They may all be old, and yet if the patentee was the first to combine them for the particular purpose, he is entitled to be protected in that improvement. *Silshy v. Foote*, 20 How. 378; s. c. 2 Blatch. 260; *Carr v. Rice*, 1 Fish. 198; *Hovey v. Stevens*, 1 W. & M. 290; *Carr v. Rice*, 1 Fish. 325; s. c. 4 Blatch. 200; *Buck v. Hermance*, 1 Blatch. 398; *Hovey v. Henry*, 3 West. L. J. 153; *Gray v. James*, Pet. C. C. 394; *Furbush v. Cook*, 2 Fish. 668; *Buck v. Gill*, 4 McLean, 174; *M'Cully v. Cunningham*, 19 Pitts. L. J. 142; *Ex parte James D. Sturgis*, 10 O. G. 204; *Evans v. Eaton*, 3 Wheat. 454; s. c. Pet. C. C. 322; *Swift v. Whisen*, 3 Fish. 343; s. c. 2 Bond. 115; *Crosby v. Lapouraille*, Taney, 374; *Pitts v. Edmonds*, 2 Fish. 52; s. c. 1 Biss. 168; *Blake v. Stafford*, 3 Fish. 294; s. c. 6 Blatch. 195; *Butch v. Boyer*, 8 Phila. 57; s. c. 28 Leg. Int. 396; *Rice v. Heald*, 13 Pac. L. R. 33; *Barrett v. Hall*, 1 Mason, 447; *Stimpson v. Woodman*, 3 Fish. 98; s. c. 10 Wall. 117; *Latta v. Shawk*, 1 Fish. 465; s. c. 1 Bond. 259; *Roberts v. Harnden*, 2 Cliff. 500; *Connover v. Roach*, 4 Fish. 12; *Ingels v. Mast*, 6 Fish. 415; *Knight v. Railroad Co.* 3 Fish. 1; s. c. Taney, 106; *Lee v. Blandy*, 2 Fish. 89; s. c. 1 Bond. 361; *Winans v. Schenec. & Troy R. R. Co.* 2 Blatch. 279; *Locomotive Co. v. Railway Co.* 6 Fish. 187; s. c. 10 Blatch. 292; 3 O. G. 93; *Ex parte A. B. Smith*, 1 O. G. 403.

A patent for a new combination or arrangement to produce a new result is valid although one of the parts is old. *O'Reilly v. Morse*, 15 How. 62; *Hall v. Wiles*, 2 Blatch. 194; *Frink v. Petry*, 11 Blatch. 422; s. c. 5 O. G. 201; *Buck v. Hermance*, 1 Blatch. 398; *Furbush v. Cook*, 2 Fish. 668; *Watson v. Cunningham*, 4 Fish. 528.

A patent for a combination can not be proved to be invalid by showing that one of the elements is found in some one prior machine and another in another prior machine, until it is shown that all the elements are old, because the theory of such a patent is that the elements are old, and the invention consists merely in the new combination. *Union Sugar Refinery v. Matthiesson*, 2 Fish. 600.

A patent for a combination cannot be supported by evidence of the novelty of one of its parts. *Batten v. Clayton*, 2 Whart. Dig. 363.

If old materials and old principles in mechanics or otherwise, are used in a state of combination so as to produce a new result, the inventor of the article so produced is entitled to apply for and may obtain a valid patent. *Pennock v. Dialogue*, 4 Wash. C. C. 538; s. c. 2 Pet. 1.

If the combination is new it is patentable matter, although a part of the apparatus might have been applied to similar purposes in other and different machines. Under such circumstances, it would not be a mere application of an old apparatus to a new purpose, but a new combination of machinery incorporating in part an old apparatus for a new purpose. *Pitts v. Whitman*, 2 Story, 609.

If the patentee borrowed the idea of the different parts which go to constitute his invention, and for the first time brought them together into one whole, and that whole is materially different from any whole that existed before, then he is the original and first inventor, and is entitled to a patent therefor. *Many v. Sizer*, 1 Fish. 17.

If not only all the primary elements but all the subcombinations existed in different machines before, but were never brought together to constitute one machine and co-operating to produce one result, and the inventor brings them together by invention, producing a useful result, he is entitled to a patent for such combination and arrangement. *Howe v. Morton*, 1 Fish. 586.

If a device is a substitute for one element of an old combination, and not merely an improvement on it, then a machine containing this substitute and the other old elements, is a new and different machine from a machine containing the combination of old elements known before the invention, and not merely an improvement on such machine containing such combination of old elements. *Potter v. Holland*, 1 Fish. 382; S. C. 4 Blatch. 206.

Although the ingredients in a combination of materials may have been in the most common and extensive use, yet, if they have never been combined together in the manner stated in the patent, the invention of the combination is patentable. *Ryan v. Goodwin*, 3 Sum. 514.

Priority.

No person who is not at once the first as well as the original inventor, by whom the invention has been perfected and put into actual use, is entitled to a patent. A subsequent inventor, although an original inventor, is not entitled to any patent. If the invention is perfected and put into actual use by the first and original inventor, it is of no consequence whether the invention is extensively known or used, or whether the knowledge or use thereof is limited to a few persons or even to the first inventor himself. It is sufficient that he is the first inventor to entitle him to a patent, and no subsequent inventor has a right to deprive him of the right to use his own prior invention. *Spring v. Packard*, 7 O. G. 341; *Burrows v. Lehigh Zinc Co.* 31 Leg. Int. 332; *Reed v. Cutter*, 1 Story, 590; *Watson v. Bladen*, 4 Wash. C. C. 580; *Stimpson v. Woodman*, 3 Fish. 98; S. C. 10 Wall. 117; *Sayles v. Hapgood*, 3 Fish. 632; S. C. 2 Biss. 189; *Carr v. Rice*, 1 Fish. 198; *Roberts v. Ward*, 4 McLean, 565; *Larabee v. Cortian*, 3 Fish. 5; S. C. Taney, 180; *Wing v. Schoemaker*, 3 Fish. 607; *Suffolk Co. v. Hayden*, 4 Fish. 86; S. C. 3 Wall. 315; *Boston E. F. Co. v. Rubber Thread Co.* 1 Holmes, 372; S. C. 5 O. G. 696; *Bridge v. Brown*, 1 Holmes, 53; *Bedford v. Hunt*, 1 Mason, 302; *Darst v. Brockway*, 18 Ohio, 462.

The patent law goes undoubtedly upon the ground that when a man, by his knowledge and skill, has made and perfected a machine, the public are

then put in possession of the invention, and have the benefit in some form of that knowledge and skill, and that the man who comes afterward can not deprive the public of that benefit, though he may be an original inventor of the machine. He has not given the consideration for an exclusive privilege, because the public had it before, and although he may have the merit of invention, he can not have the right to take from the community that which they possess by the invention of another. *Howe v. Underwood*, 1 Fish. 160.

If the prior inventor made the article, for whatever purpose, he has a right to say that no one else is entitled to a patent for it, although he did not perceive all its advantages. *Richardson v. Lockwood*, 6 Fish. 454; S. C. 4 O. G. 398.

The patentee is presumed in judgment of law to have had a knowledge of prior inventions, although the fact may have been otherwise. *Silsby v. Foote*, 2 Blatch. 260; S. C. 20 How. 378.

If the invention has been in use, or has been described in a public work anterior to the supposed discovery, the patent is void. It may be that the patentee had no knowledge of this previous use or previous description, still his patent is void. The law supposes he may have known it. *Evans v. Eaton*, 3 Wheat. 454; S. C. Pet. C. C. 322; *Winans v. Schen. & Troy R. R. Co.* 2 Blatch. 279; *Evans v. Hettick*, 3 Wash. C. C. 408; *Sewall v. Jones*, 7 Wheat. 453; S. C. 3 Wash. C. C. 408.

If the alleged prior machine is abandoned after experimental trials as useless, a presumption will arise that the alleged invention is not identical with one subsequently patented to another person, the merits and utility of which are proved by its general use and admitted superiority over all others. *Wayne v. Holmes*, 2 Fish. 20; S. C. 1 Bond, 27; *Suffolk Co. v. Hayden*, 4 Fish. 86; S. C. 3 Wall. 315; *Parham v. Sewing Machine Co.* 4 Fish. 468; *Allen v. Blunt*, 2 W. & M. 121; *Blake v. Eagle Works Manuf. Co.* 4 Fish. 591; S. C. 3 Biss. 77.

In order to entitle a person to a patent, he must be the original inventor, not only in relation to the United States, but to other parts of the world. *Sewall v. Jones*, 91 U. S. 171; S. C. 9 O. G. 47; 6 Fish. 343; 3 O. G. 630.

A patent can not be obtained for an invention known and practiced in a foreign country. A patentee must be an inventor, not an importer. *Thompson v. Haight*, 1 U. S. L. J. 582.

It is a presumption of law that when a patent has been obtained, and the specifications and drawings recorded in the patent office, every man who subsequently takes out a patent for a similar machine has a knowledge of the preceding patent. *Odiorne v. Winkley*, 2 Gallis. 51.

A subsequent inventor can not oust the first inventor of his right under his patent, although he may be a subsequent inventor without any knowledge of the prior existence of the machine, or communication with the first inventor. *Woodcock v. Parker*, 1 Gallis. 438.

If the original inventor chooses not to obtain a patent for his invention, it becomes public property by his abandonment, and no other person can obtain a patent for it. *Evans v. Eaton*, Pet. C. C. 323; S. C. 3 Wheat. 454; *Colt v. Mass. Arms Co.* 1 Fish. 108; *Whipple v. Baldwin Manuf. Co.* 4 Fish. 29.

Date of Invention.

The date of the invention as perfected and reduced to successful use is important, for, by the rules of law, when a dispute arises as to the priority of an invention, a patentee is allowed to show the real date of it. *Farker v. Hulme*, 1 Fish. 44; *Judson v. Cope*, 1 Fish. 615; S. C. 1 Bond, 327.

The question of priority is not one of scientific precedence. It is purely a question of invention applied in a practical form to a specific use. *French v. Rogers*, 1 Fish. 133.

The mere speculation of a philosopher or a mechanic, which has never been tried by the test of experience, or put into practical operation, will not deprive a subsequent inventor, who has employed his labor and his talents in putting it into practice, of the reward due to his ingenuity and enterprise. *Bedford v. Hunt*, 1 Mason, 302.

The mere suggestion of the idea of an application of a principle to practical purposes will not defeat the claim of the patentee, if no such application was made before he made it, for the person who first reduces the idea to practical application and use is entitled to a patent. *Silsby v. Foote*, 1 Blatch. 445; S. C. 14 How. 218.

The mere conception of the invention, however perfect the idea may have been, and although the inventor actually described the plan to one person, is not sufficient, unless he completed the invention and reduced it to practice in the form of an operative machine. Original and first inventors are entitled to the benefits of their inventions, if they reduce them to practice and reasonably comply with the requirements of the patent law in procuring letters patent for the protection of their exclusive rights. While the suggested invention, however, rests merely in the mind of the originator of the idea, it is not completed within the meaning of the patent law. Mere discovery of an improvement does not constitute it the subject-matter of a patent, although the ideas which it involves may be new; but the new set of ideas, in order to become patentable, must be embodied into working machinery and adapted to practical use. *White v. Allen*, 2 Fish. 440; S. C. 2 Cliff. 224; *Sickels v. Borden*, 3 Blatch. 535; *Smith v. O'Connor*, 6 Fish. 469; S. C. 2 Saw. 461; 4 O. G. 633; *Poppenhusen v. Gutta Percha Comb Co.* 2 Fish. 62; *Putnam v. Hickey*, 5 Fish. 334; S. C. 3 Biss. 157; *Ellithorpe v. Robertson*, 2 Fish. 83; S. C. 4 Blatch. 307; *Masury v. Anderson*, 6 Fish. 457; S. C. 11 Blatch. 162; 4 O. G. 55; *Washburn v. Gould*, 3 Story, 122; *Henry v. Stove Co.* 9 O. G. 408; *Johnson v. Root*, 2 Fish. 291; S. C. 2 Cliff. 108; *Warner v. Anders*, 11 O. G. 109; *Agawam Co. v. Jordan*, 7 Wall. 583; *Winans v. N. Y. & Harlem R. R. Co.* 4 Fish. 1; *Wilton v. R. R. Co.* 2 Whart. Dig. 360; *Webb v. Quintard*, 5 Fish. 276; S. C. 9 Blatch. 352; 1 O. G. 525.

The time of the invention is neither the date of the patent, nor the time when the idea was first conceived by the inventor. It is the time when the idea is not only distinct and complete in the mind of the inventor, but that idea is reduced to practice and embodied in some distinct form. This must necessarily be some time more or less before the date of the patent, and some time more or less after the first conception of the inventor. When the idea

first enters into the mind of the inventor, it is almost necessarily in a crude and imperfect state. His mind will naturally dwell and reflect upon it. It is not until his reflections, investigations, and experiments have reached such a point of maturity that he not only has a clear and definite idea of the principle, and of the mode and manner in which it is to be practically applied to useful purposes, but has reduced his idea to practice, and embraced it in some distinct form, that it can be said he has achieved a new and useful invention. That is the real time of his invention, though it may be months or years before he obtains a patent for it. *Matthews v. Skates*, 1 Fish. 602; *Brodie v. Ophir Mining Co.* 4 Fish. 137.

He is the first inventor in the sense of the statute, and entitled to a patent for his invention, who has first perfected and adapted the same to use, and until the invention is so perfected and adapted to use, it is not patentable. An imperfect and incomplete invention resting in mere theory, or in intellectual notion, or in uncertain experiments, and not actually reduced to practice and embodied in some distinct machinery, apparatus, manufacture, or composition of matter, is not, and indeed can not be patentable, since it is utterly impossible under such circumstances to comply with the fundamental requisites of the statute. In a race of diligence between two independent inventors, he who first reduces his invention to a fixed, positive, and practical form, would seem to be entitled to a priority of right to a patent therefor. *Reed v. Cutter*, 1 Story, 590; *Kinsman v. Parkhurst*, 1 Blatch. 488; s. c. 18 How. 289; *Silby v. Foote*, 2 Blatch. 260; s. c. 20 How. 378; *Rich v. Lippincott*, 2 Fish. 1; s. c. 1 Pitts. L. J. 25; *White v. Allen*, 2 Fish. 440; s. c. 2 Cliff. 224; *Ellithorpe v. Robertson*, 2 Fish. 83; s. c. 4 Blatch. 307; *Agawam Co. v. Jordan*, 7 Wall. 583; *Whiteley v. Swayne*, 4 Fish. 117; s. c. 7 Wall. 685; *Seymour v. Osborne*, 3 Fish. 555; s. c. 11 Wall. 516; *Hubbell v. U. S. & H.* 1.

How invariable is it that after a great invention has been brought before the world, has become known to the public, and been put in a form to be useful, that people start up in various places and declare that they invented the same thing long ago. These pretended prior inventors had thought of such a thing; had perhaps had a conception of such a thing, but had never carried it to the extent of making it of practical utility, so that the world could obtain possession of it. But when they find that another has completed that which they had begun, they are astonished that they did not see, think they must have seen all that is necessary, and claim that they have invented it. After having seen what has been done, the mind is very apt to blend the subsequent information with prior recollections, and confuse them together. Prophecy after the event is easy prophecy. *Howe v. Underwood*, 1 Fish. 100; *Rubber Co. v. Goodyear*, 2 Fish. 499; s. c. 9 Wall. 788; 2 Cliff. 351.

It is usually the case when any valuable discovery is made, or any new machine of great utility has been invented, that the attention of the public has been turned to that subject previously, and that many persons have been making researches and experiments. Philosophers and mechanics may have in some measure anticipated in their speculation the possibility or probability of such discovery or invention; many experiments may have been unsuccessfully tried, coming very near, yet falling short of the desired result. The invention when perfected may truly be said to be the culminating point

of many experiments, not only by the inventor, but by many others. He may have profited indirectly by the unsuccessful experiments and failures of others, but that gives them no right to claim a share of the honor or profit of the successful inventor. It is when speculation has been reduced to practice, when experiment has resulted in discovery, and when that discovery has been perfected by patient and continued experiments—when some new compound, art, manufacture, or machine has been thus produced which is useful to the public, that the party making it becomes a public benefactor, and entitled to a patent. *Goodvear v. Day*, 2 Wall. Jr. 283; *U. S. v. Hubbell*, 5 N. & H. 1; *Jones v. Vankirk*, 2 Fish. 586; *Pike v. P. & W. R. R. Co.* 1 Holmes, 445; S. C. 6 O. G. 575; *Reed v. Torpedo Co.* 3 Fish. 629; *Westinghouse v. G. & R. Brake Co.* 9 O. G. 538; *Wood v. Rolling Mill Co.* 4 Fish. 550; *Sayles v. C. & N. R. R. Co.* 4 Fish. 484; S. C. 3 Biss. 52.

The date of the invention is the date of the discovery of the principle involved, and the attempt to embody that in some machine, not the date of the perfecting of the instrument. But the party can not get a patent till he perfects it in some sense of the word, that is, until he goes on and makes improvements to render it practical and useful. *Colt v. Mass. Arms Co.* 1 Fish. 108; *National Oil Co. v. Arctic Oil Co.* 4 Fish. 514; S. C. 8 Blatch. 416; *Clark v. Scott*, 15 Fish. 245; S. C. 9 Blatch. 301; 1 O. G. 4.

The law means by invention not maturity. It must be the idea struck out, the brilliant thought obtained, the great improvement in embryo. The inventor must have that, but if he has that, he may be years in improving and maturing it. It may require half a life, but in that time he must have devoted himself to it as much as circumstances would allow. But the period when he strikes out the plan which he afterwards patents, that is the time of the invention—that is the time when the discovery occurs. *Adams v. Edwards*, 1 Fish. 1.

In order to determine the precise date of an invention, it must be determined at what time the patentee first perfected the intellectual production, or the idea or conception of the thing patented, so that without more inventive power or further trial or experiment, he could have successfully applied it in practice, and could at once have complied with that provision of the statute which requires that an inventor before he shall receive a patent for the invention or discovery, shall deliver to the patent office a written description of his invention, and explain the principles and several modes in which he has contemplated the application of that principle or character by which it may be distinguished from other inventions. And in order to determine whether any other person has invented the same thing patented by the patentee prior to the patentee's invention thereof, the same rule must be applied in determining the date of such alleged prior invention. *Ransom v. New York*, 1 Fish. 252; *Stimpson v. Woodman*, 3 Fish. 98; S. C. 10 Wall. 117.

It is only when some person by labor and perseverance has been successful in perfecting some valuable manufacture by ingenious improvements and labor-saving devices, that his patent is sought to be annulled by digging up some useless, rusty, forgotten contrivances of unsuccessful experimenters. *Adams v. Jones*, 1 Fish. 527; *Ex parte John C. Birdsell*, 1 O. G. 465; *Woodward v. Dinsmore*, 4 Fish. 163; *Wood v. Cleveland Rolling Mill*, 4 Fish.

The alleged prior invention must have been a practical invention capable of performing the object of the maker. *Case v. Brown*, 2 Fish. 268; S. C. 2 Wall. 320; 1 Biss. 382; *Wayne v. Holmes*, 2 Fish. 20; S. C. 1 Bond, 27; *Harwood v. Mill River Co.* 3 Fish. 526.

Proof of Invention.

In most cases a sufficient use of the alleged prior invention must be shown to prove that it will accomplish what is claimed, otherwise it rests in the region of mere experiment. *Sayles v. C. N. R. R. Co.* 4 Fish. 584; S. C. 3 Biss. 52.

If the first inventor reduced his theory to practice, and put his machine or other invention into use, the law never would intend that the greater or less use in which it might be, or the more or less widely the knowledge of its existence might circulate, should constitute the criterion by which to decide upon the validity of any subsequent patent for the invention. *Rich v. Lippincott*, 2 Fish. 1; S. C. 1 Pitts. L. J. 25.

An experiment may be a trial either of an incomplete mechanical structure, to ascertain what changes or additions may be necessary to make it accomplish the design of its projector, or of a completed machine, to illustrate or test its practical efficiency. Obviously in the first case, the incompleteness of the inventor's efforts, if they are then abandoned, will have no effect upon the rights of a subsequent inventor. But if the experiment proves the capacity of the machine to effect what its inventor proposed, the law assigns to him the merit of having produced a complete invention. *Northwestern Co. v. Philadelphia Co.* 6 O. G. 34; S. C. 31 Leg. Int. 148.

The fact of making or exhibiting an article never before seen or heard of by the witnesses who prove the fact, is at least *prima facie* evidence of invention, until other evidence is given to prove that the same article was invented, known, or in use at an antecedent period of time, and that the patentee had only embodied the conceptions and the discovery of some other person. *Pennock v. Dialogue*, 4 Wash. C. C. 538; S. C. 2 Pet. 1.

The only question is whether the patentee is the original inventor of an art not known or used before; consequently it is clearly immaterial whether the first experiment of his invention is made by himself or by others. *Pennock v. Dialogue*, 4 Wash. C. C. 538; S. C. 2 Pet. 1.

The alleged prior machine, must be a machine completed and reduced to practice, in contradistinction to an experimental machine, or a machine made by the supposed inventor in the prosecution of experiments and inquiries. *Cahoon v. Ring*, 1 Fish. 397; S. C. 1 Cliff. 592; *Cox v. Griggs*, 2 Fish. 174; S. C. 1 Biss. 362; *Seymour v. Osborne*, 3 Fish. 555; S. C. 11 Wall. 516; *Murphy v. Eastham*, 5 Fish. 306; S. C. 1 Holmes, 113; 2 O. G. 61; *Stimpson v. Woodman*, 3 Fish. 98; S. C. 10 Wall. 117; *Eickemeyer Machine Co. v. Pearce*, 6 Fish. 219; S. C. 10 Blatch. 403; 3 O. G. 150.

The phrase "reduced to practice," does not import the bringing of the invention into use. When applied to an invention, it generally means the reduction of it into such form that it may be used, so as not to be a mere theory.

Heath *v.* Hildreth, Cranch Pat. Dec. 96; Perry *v.* Cornell, Cranch Pet. Dec. 132.

In order to defeat a patent it is sufficient to show that the patentee was not the first and original inventor, without proving that the first inventor had put his invention into practice. Hildreth *v.* Heath, Cranch Pat. Dec. 96.

If a party discovers the practical mode and contrives the practical means of accomplishing a result, he is entitled to a patent for his invention although ignorant of the philosophical or abstract principle which is involved in it. Brown *v.* Piper, 4 Fish. 175; S. C. 1 Holmes, 20; 91 U. S. 37; Woodward *v.* Dinsmore, 4 Fish. 163.

If a patent is for a process, it is not sufficient to show that any prior apparatus could have been used to practice the process. It must appear affirmatively that it actually was put to such practical use. Brown *v.* Piper, 4 Fish. 175; S. C. 1 Holmes, 20; 91 U. S. 37.

The putting of an invention into use is generally strong evidence of a reduction of it to practice. But it may be a completed invention put into a practical form ready for practical use, and reduced to practice without being put into use in the general acceptance of that word. If the adaptation to use, or even the use itself is merely experimental, the invention is not perfected. But use is not necessarily required in order to show perfection or completion. In respect to most inventions, use not merely experimental is one of the best proofs of the reduction of an invention to practice. But a piece of mechanism may be shown to have been completed and not to have rested in experiment, and to have been capable from its structure of working successfully, so as to deprive a subsequent independent invention of the same thing of the merit of novelty in the patent law, without its being shown that such piece of mechanism was actually used before the making of such subsequent invention. Coffin *v.* Ogden, 3 Fish. 640; S. C. 7 Blatch. 61.

It is not sufficient that some part incorporated into an invention, was perfected so that it did not require further alteration, unless that part could be a machine so as to be of some practical utility. It must have been embodied and connected with a machine which as a whole, taking that part, was of some practical utility, in order to prevent other people coming afterward, from having the benefit of an invention which embraces that, and perfects a machine that renders that part useful. Johnson *v.* Root, 1 Fish. 351.

In order to be perfected in the eye of the law, it is not necessary that the invention shall be carried to a point where there can not be any subsequent improvement, that it shall be made as good as it can possibly be made as a practical machine, but that the invention shall be completed so as to be of some practical utility. It need not be of any high degree if it is of any practical utility, although of a very low degree, and has been completed so as to be of practical utility and considered as completed, then it may be said to be perfected in the eye of the law. Johnson *v.* Root, 1 Fish. 351.

To constitute a prior invention, the party alleged to have made it must have proceeded so far as to have entitled himself to a patent in case he had made an application. Allen *v.* Hunter, 6 McLean, 303.

The making of drawings of conceived ideas, is not such an embodiment of conceived ideas into practical and useful form as will defeat a patent

which has been granted. *Ellithorpe v. Robertson*, 2 Fish. 83; s. c. 4 Blatch. 307.

When the inventor's idea is perfected by a practical adaptation of it in the form of mechanism, a rejected specification, with the drawings, is a valuable guide in ascertaining the date of the invention, the design of the inventor, and the principle, intended functions, and mode of operation of his mechanism, and must therefore, necessarily, be considered in connection with it. *Northwestern Co. v. Philadelphia Co.* 6 O. G. 34; s. c. 31 Leg. Int. 148.

Although a *caveat* is understood to be filed in order to allow the party to perfect his machine, yet if, in point of fact, the invention had been perfected in the eye of the law, then it is to be deemed perfected, for it may happen that a person may choose to file a *caveat* while he is going on and making improvements upon an invention which he has already completed so as to be of practical utility. *Johnson v. Root*, 1 Fish. 351.

The invention will not date from the filing of the *caveat* unless the *caveat* and the patent are for the same invention. *American Pavement Co. v. Elizabeth*, 4 Fish. 189.

If only a model was made, yet unless a machine capable of being used was made prior to the invention set forth in the patent, then such alleged prior invention never was completed, and can not affect the validity of the patent, although the model was capable of operation for the purpose of experiments. *Cahoon v. Ring*, 1 Fish. 397; s. c. 1 Cliff. 592; *Stainthorp et al. v. Humiston*, 4 Fish. 107; *Lyman V. & R. Co. v. Lalor*, 12 Blatch. 303; s. c. 6 O. G. 642; *S. & B. Manuf. Co. v. Coke Co.* 7 O. G. 829.

Witnesses who speak of circumstances occurring many years ago are liable to mistake the particular year, unless they have some evidence of a documentary character or otherwise, or some leading fact in relation to which there can be no error upon which they may rely to show the particular time, and this fact should be borne in mind in weighing their testimony. *Sayles v. Railroad Company*, 2 Fish. 523; s. c. 1 Biss. 468; *Smith v. Fay*, 6 Fish. 446; *Parker v. Hulme*, 1 Fish. 44; *Blake v. Eagle Works Manuf. Co.* 4 Fish. 591; s. c. 3 Biss. 77; *Wing v. Richardson*, 2 Fish. 535; s. c. 2 Cliff. 449; *Hawes v. Antisdell*, 8 O. G. 685; *Ely v. Monson Manuf. Co.* 4 Fish. 64; *Baldwin v. Schultz*, 5 Fish. 75; s. c. 9 Blatch. 494; 2 O. G. 315; *Suffolk Co. v. Hayden*, 4 Fish. 86; s. c. 3 Wall. 315; *Wood v. Rolling Mill Co.* 4 Fish. 550.

Abandoned Experiments.

Cases undoubtedly occur where an individual employed in inventing or in making experiments in that behalf, feeling dissatisfied with the results of his efforts, becomes discouraged in prosecuting an investigation, and finally loses all confidence in the prospect of his ultimate success, and under the influence of such discouragements, or from a desire to engage in more profitable business, or to pursue a more pressing or favorite undertaking, decides to break up what he has accomplished, and lays the parts aside, not positively intending to abandon the subject, yet wholly uncertain whether he will ever resume it, or make any further use of the parts so laid aside. Such cases do not show an unconditional abandonment of the undertaking, but an indefinite suspen-

sion of the same, and an entire uncertainty during such suspension whether the interested party will ever furnish the invention to the public. Where an invention is thus voluntarily broken up and laid aside, without any controlling impediment in the way of an application for a patent, and under all the other conditions specified in the preceding proposition, and another in the mean time invents the same thing without any knowledge of that which is so suspended, and reduces the same to practice, applies for and takes out his patent and introduces the patented invention into public use, he must be regarded as the original and first inventor of the improvement. *White v. Allen*, 2 Fish. 440; S. C. 2 Cliff. 224.

It is not enough to defeat a patent already issued that another conceived the possibility of effecting what the patentee accomplished. To constitute a prior invention, the party alleged to have produced it must have proceeded so far as to have reduced his idea to practice, and embodied it in some distinct form. Crude and imperfect experiments, equivocal in their results, and then given up for years, can not be permitted to prevail against an original inventor who has perfected his improvement and obtained his patent. *Kinsman v. Parkhurst*, 1 Blatch. 489; S. C. 18 How. 289; *Teese v. Phelps*, 1 McA. 48; *Allen v. Hunter*, 6 McLean, 303; *Webb v. Quintard*, 5 Fish. 276; S. C. 9 Blatch. 352; 1 O. G. 525; *Union Sugar Refinery v. Matthiesson*, 2 Fish. 600; *Whitely v. Swayne*, 4 Fish. 117; S. C. 7 Wall. 685; *Potter v. Wilson*, 2 Fish. 102; *Washburn v. Gould*, 3 Story, 122.

An unsuccessful experiment abandoned, although involving the same idea or principle, will not invalidate a patent granted to a subsequent inventor who has reduced the invention to successful practice, and published it by obtaining letters patent. If a person has some vague idea of the application of the principle which another party has made available, if he makes numerous trials and long continued experiments, if those trials and experiments never result in such a knowledge upon his part as will enable him to put in successful practice the idea of which he has this vague and undefined notion, he has never become an inventor in the sense of the patent law; he has never embodied the principle so as to make it available for practical use, and the party who embodies the principle and makes it available for practical use is the party who is entitled to a patent and to protection under the patent law. *U. S. Nickel Co. v. Authes*, 5 Fish. 517; S. C. 1 Holmes, 135; 1 O. G. 578; *Blake v. Rawson*, 6 Fish. 74; S. C. 1 Holmes, 200; 3 O. G. 122; *Ransom v. New York*, 1 Fish. 252; *Stainthorp v. Elkinton*, 1 Fish. 349; *Taylor v. Wood*, 12 Blatch. 110; S. C. 8 O. G. 90; *Singer v. Walmsley*, 1 Fish. 558; *Wayne v. Holmes*, 2 Fish. 20; S. C. 1 Bond, 27; *Hubbell v. U. S. 5 N. & H.* 1; *Sickles v. Borden*, 3 Blatch. 535; *Smith v. Allen*, 2 Fish. 572; *Roberts v. Dickey*, 4 Fish. 532; S. C. 4 Brews. 260; 1 O. G. 4; *Many v. Jagger*, 1 Blatch. 372; *Seymour v. McCormick*, 19 How. 96; S. C. 3 Blatch. 209; *Sayles v. Railroad Co.* 2 Fish. 523; S. C. 1 Biss. 468; *Whiteley v. Swayne*, 7 Wall. 685; S. C. 4 Fish. 117; *Smith v. G. E. F. Co.* 1 Holmes, 340; S. C. 5 O. G. 429; *Smith v. G. D. V. Co.* 93 U. S. 487; S. C. 1 Holmes, 354; 5 O. G. 585; 11 O. G. 246; 4 A. L. T. (N. S.) 74; *La Baw v. Hawkins*, 6 O. G. 724; *Many v. Sizer*, 1 Fish. 17; *Gold & Silver Ore Co. v. U. S. Ore Co.* 3 Fish. 409; S. C. 6 Blatch. 307; *Smith v. Fay*, 6 Fish. 446; *Aultman v. Holley*, 6 Fish. 534; S. C. 11 Blatch. 304; 5 O. G. 3;

Ex parte Byron Boardman, 1 O. G. 304; *Latta v. Shawk*, 1 Fish. 465; s. C. 1 Bond, 259; *Winans v. N. Y. & Harlem R. R. Co.* 4 Fish. 1; *Reeves v. Keystone Bridge Co.* 5 Fish. 456; s. C. 9 Phila. 368; 1 O. G. 466; 5 A. L. T. 150; *Nicholson v. Tremaine*, 9 Blatch. 550; *Matthews v. Skates*, 1 Fish. 602; *Suffolk Co. v. Hayden*, 4 Fish. 86; s. C. 3 Wall. 315; *Doughty v. Day*, 5 Fish. 224; s. C. 9 Blatch. 262; *Gallahue v. Butterfield*, 6 Fish. 203; s. C. 10 Blatch. 232; 2 O. G. 645; *Decker v. Grote*, 6 Fish. 143; s. C. 10 Blatch. 331; 3 O. G. 65; *Ellithorpe v. Robertson*, 2 Fish. 83; s. C. 4 Blatch. 307; *Stainthorp et al. v. Humiston*, 4 Fish. 107; *Nat'l Spring Co. v. Union Car Spring Manuf. Co.* 12 Blatch. 80; s. C. 6 O. G. 224; *Robertson v. Secombe Co.* 6 Fish. 268; s. C. 10 Blatch. 481; 3 O. G. 412; *Waterman v. Thomson*, 2 Fish. 461; *Hoffman v. Aronson*, 4 Fish. 456; s. C. 8 Blatch. 324; 4 A. L. T. (N. S.) 110; *Singer v. Braunsdorf*, 7 Blatch. 521; *Ball v. Murry*, 10 Penn. 111; *Wilcox v. Komp*, 7 Blatch. 126.

A machine, in order to anticipate any subsequent discovery, must be perfected, that is, made so as to be of practical utility, and not to be merely experimental, and to end in experiment. The terms "being an experiment" and "ending in experiment" are used in contradistinction to the term "being of practical utility." Until of practical utility, the public attention is not called to the invention. It does not give to the public that which the public lays hold of as beneficial. If it is an experiment only, and ends in experiment, and is laid aside as unsuccessful, however far it may have been advanced, however many ideas may have been combined in it, which subsequently taken up might, when perfected, make a good machine, still not being perfected it has not come before the public as a useful thing, and is therefore entirely inoperative as affecting the rights of those coming afterwards. *Howe v. Underwood*, 1 Fish. 160.

An imperfect embodiment of the idea will not deprive a subsequent inventor of his right to a patent. *Richardson v. Noyes*, 10 O. G. 507.

If the alleged prior machine was merely got up for the purpose of experiment, and not practically tested, it will not be regarded as a perfected invention. The mere knowledge by an individual of a prior mechanical structure similar to the one patented which has not been used practically, will not defeat the novelty of the later patent. *Swift v. Whisen*, 3 Fish. 343; s. C. 2 Bond, 115.

If it appears that the alleged prior invention or discovery was only an experiment, and was never perfected or brought into actual use, but was abandoned and never revived by the alleged inventor, the mere fact of having unsuccessfully applied for a patent therefor can not take the case out of the category of unsuccessful experiments. *Brown v. Guild*, 23 Wall. 181; s. C. 6 O. G. 392; 7 O. G. 739.

The devices contained in an abandoned experiment can not be used to defeat the patent of an independent and successful inventor. *Aultman v. Holley*, 6 Fish. 534; s. C. 11 Blatch. 304; 5 O. G. 3.

If a process is practiced once as an experiment, and then abandoned, this mere experiment will not be an obstacle to the right of a subsequent inventor. *Brown v. Piper*, 4 Fish. 175; s. C. 1 Holmes, 20; 91 U. S. 37.

The fact that the alleged prior machine was not actually put into practical

use affords grounds for presuming that it was a mere experiment. *Cahoon v. Ring*, 1 Fish. 397; S. C. 1 Cliff. 592.

The desertion of an invention consisting of a machine never patented may be proved by showing that the inventor, after he had constructed it, and before he had reduced it to practice, broke it up as something requiring more thought and experiment, and laid the parts aside as incomplete, provided it appears that those acts were done without any definite intention of resuming his experiments and of restoring the machine. *Seymour v. Osborne*, 11 Wall. 516; S. C. 3 Fish. 555.

If the inventor produced a complete invention, but was repulsed by the patent office, and abandoned further efforts to secure the full benefit of the invention to himself and the public, such abandonment does not reduce his matured invention to the grade of a mere experiment. *Northwestern Co. v. Philadelphia Co.* 6 O. G. 34; S. C. 31 Leg. Int. 148.

Use of Invention.

If the prior machine is perfect and capable of use, it is not necessary that it should be actually used, but it must have been capable of such use. *Parker v. Ferguson*, 1 Blatch. 407; *Pitts v. Wemple*, 2 Fish. 10; S. C. 1 Biss. 87.

It is not necessary that the prior inventor shall have worked the process with the same degree of skill and success as the patentee attains. It is sufficient if he did it with that degree of success which demonstrated its usefulness. *Waterman v. Thomson*, 2 Fish. 461; *Pitts v. Wemple*, 2 Fish. 10; S. C. 1 Biss. 87.

The mere fact that the prior inventor ceased to use his machine, because he had no occasion to do so, is of itself of no importance. *Waterman v. Thomson*, 2 Fish. 461.

If the invention was successful, and no change of mechanism was needed, its use may be altogether discontinued; but this will not give a subsequent inventor the right to take it up and appropriate it exclusively. *Shoup v. Henrici*, 9 O. G. 1162; S. C. 23 Pitts. L. J. 123; 22 I. R. R. 114.

Diligence in Perfecting Invention.

He who invents first has the prior right if he uses reasonable diligence in adapting and perfecting his invention. *White v. Allen*, 2 Fish. 440; S. C. 2 Cliff. 224; *Reed v. Cutter*, 1 Story, 590; *Singer v. Walmsley*, 1 Fish. 558.

It is the right and privilege of a party, when an idea enters his mind in the essential form of invention, to perfect by experiment and reasonable diligence his original idea, so as not to be deprived of the fruit of his skill and labor by a prior patent, if he is the first inventor; but there must be a reasonable diligence looking to all the facts of the case. *Cox v. Griggs*, 2 Fish. 174; S. C. 1 Biss. 362; *Winans v. Schen. & Troy R. R. Co.* 2 Blatch. 279; *Whitney v. Emmett*, Bald. 303; *National Oil Co. v. Arctic Oil Co.* 4 Fish. 514; S. C. 8 Blatch. 416.

If two parties are jointly experimenting and equally meritorious, a doubt should be solved in favor of him who first obtains a patent. *Cox v. Griggs*, 2 Fish. 174; S. C. 1 Biss. 362.

The relation borne to the public by inventors, and the obligations they are bound to fulfil in order to secure for the former protection and the right to remuneration, by no means forbid a delay requisite for completing an invention, or for a test of its value or success by a series of sufficient and practical experiments; nor do they forbid a discreet and reasonable forbearance to proclaim the theory or operation of a discovery during its progress to completion, and preceding an application for protection in that discovery. *Kendall v. Winsor*, 21 How. 322.

No delay in taking out a patent is fatal to the earliest or first inventor, unless he abandons his discovery to the public, or by his consent allows it to be put in public use or on sale for two years before taking out a patent. If there has been no such abandonment or public use, the earliest invention will prevail over a succeeding one, though the latter may be made and used before letters patent are taken out for the first. *Allen v. Blunt*, 2 W. & M. 121; *Hildreth v. Heath*, Cranch Pat. Dec. 96.

If the patentee was induced to believe that his invention had been anticipated, and decided to keep it a secret and practice it for his own benefit, but applied for a patent as soon as he discovered his mistake, he did use reasonable diligence. *Ayling v. Hull*, 2 Cliff. 494.

If the inventor, after he has perfected his invention, unreasonably delays his application for a patent, and other persons before such application is made actually perfect and apply the same invention to practical use, and give the knowledge thereof to the public, and the first inventor, after the knowledge of such subsequent invention or discovery, and its public use, fails to make objection and to apply without unreasonable delay for a patent for his invention, he can not sustain his patent, because he failed to give to the public that consideration for the grant of exclusive privileges upon which all valid patents must be based. *Ransom v. New York*, 1 Fish. 252.

If an inventor has not used reasonable diligence in perfecting and adapting his invention, he will not be protected against a subsequent inventor, although he had previously conceived the idea of the invention, and had sketched it on paper. *Reeves v. Keystone Bridge Co.* 5 Fish. 456; S. C. 9 Phila. 368; 1 O. G. 466; 5 A. L. T. 150; 29 Leg. Int. 124; *Carleton v. Atwood*, 2 A. L. T. R. 129; *Kirby v. Johnson*, 1 O. G. 405; *Gates v. Benson*, 3 A. L. T. (U. S.) 113; *Agawam Co. v. Jordan*, 7 Wall. 583.

Effect of Concealment.

If the first inventor makes the discovery in his closet, and confines the knowledge to himself, such knowledge will not invalidate a subsequent patent to another. *Whitney v. Emmett*, Bald. 303; *Rowley v. Mason*, 2 A. L. T. (U. S.) 106.

It would be strange, indeed, if, because the first inventor would not permit other persons to know his invention, or to use it, he should thereby be deprived of his right to obtain a patent, and it should devolve upon a subsequent inventor, merely from his ignorance of any prior invention or prior use, or that a subsequent inventor should be entitled to a patent, notwithstanding a prior knowledge or use of the invention by one person and yet should be deprived of it by a like knowledge or use of it by two persons. *Reed v. Cutter*, 1 Story, 590.

If the alleged first inventor did not make his discovery public, but used it simply for his own private purpose, and it was finally forgotten or abandoned, such discovery and use will not defeat the rights of a subsequent inventor, if he is an original, though not the first inventor. *Gayler v. Wilder*, 10 How. 477; *Hall v. Bird*, 3 Fish. 595; s. c. 6 Blatch. 438.

If only a single specimen of the alleged prior machine was made, whether capable of use, and whether actually used or not by the party making it for the purpose of testing its operation, it will not invalidate a patent by a subsequent inventor, if it was kept in the possession of the maker from the knowledge of the public, and subsequently broken up, and the essential parts of it did not exist at the time of the subsequent invention, so that the public could derive the knowledge of it from the machine itself, but merely from the memory of the maker. *Cahoon v. Ring*, 1 Fish. 397; s. c. 1 Cliff. 592; *Sayles v. Railroad Company*, 2 Fish. 523; s. c. 1 Biss. 468; *Stainthorp et al. v. Humiston*, 4 Fish. 107; *Piper v. Brown*, 4 Fish. 175.

An inventor who withholds his invention from the public designedly, and with the view of applying it indefinitely and exclusively for his own profit, does not come within the objects or policy of the Constitution or acts of Congress. He does not promote, and if aided in his design would impede, the progress of science and the useful arts. Hence if, during such a concealment, an invention similar to or identical with his own, should be made and patented, or brought into use without a patent, the latter could not be inhibited nor restricted, upon proof of its identity with a machine previously invented and withheld or concealed by the inventor from the public. *Kendall v. Winsor*, 21 How. 322.

If there has been, at any time, and under any circumstances, an accidental discovery similar in character to that which the patentee has patented, but the public obtained no knowledge of the invention, then the invention was not produced by the party who made such discovery. In other words, if the party did not comprehend the invention, he added nothing to his own stock of knowledge, and the fact, if observed by other men, added nothing to the knowledge of science upon that subject. Therefore, the invention was not made until the party contriving, or others observing, the invention, saw that it could be made available for the purpose of producing a result similar to the one which the patentee mentions in his specification. *Ransom v. New York*, 1 Fish. 252.

It is well known that centuries ago discoveries were made in certain arts, the fruits of which have come down, but the means by which the work was accomplished are at this day unknown: the knowledge has been lost for ages; yet, if any one now were to discover an art thus lost, and it were a useful improvement, he would be entitled to a patent. Yet he would not literally be the first and original inventor, but he would be the first to confer on the public the benefit of the invention. He would discover what is unknown, and communicate knowledge which the public had not the means of obtaining without his invention. *Gayler v. Wilder*, 10 How. 477.

Utility.

An invention is not useful which will not enable the operator to accomplish the desired result. *Mitchell v. Tilghman*, 4 Fish. 599; S. C. 19 Wall. 287; 5 O. G. 299; *Hubbell v. U. S.* 5 N. & H. 1.

It is not sufficient that the invention is useful for some purpose. If it is impracticable to be used for the purpose for which it was patented, the patent is void. *Rowe v. Blanchard*, 18 Wis. 441.

If no person can make use of the invention advantageously, the patent is void. *Dickinson v. Hall*, 31 Mass. 217; *Ross v. Wolfinger*, 5 O. G. 117; *Bliss v. Brooklyn*, 6 Fish. 289; S. C. 10 Blatch. 521; 3 O. G. 269.

The law does not look to the degree of utility. It simply requires that the invention shall be capable of use, and that the use be such as sound morals and policy do not discountenance. *Bedford v. Hunt*, 1 Mason, 302; *Dunbar v. Marden*, 13 N. H. 311.

The invention must be useful to an appreciable extent, although the measure of that usefulness is not material. Any degree of utility appreciable by a jury is sufficient. *Conover v. Roach*, 4 Fish. 12.

The court will not be very rigid as to the degree of utility. It will not inquire into the precise *quantum* of value, but if the invention is useful in any degree, and not absolutely worthless, the patent will be sustained. *Vance v. Campbell*, 1 Fish. 483; S. C. 1 Black, 427; *Tilghman v. Werk*, 2 Fish. 229; S. C. 1 Bond, 511; *Ex parte Geo. Richardson*, 2 O. G. 3.

The question is not whether the invention is useful beyond all other machines in use for effecting the object for which it was designed, but whether it is capable in some degree of beneficial use, or will in some degree subserve the purpose of its design, or whether on the contrary, it is merely mischievous and injurious, or pernicious, or frivolous and worthless. *Dunbar v. Marden*, 13 N. H. 311; *Crouch v. Speer*, 6 O. G. 187.

If the invention is useful, it is not necessary that the thing patented should be the best possible thing of the kind that could be made. *Winans v. Schen. & Troy R. R. Co.* 2 Blatch. 279; *Wilbur v. Beecher*, 2 Blatch. 132; *Crompton v. Belknap Mills*, 3 Fish. 536.

The law does not require the patentee to prove his discovery to be useful to any eminent or large degree. It is sufficient if it produces an improved article at less cost or with more expedition than other known methods. *Carr v. Rice*, 1 Fish. 192.

The question is not whether the patented machine does its work better or faster than any other machine in the same department of labor. If it is to a certain degree useful and is original with the patentee, it belongs to him alone, whether it does less or more work. *Wilbur v. Beecher*, 2 Blatch. 132.

To what extent an invention must be useful to render it the subject of a patent, will depend on the particular circumstances of each case, and for which no general rule can be given, but it must, in some small measure at least, be beneficial to the community. This utility is to be tested not merely by the benefits which the patentee may obtain, but by the advantages which the public are to derive from it. *Langdon v. De Groot*, 1 Paine, 203.

It is not necessary that the invention should be of general utility. The

word useful is incorporated into the statute in contradistinction to mischievous or immoral. For instance, a new invention to poison people or to promote debauchery, or to facilitate private assassination, is not a patentable invention. But if the invention steers wide of these objections, whether it be more or less useful is a circumstance very material to the patentee but of no importance to the public. All that the law requires is that the invention shall not be frivolous or injurious to the well-being, good policy, or sound morals of society. *Lowell v. Lewis*, 1 Mason, 182; *Page v. Ferry*, 1 Fish. 298; *Cox v. Griggs*, 2 Fish. 174; s. c. 1 Biss. 362; *Wintermute v. Reddington*, 1 Fish. 239; *Adams v. Edwards*, 1 Fish. 1; *Smith v. O'Connor*, 6 Fish. 469; s. c. 2 Saw. 461; 4 O. G. 633; *Doherty v. Haines*, 6 O. G. 118; *Wilson v. Janes*, 3 Blatch. 227; *Kneass v. Schuylkill Bank*, 4 Wash. C. C. 9; *Whitney v. Emmett*, Bald. 303.

An invention which is neither frivolous nor mischievous, if it be of any use, is embraced within the spirit of the law, whether it be more or less useful. *Page v. Ferry*, 1 Fish. 298; *Cook v. Ernest*, 5 Fish. 396; s. c. 1 Woods, 195; 2 O. G. 89; *Many v. Sizer*, 1 Fish. 17; *Westlake v. Cartter*, 6 Fish. 519; s. c. 4 O. G. 636; *Clark Patent Co. v. Copeland*, 2 Fish. 221; *Converse v. Cannon*, 2 Woods, 7; s. c. 9 O. G. 105; *Wayne v. Holmes*, 2 Fish. 20; s. c. 1 Bond, 27; *Winans v. Schen. & Troy R. R. Co.* 2 Blatch. 279; *Bedford v. Hunt*, 1 Mason, 302; *Hoffheins v. Brandt*, 3 Fish. 218.

The beauty of an ornament is one great test of its utility. *Magic Ruffle Co. v. Douglass*, 2 Fish. 330.

The jury are not to conclude that there is no utility in an improvement from its apparent simplicity, nor from the fact that it may not be the best mode of effecting the result. This last consideration would affect the value of the patent but not its validity. *Bell v. Daniels*, 1 Fish. 372; s. c. 1 Bond, 212.

In the absence of proof that the thing patented is absolutely frivolous and worthless, the presumption of utility raised by the patent itself, would be sufficient, so far as the question of utility is concerned, to sustain the patent. *Parker v. Stiles*, 5 McLean, 44; *Lee v. Blandy*, 2 Fish. 89; s. c. 1 Bond, 361; *Hays v. Sulsor*, 1 Fish. 532; s. c. 1 Bond, 279; *Vance v. Campbell*, 1 Fish. 483; s. c. 1 Black, 427; *Tilghman v. Werk*, 2 Fish. 229; s. c. 1 Bond, 511; *Mowry v. Whitney*, 3 Fish. 157; s. c. 14 Wall. 620; 1 O. G. 499.

In ascertaining the usefulness of an invention, it is not important that it should be more valuable than other modes of accomplishing the same result, but it must be a practicable method of doing the thing designed, in which its utility will more or less consist. *Roberts v. Ward*, 4 McLean, 565; *Winans v. Schen. & Troy R. R. Co.* 2 Blatch. 279; *Seymour v. Osborne*, 3 Fish. 555; s. c. 11 Wall. 516.

The only legal quality or aid which an alleged invention can draw from the art with which it is connected in the specification, is that which relates to its utility. *Morton v. N. Y. Eye Infirmary*, 2 Fish. 320; s. c. 5 Blatch. 116.

Utility in most cases is a question of fact, as it usually depends upon the evidence resulting from actual experiment. *Mitchell v. Tilghman*, 4 Fish. 599; s. c. 19 Wall. 287; 5 O. G. 299.

Any saving in labor or expense, is a proper subject to be considered in deciding the question of utility. *Hays v. Sulsor*, 1 Fish. 532; S. C. 1 Bond, 279; *Gray v. James*, Pet. C. C. 476; *Simpson v. Mad River R. R. Co.* 6 McLean, 603; *Middletown Co. v. Judd*, 3 Fish. 141; *Watson v. Cunningham*, 4 Fish. 528; S. C. 19 Pitts. L. J. 142.

That a machine, when first applied in practice, does not perfectly accomplish the work for which it was designed, or does not accomplish all that its inventor supposed it would, is not enough to secure its rejection as a patentable invention. Correction of defects arising from imperfect material, and not involving reorganization of the machine, will not change its fundamental character and subject it to condemnation as impracticable in its original condition. Taken as a whole in its construction and operation, if it is an advance upon the state of the art to which it appertains, furnishing a better though still imperfect method of performing a useful function than was before available, it is not to be discarded as destitute of patentable worth. *Seymour v. Marsh*, 6 Fish. 115; S. C. 9 Phila. 380; 2 O. G. 675.

If a machine can be applied to any beneficial purpose, it is useful. *Dickinson v. Hall*, 31 Mass. 217.

If a patent is not useful for some beneficial purpose, it is void. *Lester v. Palmer*, 86 Mass. 145.

Utility is not an infallible test of originality. The patent law requires a thing to be new as well as useful in order to entitle it to the protection of the statute. *Stanley Works v. Sargent*, 4 Fish. 443; S. C. 8 Blatch. 344.

The effect produced by a change is often an appropriate though not a controlling consideration in determining the character of the change itself. *Stanley Works v. Sargent*, 4 Fish. 443; S. C. 8 Blatch. 344; *Monce v. Adams*, 12 Blatch. 1; S. C. 7 O. G. 177.

If an article is so expensive that manufacturers would not be induced to make it, the fact may be a very important consideration, but is not necessarily conclusive. *Many v. Sizer*, 1 Fish. 17.

An improvement is not useful which, in effecting a subsidiary truth, as arresting the sparks of a locomotive, is destructive of the ends of the principal machine. *Wilton v. R. R. Co.* 2 Whart. Dig. 360.

An invention which constantly exposes the operator to the loss of his life, or to great bodily harm, can not be regarded as useful within the meaning of the patent law. *Mitchell v. Tilghman*, 4 Fish. 599; S. C. 19 Wall. 287; 5 O. G. 299.

An extensive use of the patented article raises a presumption of its utility. *Adams v. Edwards*, 1 Fish. 1; *Rice v. Heald*, 13 Pac. L. R. 33.

If the invention was useful at the time when it was discovered, the patent will be valid although it has been superseded by later inventions. *Wheeler v. Clipper Co.* 6 Fish. 1; S. C. 10 Blatch. 181; 2 O. G. 442; *Poppenhusen v. Gutta Percha Comb Co.* 2 Fish. 62.

The fact that other superior devices have been invented, and have driven it out of use, does not tend to prove that it lacks utility. *Cook v. Ernest*, 5 Fish. 396; S. C. 1 Woods, 195; 2 O. G. 89.

If another person can superadd something which will remove all the defects of an invention, and render it useful, it immediately becomes valuable,

not on account of its own qualities, but because of its capacity to receive the improvement, and with its aid to become useful. *Gray v. James*, Pet. C. C. 476; *Ex parte Hymen L. Lipman*, 1 O. G. 304.

A patent is void if the machine will not answer the purpose for which it was intended, without some addition, adjustment, or alteration which the mechanic who is to construct it must introduce of his own invention. *Burrall v. Jewett*, 2 Paige, 134.

A machine can not be pronounced useless or impracticable because it is susceptible of improvement which will obviate or prevent embarrassment to its more perfect operation. *Wheeler v. Clipper Co.* 6 Fish. 1; S. C. 10 Blatch. 181; 2 O. G. 442.

The comparative value of the thing invented is not material so far as the exclusive right is concerned, beyond the fact that the article is useful or of some value. An article made according to a known method may be better than other articles made in the same manner, on account of its superior mechanism, but this is no foundation of an exclusive right. *Hotchkiss v. Greenwood*, 4 McLean, 456; S. C. 11 How. 248; *Many v. Jagger*, 1 Blatch. 372.

The objection that the invention is not useful generally comes with bad grace from a person charged with an infringement, because if the invention is of no utility, then he ought not to use it, and the very fact of his using it shows that his practice and his professions as regards the utility of the invention are very much at variance. *Many v. Jagger*, 1 Blatch. 372; *Turrill v. Ill. Cent. R. R. Co.* 3 Fish. 330; S. C. 2 Biss. 66; *Gray v. James*, Pet. C. C. 394; S. C. Pet. C. C. 476; *Robertson v. Garrett*, 6 Fish. 278; S. C. 10 Blatch. 490; *Lee v. Blandy*, 2 Fish. 89; S. C. 1 Bond, 361; *Rice v. Heald*, 13 Pac. L. R. 33; *Poppenhusen v. Gutta Percha Comb Co.* 2 Fish. 62; *Winans v. N. Y. & Erie R. R. Co.* 1 Fish. 213; S. C. 21 How. 88; *Simpson v. Mad River R. R. Co.* 6 McLean, 603; *Middletown Co. v. Judd*, 3 Fish. 141.

If the defendant has used the invention itself, or something substantially like it, he is estopped from denying its utility, for use implies utility, and it would be fair to presume that the party would not use it if he thought it of no utility. *Hays v. Sulsor*, 1 Fish. 532; S. C. 1 Bond, 279; *Vance v. Campbell*, 1 Fish. 483; S. C. 1 Black, 427; *Smith v. O'Connor*, 6 Fish. 469; S. C. 2 Saw. 461; 4 O. G. 633.

What is Patentable.

At common law an inventor has no exclusive right to his invention or discovery. That exclusive right is the creature of the statute, and to that the courts must look to see if the right claimed in a given case is within its terms. The true field of inquiry, is to ascertain whether or not the alleged invention set forth in the specification is embraced within the scope of the statute. *Morton v. N. Y. Eye Infirmary*, 2 Fish. 320; S. C. 5 Blatch. 116; *Latta v. Shawk*, 1 Fish. 465; S. C. 1 Bond, 259.

Whatever may be the extent of the terms of the grant under the Constitution, the only power that Congress has exercised is the power to give a patent for a "new and useful art, machine, manufacture, or composition of matter." *Singer v. Walmsley*, 1 Fish. 558.

Principle.

A machine is a concrete thing consisting of parts, or of certain devices and combinations of devices. The principle of a machine is properly defined to be its mode of operation, or that peculiar combination of devices which distinguish it from other machines. A machine is not a principle or an idea. Because the law requires a patentee to explain the mode of operation of his peculiar machine which distinguishes it from others, it does not authorize a patent for a mode of operation as exhibited in a machine. There is no authority in the statute to grant a patent for a principle, or a mode of operation, or an idea or any other abstraction. *Burr v. Duryee*, 2 Fish. 275; S. C. 1 Wall. 531; *Stone v. Sprague*, 1 Story, 270; *Case v. Brown*, 2 Fish. 268; S. C. 2 Wall. 320; 1 Biss. 382; *Sullivan v. Redfield*, 1 Paine, 441; *Barrett v. Hall*, 1 Mason, 447.

In its naked ordinary sense, a discovery is not patentable. A discovery of a new principle, force, or law operating, or which can be made to operate on matter, will not entitle the discoverer to a patent. It is only where the explorer has gone beyond the mere domain of discovery, and has laid hold of the new principle, force, or law and connected it with some particular medium or mechanical contrivance by which or through which it acts on the material world, that he can secure the exclusive control of it under the patent laws. He then controls his discovery through the means by which he has brought it into practical action, or their equivalent, and only through them. It is then an invention, although it embraces a discovery. Sever the force or principle discovered from the means or mechanism through which he has brought it into the domain of invention, and it immediately falls out of that domain, and eludes his grasp. It is then a naked discovery, and not an invention. Every invention may, in a certain sense, embrace more or less of discovery, for it must always include something that is new; but it by no means follows that every discovery is an invention. It may be the soul of an invention, but it can not be the subject of the exclusive control of the patentee or the patent law until it inhabits a body, no more than can a disembodied spirit be subjected to the control of human laws. *Morton v. N. Y. Eye Infirmary*, 2 Fish. 320; S. C. 5 Blatch. 116.

The intellectual conception of a possible process, without a potential working of it out, is not patentable. If an inventor merely conceives a mechanical process in his mind, and then sets to work to construct a machine to work that process, and works it out in no other way, and the machine fails to work successfully, then his claim as the inventor of a process is as groundless as his claim as the inventor of a machine. *Union Manuf. Co. v. Lounsbury*, 2 Fish. 389.

The beneficent and imposing character of a discovery can not change the legal principles upon which the law of patents is founded, nor abrogate the rules by which judicial construction must be governed. These principles and rules are fixed and uninfluenced by shades and degrees of comparative merit. They secure to the inventor a monopoly in the manufacture, use, and sale of very humble contrivances of limited usefulness, the fruits of indifferent skill

and trifling ingenuity, as well as those grander products of his genius which confer renown on himself, and extensive and lasting benefits on society. But they are inadequate to the protection of every discovery by securing its exclusive control to the explorer to whose eye it may be first disclosed. A discovery may be brilliant and useful, and not patentable. *Morton v. N. Y. Eye Infirmary*, 2 Fish. 320; s. c. 5 Blatch. 116.

A principle may be embodied and applied so as to afford some result of practical utility in the arts and manufactures, and under such circumstances a principle may be the subject of a patent. It is, however, the embodiment and application of the principle which constitute the grant of the patent. The principle so embodied and applied, and the principle of such embodiment and application, are essentially distinct, the former being a truth of exact science or a law of natural science, or a rule of practice; the latter a practice founded on such truth, law, or rule. *Wintermute v. Redington*, 1 Fish. 239; *Wing v. Richardson*, 2 Fish. 535; s. c. 2 Cliff. 449; *Blanchard v. Eldridge*, 2 Whart. Dig. 358; *McComb v. Brodie*, 5 Fish. 384; s. c. 1 Woods, 153; 2 O. G. 117; *Singer v. Walmsley*, 1 Fish. 558; *Sickles v. Borden*, 3 Blatch. 535.

The distinction between a patent for a principle and a patent which can be supported is, that there must be an embodiment of the principle in some practical mode described in the specification for carrying it into actual effect; and then a patent may be taken out, not for the principle, but for the mode of carrying the principle into effect. However brilliant the discovery of the new principle may be, to make it useful it must be applied to some practical purpose. Short of this no patent can be granted. *Le Roy v. Tatham*, 22 How. 132.

A patent is not good for an effect, or the result of a certain process, as that would prohibit all other persons from making the same thing by any means whatsoever. *Le Roy v. Tatham*, 14 How. 156; s. c. 2 Blatch. 474; *Sangster v. Miller*, 2 Fish. 563; s. c. 5 Blatch. 243; *Ex parte B. J. Hobson*, 1 O. G. 141; *Carr v. Rice*, 1 Fish. 325; s. c. 4 Blatch. 200; *Sickles v. Falls Co.* 2 Fish. 202; s. c. 4 Blatch. 508; *Whittemore v. Cutter*, 1 Gallis. 478; *Brown v. Selby*, 4 Fish. 363; s. c. 2 Biss. 457; *Shaw v. Lovejoy*, 7 Blatch. 232.

It is not purpose or results that are the subject of patent, but the instrumentality, contrivance or machinery, through the agency of which results are effected. If two inventions are the same in fact, whatever may be claimed by either party in effect, they are one as a necessary legal consequence. *Ex parte Rufus S. Merrill*, 1 McArthur, 301; s. c. 5 O. G. 120.

A claim for a thing fabricated in a given form, for a specific purpose, and out of materials so united that the combined fabric is impressed with the peculiar qualities which belong to each of its constituents, is not a claim for a mere abstract result. *Union Paper Collar Co. v. White*, 32 Leg. Int. 143.

Art.

The word "art" in the patent laws, as well as in the Constitution, means a useful art, or a manufacture which is beneficial, and which is required to be described with exactness in its mode of operation, and of course can be protected only in the mode and to the extent thus described. *Smith v. Downing*, 1 Fish. 64.

A patent may be for a new and useful art, but it must be practical; it must be applicable and referrible to something which may prove it to be useful. A mere abstract principle is unsusceptible of appropriation by patent. *Evans v. Eaton*, Pet. C. C. 323; S. C. 3 *Wheat*. 454.

An art as such may be made the subject of a patent. The constitutional provision under which the patent laws are framed looks to the promotion of "useful arts." The act places "a new and useful art" among the discoveries it proposes to protect, and assigns to it the first place on the list. There is no reason of policy which should deny protection to an art while extending it to the machinery or processes which the art teaches, employs and makes useful. *French v. Rogers*, 1 *Fish*. 133.

A combination of arrangements and processes to work out a new and useful result, is a new and useful art. A novel process or method of operation that amounts to a successful application of known things to a practical use, is patentable as an art. *Roberts v. Dickey*, 4 *Fish*. 532; S. C. 4 *Brews*. 260; 1 *O. G.* 4.

If the invention is not a machine, manufacture or composition of matter, it must be an art in order to be patentable. *Jacobs v. Baker*, 7 *Wall*. 295.

Process.

A process *eo nomine* is not made the subject of a patent in any act of Congress. It is included under the general term "useful art." An art may require one or more processes or machines in order to produce a certain result or manufacture. The term machine includes every mechanical device, or combination of mechanical powers and devices, to perform some function and produce a certain effect or result. But where the result or effect is produced by chemical action, by the operation or application of some element or power of nature, or of one substance to another, such modes or methods or operations are called processes. A new process is usually the result of discovery; a machine, of invention. It is for the discovery or invention of some practicable method or means of producing a beneficial result or effect, that a patent is granted, and not for the result or effect itself. It is when the term process is used to represent the means or method of producing a result that it is patentable, and it will include all methods or means which are not effected by mechanism or mechanical combinations. But the term process is often used in a more vague sense, in which it can not be the subject of a patent. Thus it is said that a board is undergoing the process of being planed, grain of being ground, iron of being hammered or rolled. Here the term is used subjectively or passively, as applied to the material operated on, and not to the method or mode of producing that operation, which is by mechanical means or the use of a machine, as distinguished from a process. In this use of the term it represents the function of a machine, or the effect produced by it on the material subjected to the action of the machine. But it is well settled that a man can not have a patent for the function or abstract effect of a machine, but only for the machine which produces it. *Corning v. Burden*, 15 *How*. 252; *Cochran v. Deiner*, 11 *O. G.* 637; S. C. 4 *W. L. R.* 99; *Wood Paper Co. v. Fibre Co.* 3 *Fish*. 362; S. C. 6 *Blatch*. 27; *Brown v. Piper*, 4 *Fish*. 175; S. C. 91 *U. S.* 37;

1 Holmes, 20; *Smith v. Frazer*, 5 Fish. 543; S. C. 2 O. G. 175; *Tilghman v. Morse*, 5 Fish. 323; S. C. 9 Blatch. 421; 1 O. G. 574.

“Process,” or “method,” when used to represent the means of producing a beneficial result, are, in law, synonymous with art, provided the means are not effected by mechanism or mechanical combinations. *Brown v. Piper*, 4 Fish. 175; S. C. 91 U. S. 37; 1 Holmes, 20.

The word principle is used by elementary writers on patent subjects, and sometimes in adjudications of courts, with such a want of precision in its application as to mislead. It is admitted that a principle is not patentable. A principle in the abstract is a fundamental truth, an original cause, a motive; these can not be patented, as no one can claim in either of them an exclusive right. Nor can an exclusive right exist to a new power, should one be discovered in addition to those already known. Through the agency of machinery a new steam power may be said to have been generated. But no one can appropriate this power exclusively to himself under the patent laws. The same may be said of electricity, and of any other power in nature which is alike open to all, and may be applied to useful purposes by the use of machinery. In all such cases the processes used to extract, modify, and concentrate natural agencies, constitute the invention. The elements of the power exist; the invention is not in discovering them, but in applying them to useful objects. *Le Roy v. Tatham*, 14 How. 156; S. C. 2 Blatch. 474; 22 How. 132; *Ransom v. New York*, 1 Fish. 252; *Wyeth v. Stone*, 1 Story, 273; *O'Reilly v. Morse*, 15 How. 62; S. C. 6 West. L. J. 102; *Whitney v. Emmett*, Bald. 303; *Lowell v. Lewis*, 1 Mason, 182; *Buchanan v. Howland*, 2 Fish. 341; S. C. 5 Blatch. 151; *Silsby v. Foote*, 2 Blatch. 260; S. C. 20 How. 378; *Poillon v. Schmidt*, 3 Fish. 476; S. C. 6 Blatch. 299; *Smith v. Ely*, 5 McLean, 76; S. C. 15 How. 137; *Hitchcock v. Tremaine*, 4 Fish. 508; S. C. 8 Blatch. 440; *Detmold v. Reeves*, 1 Fish. 127; *Roberts v. Dickey*, 4 Fish. 532; S. C. 4 Brews. 240; 1 O. G. 4; *Blanchard v. Eldridge*, 2 Whart. Dig. 358; *Smith v. Downing*, 1 Fish. 64; *Wood v. Cleveland Rolling Mill*, 4 Fish. 550; *Tilghman v. Werk*, 2 Fish. 229; S. C. 1 Bond, 511; *Bell v. Daniels*, 1 Fish. 372; S. C. 1 Bond, 212; *Shaw v. Lovejoy*, 7 Blatch. 232.

Where a party has discovered a new application of some property in nature never before known or in use, by which he has produced a new and useful result, the discovery is the subject of a patent, independently of any peculiar or new arrangement of machinery for the purpose of applying the new property in nature, and hence the inventor has the right to use any means, old or new, in the application of the new property to produce the new and useful result to the exclusion of all other means. Otherwise a patent would afford no protection to an inventor in cases of this description, because if the means used by him for applying his new idea must necessarily be new, then in all such cases the novelty of the arrangement used for the purpose of effecting the application would be involved in every instance of infringement, and the patentee would be bound to make out, not only the novelty in the new application, but also the novelty in the machinery employed by him in making the application. *Silsby v. Foote*, 2 Blatch. 260; S. C. 20 How. 378.

A process is a mode of treatment of certain materials to produce a given result. It is an act or a series of acts to be performed on the subject-matter

to be transformed and reduced to a different state or thing. *Cochrane v. Deener*, 11 O. G. 637; S. C. 4 Wash. L. R. 99.

The machinery pointed out as suitable to perform a process may or may not be new or patentable, while the process itself may be altogether new, and produce an entirely new result. The process may be patentable irrespective of the particular form of the instrumentalities used. *Cochrane v. Deener*, 11 O. G. 637; S. C. 4 Wash. L. R. 99.

A claim for a process carried into effect by an apparatus is valid. *Black v. Thorne*, 5 Fish. 550; S. C. 10 Blatch. 66; 2 O. G. 388.

He who first utilizes and applies a peculiar property of a material is entitled to a patent for such application, whether he was the first person to discover the peculiarity or not. *Mulford v. Pearce*, 13 Blatch. 173; S. C. 9 O. G. 204.

A new mode or manner of producing a motion may be patentable. *Hovey v. Stevens*, 3 W. & M. 17.

The idea of forcing water from the earth into a well-pit by the use of artificial power when made available by a method whereby it is put to practical use, is patentable as a process. *Andrews v. Carman*, 13 Blatch. 307; S. C. 9 O. G. 1011.

The elements of the process may be old, but when combined for the purpose of putting a new idea to practical use, they constitute a new and useful process. *Andrews v. Carman*, 13 Blatch. 307; S. C. 9 O. G. 1011.

Machine.

Patentable inventions pertaining to machines may be divided into four classes: 1st, entire machines; 2d, separate devices of a machine; 3d, new devices of a machine in combination with old elements, all embraced in one claim, or with separate claims for what is new, together with a claim for the new combination of all the elements; 4th, devices or elements of a machine in combination where all the devices or elements are old. *Sanford v. Hat Co.* 10 O. G. 466.

All machines may be regarded as merely devices by the instrumentality of which the laws of nature are made applicable and operative to the production of a particular result. He who first discovers that a law of nature can be so applied, and having devised machinery to make it operative, introduces it in a practical form to the knowledge of his fellow men, is a discoverer and inventor of the highest grade, not merely of the mechanism, the combination of iron, brass and wood in the form of levers, screws or pulleys, but the force which operates through the mechanical medium, the principle; and this title as a discoverer he may lawfully assert and secure to himself by letters patent, thus establishing his property not only in the formal device, but in the essential principle which his machine was the first to embody, to exemplify, to illustrate, to make operative and to announce to mankind. *Parker v. Hulme*, 1 Fish. 44.

If a party claims a whole machine, it must in substance be a new machine, that is, it must be a new mode, method or application of mechanism to produce some new effect, or to produce an old effect in a new way. *Woodcock v. Parker*, 1 Gallis. 438.

If the patentee is the inventor of a mode of making a machine in a dif-

ferent manner from any ever before made, and it thereby produces a new and useful result by a new combination of old materials, he may claim the whole machine. When there is an addition to an old machine, or part of an old machine, or a mere alteration of some of its subordinate parts, the claim can only be for an improvement; but where the whole mode of forming the thing and its effect is new, it may be claimed as new. *Geiger v. Cook*, 3 W. & S. 266.

A patent may be obtained for a function as embodied in a particular machine, whose mode of operation and general structure are pointed out. *Blanchard v. Sprague*, 2 Story, 164; *Parham v. Sewing Machine Co.* 4 Fish. 468.

A patent for an arrangement to produce a given mechanical result is not a patent for a function, but a patent for the means when especially arranged to produce the result. *Reawick v. Pond*, 5 Fish. 569; s. C. 10 Blatch. 39; 2 O. G. 392.

If the patentee is the inventor of both the apparatus and the process, he may claim the apparatus when employed to work the process. *Black v. Thorne*, 5 Fish. 550; s. C. 10 Blatch. 66; 2 O. G. 388.

A device may be patentable, although it has not in itself, apart from any connection with or application to other known devices or instrumentalities, capacity to produce practically useful results. *Wheeler v. Clipper Co.* 6 Fish. 1; s. C. 10 Blatch. 181; 2 O. G. 442.

A hotel register constructed to receive advertisements about its margin is patentable as a structure. *Hawes v. Washburne*, 5 O. G. 491; *Hawes v. Cook*, 5 O. G. 493.

A discovery that the attachment of an advertisement permanently to a balloon is a good mode of advertising is not patentable as an apparatus. *Gould v. Commissioner*, 1 McArthur, 410; s. C. 5 O. G. 121.

Combinations.

The word "machine" in the statute includes new combinations as well as new organizations of mechanism, and hence there may be a patent for new combinations of machinery to produce certain effects, whether the machines constituting the combination be new or old. *Wintermute v. Redington*, 1 Fish. 239.

In order to render a combination patentable, the results must be a product of the combination and not a mere aggregate of several results, each the complete product of one of the combined elements. Merely bringing old devices into juxtaposition, and there allowing each to work out its own effect without the production of something novel, is not invention. *Hailes v. Van Wormer*, 20 Wall. 353; s. C. 7 Blatch. 443; *Booth v. Parks*, 6 C. L. N. 407; *Sarven v. Hall*, 5 Fish. 415; s. C. 9 Blatch. 524; 1 O. G. 437; *Ross v. Wolfinger*, 5 O. G. 117; *Sawyer v. Bixby*, 9 Blatch. 361.

All the parts or devices of the combination claimed must co-act to produce a given result, in order to form a legitimate combination; and if one part does not co-act with the others, the patent is void for want of unity and co-operation of its several parts. *Swift v. Whisen*, 3 Fish. 343; s. C. 2 Bond, 115.

A combination to be patentable must produce a different force or effect or result in the combined forces or processes from that given by their separate parts. There must be a new result produced by their union; if not, it is only an aggregation of separate elements. *Reckendorfer v. Faber*, 92 U. S. 347; S. C. 12 Blatch. 68; 5 O. G. 697; 10 O. G. 71.

Either the instrumentalities employed, or the effect caused by their operation must be new to constitute a patentable combination. If substantially the same devices have been used before for a like purpose, or, if they are applied merely to effectuate a method known and practiced before, such employment of them will not be protected by a patent. *Northwestern Co. v. Philadelphia Co.* 6 O. G. 34; S. C. 31 Leg. Int. 148.

A combination in mechanism must consist of distinct mechanical parts having some relation to each other, and each having some function in the organism. *Gale Manuf. Co. v. North*, 3 Fish. 279; S. C. 5 Blatch. 455.

Where one or more of the parts are new, and the combination is for that reason made to produce a new result, there is something more than a mere aggregation. *Gallahue v. Butterfield*, 6 Fish. 203; S. C. 10 Blatch. 232; 2 O. G. 645.

If one device performs a different function from that for which it is substituted, it may be patentable in combination with other devices. *Irwin v. Dane*, 9 O. G. 642.

If the arrangement produces a new result, it is patentable as a combination and not a mere aggregation. *S. & B. Manuf. Co. v. Coke Co.* 7 O. G. 829.

Such things are patentable as the discoverer undertakes to apply in combination or separately so as to produce new and beneficial results. It need not be a new material. It need not be an entirely new machine. It need not be wholly or throughout a new application. When it is a combination, it must bring some new features into the combination and produce new and beneficial results. It does that, it is of no matter how slight is the change. *Adams v. Edwards*, 1 Fish. 1.

To make a valid claim for a combination, it is not necessary that the several elementary parts of the combination should act simultaneously. If those elementary parts are so arranged that the successive action of each contributes to produce some one practical result, which result, when attained, is the product of the simultaneous or successive action of all the elementary parts viewed as one entire whole, a valid claim for thus combining those elementary parts may be made. *Furbush v. Cook*, 2 Fish. 668; *Birdsell v. McDonald*, 6 O. G. 682.

If the patentee is the inventor of a new device, he may restrict his claim to the device when used in some special connection. *Russell Manuf. Co. v. Mallory*, 5 Fish. 632; S. C. 10 Blatch. 140; 2 O. G. 495.

A combination is an entirety. If one of the elements is given up as immaterial and useless, the thing claimed disappears. *Vance v. Campbell*, 1 Fish. 483; S. C. 1 Black, 427.

If a combination requires new devices to make it operative, and the several parts, when combined, produce a new result, it is patentable. *Buerk v. Imhausen*, 5 O. G. 752.

If the idea of a combination is a meritorious invention, it will be deemed new, although a competent mechanic could easily adapt the parts. *Brown v. Whittemore*, 5 Fish. 524; S. C. 2 O. G. 248.

A combination which consists only of the application of a piece of rubber to one end of the same piece of wood which makes a lead pencil, is not patentable, for a handle in common does not create a new or combined operation. *Reckendorfer v. Faber*, 92 U. S. 347; S. C. 12 Blatch. 68; 5 O. G. 697; 10 O. G. 71.

In a just sense that is a combination which requires different things, or different contrivances, or different arrangements to be brought together to accomplish the given end. *Carver v. Braintree Manuf. Co.* 2 Story, 432.

An added element which increases the efficiency of a combination of itself effective, is of the nature of an improvement, but when the added element is essential to the production of any useful result, such addition is not an improvement, but its use gives birth to the only patentable, because the first useful combination. *Bliss v. Brooklyn*, 6 Fish. 289; S. C. 10 Blatch. 521; 3 O. G. 269.

A patent for a combination is not a patent for all and each of the parts. *Treadwell v. Bladen*, 4 Wash. C. C. 703.

If a new combination produces a new result, it is patentable. *Hawes v. Washburne*, 5 O. G. 491.

If the different effects produced by a combination were all produced by the same application of machinery in separate parts, and the patentee merely combined them together or added a new effect, such combination would not sustain a claim for the whole machine. *Whittemore v. Cutter*, 1 Gallis 478.

If one element of a proposed combination is covered by a subsisting patent held by another, the patent office can not grant a patent for the whole combined machine, for it can not grant any right in an invention which is the property of another. *Larabee v. Cortlan*, 3 Fish. 5; S. C. Tancy, 180.

Manufacture.

A machine may be new, and the product or manufacture proceeding from it may be old. In that case the former would be patentable, and the latter not. The machine may be substantially old, and the product new. In that event the latter, and not the former would be patentable. Both may be new, or both may be old. In the former case both would be patentable, in the latter neither. The same remarks apply to processes and their results. Patentability may exist as to either, neither, or both, according to the fact of novelty or the opposite. The patentability, or the issuing of a patent as to one, in no wise affects the rights of the inventor or discoverer as to the other. They are wholly disconnected and independent facts. *Rubber Co. v. Goodyear*, 2 Fish. 499; S. C. 9 Wall. 788; 2 Cliff. 351.

There is not only a distinction, but a wide difference, between one who merely invents a new method or process by which a well-known fabric, product or manufacture is produced in a cheaper or better way, and the discoverer of a new compound substance or manufacture having qualities never found to exist together in any other material. In the first case the inventor can patent

nothing but his process, and not his composition of matter. In the latter, both are new and original, and both patentable—not severally, but as one discovery or invention. *Goodyear v. Central R. R. Co.* 1 Fish. 626; s. c. 2 Wall. Jr. 356; *Goodyear v. Wait*, 3 Fish. 242; s. c. 5 Blatch. 468; *Waterbury Brass Co. v. Miller*, 5 Fish. 48; s. c. 9 Blatch. 77; *Merrill v. Yeomans*, 1 Holmes, 331; s. c. 5 O. G. 267.

A manufacture or a product of a process may be no novelty, while at the same time the process or agency by which it is produced may be both new and useful. *American Wood Paper Co. v. Fibre Disintegrating Co.* 23 Wall. 566.

A process to obtain an extract from a subject from which it has never been taken may be the creature of invention, but the thing itself, when obtained, can not be called a new manufacture. *American Wood Paper Co. v. Fibre Disintegrating Co.* 23 Wall. 566.

An article in common use can not be patented as a new article merely because it is fabricated by the use of new and improved machinery. *Draper v. Hudson*, 6 Fish. 327; s. c. 1 Holmes, 208; 3 O. G. 354; *Wooster v. Calhoun*, 6 Fish. 514; s. c. 11 Blatch. 215.

A product is not patentable on the mere ground that a machine makes it more perfectly than it can be made without a machine, for improvements in degree or quality are not the subject of a patent. *Wooster v. Calhoun*, 6 Fish. 514; s. c. 11 Blatch. 215.

Improvements.

An improvement has essential reference to a subject-matter to be improved. It is not an original, but embraces, and either adds to or alters the original. *Page v. Ferry*, 1 Fish. 298.

An improvement upon an old contrivance, in order to be of sufficient importance to be the subject of a patent, must embody some originality and something substantial in the change, producing a more useful effect and operation. *Hall v. Wiles*, 2 Blatch. 194; *Buck v. Hermance*, 1 Blatch. 398; *Smith v. Pearce*, 2 McLean, 176.

It is not necessary, in any improvement, that the application to the new and useful purpose should be made by the very best apparatus that can be devised. The question does not depend on the degree of usefulness. If the application that was made of the principle operated successfully, so as to be practically useful, although it might not have been the very best, yet it was not a failure. *Silsby v. Foote*, 2 Blatch. 260; s. c. 20 How. 378; *Many v. Jagger*, 1 Blatch. 372.

Particular changes may be made in the construction and operation of an old machine, so as to adapt it to a new and valuable use not known before, and to which the old machine had not been and could not be applied without these changes, and under these circumstances and conditions, if the machine, as changed and modified, produces a new and useful result, it may be patented. Such change in an old machine may consist alone of a new and useful combination of the several parts of which it is composed, or it may consist of a ma-

terial alteration or modification of one or more of the several devices which enter into its construction, or it may consist in adding new devices. *Bray v. Hartshorn*, 1 Cliff. 538; *Turnill v. Illinois Cent. R. R. Co.* 3 Fish. 330; S. C. 8 Biss. 66.

A new device is not in law an improvement upon the machine which it supersedes. It is an improvement on the old machine only in that sense that any new and useful mechanical device to accomplish a given object is an improvement on all other known mechanical devices to accomplish the same object. It is not something in aid of the old mode, and to make the old mode better. It dispenses with and discards the old modes, and substitutes in their place other means to accomplish a useful result. It is not an addition to any old mode, to be used in conjunction with such old mode, and to make such old mode better and more effectual. *Potter v. Holland*, 1 Fish. 382; S. C. 4 Blatch. 206.

Any person may make an improvement upon a patent, but all that he can patent is his own invention, that is, the improvement. *Colt v. Mass. Arms Co.* 1 Fish. 108; *Larabee v. Cortlan*, 3 Fish. 5; S. C. 1 Taney, 180; *Cochrane v. Deener*, 11 O. G. 637; S. C. 4 W. L. R. 99; *Conover v. Roach*, 4 Fish. 12.

There is nothing in the statute that forbids an inventor to take out a patent for an improvement upon his invention. Any other inventor may do so, and there can be no reason in justice or in policy for refusing the like privilege to him. When there is no positive law to the contrary, he must stand on the same footing with any other inventor of an improvement upon a previous discovery. Nor is he bound in his new patent to refer specially to his former one. All that the law requires of him is that he shall not claim as new what is covered by a former invention, whether made by himself or any other person. *O'Reilly v. Morse*, 15 How. 62; S. C. 6 West. L. J. 102; *Smith v. Ely*, 5 McLean, 76; S. C. 15 How. 137.

Knowledge and Use.

The words "by others" were added to remove the doubt formerly entertained whether a use by the patentee himself, before his application for a patent, would not deprive him of his right to a patent. They are not designed to denote a plurality of persons by whom the use should be, but to show that the use should be by some other person or persons than the patentee. *Reed v. Cutter*, 1 Story, 590; *Wyeth v. Stone*, 1 Story, 273.

By knowledge and use Congress meant knowledge and use existing in a manner accessible to the public. *Gayler v. Wilder*, 10 How. 477; *Cahoon v. Ring*, 1 Fish. 397; S. C. 1 Cliff. 592.

The true meaning of this clause is that the invention must not have been known or used by the public. If it were necessary to employ others to assist in the original structure or use by the inventor himself, or if his invention should be pirated by another, or used without his consent, it can scarcely be supposed that the legislature had within its contemplation such knowledge or use. *Pennock v. Dialogue*, 2 Pet. 1; S. C. 4 Wash. C. C. 538; *Ryan v. Goodwin*, 3 Sum. 514; *Shaw v. Cooper*, 7 Pet. 292; *Morris v. Huntington*, 1 Paine, 348; *Jones v. Sewall*, 6 Fish. 343; S. C. 3 O. G. 630; *Treadwell v. Bladen*, 4 Wash. C. C. 703; *Whitney v. Emmett*, Bald. 303.

Public use is opposed to private use. If a man has an invention and uses it privately, and nobody knows of it, then the use of it can not debar another person from inventing or patenting it. The evidence of a public use as opposed to a private use need not be a general use by the community, but it must be an open use, however, so that the structure and *modus operandi* are apparent. One evidence of public use is the manufacture of an article publicly and openly for sale; not universally but still publicly; not by one person alone, and for his own private use, but the manufacture of it publicly, the offering of it for sale publicly. A man is not to lie by and let the public—several persons—use his invention without objection, because he thus misleads them. He is not to lie by and let it be sold in public stores. *Adams v. Edwards*, 1 Fish. 1.

The first inventor has a right to a patent, though there may have been a knowledge and use of the thing invented by others, before his application for a patent, if such knowledge or use was not anterior to his discovery. *Mellus v. Silsbee*, 4 Mason, 108.

It is not enough to show that a machine like the one described in the patent was made, but there must be proof that it was used prior to the patentee's invention. This is the test of what is required to defeat the title of a patentee of an improved machine. *Parker v. Hulme*, 1 Fish. 44; *Pennock v. Dialogue*, 4 Wash. C. C. 538; s. c. 2 Pet. 1.

A mere application for a patent is not a bar to the granting of a patent to another. It can only have a bearing on the question of prior invention or discovery. *Brown v. Guild*, 23 Wall. 181; s. c. 6 O. G. 392; 7 O. G. 739.

The prior use of an alleged invention must be a public use, and not a private use. If an invention is made and used in a private way, and then thrown aside and not given to the public, a patent granted to a subsequent inventor would be a valid patent. *Haselden v. Ogden*, 3 Fish. 378; *Cahoon v. Ring*, 1 Fish. 397; s. c. 1 Cliff. 592.

The greater or less use in which the prior invention may have been, or the more or less widely the knowledge of its existence may have circulated, does not constitute the criterion by which to decide upon the validity of any subsequent patent. Any patent may therefore be defeated by showing that the thing secured by the patent had been discovered and put into actual use prior to the discovery of the patentee, however limited the use or knowledge of the prior discovery may have been. *Bedford v. Hunt*, 1 Mason, 302.

The prior knowledge and use by a single person is sufficient. The number is immaterial. *Coffin v. Ogden*, 18 Wall. 120; s. c. 5 O. G. 270.

Whether the machine was in fact operated for a greater or less time, is of no importance, except so far as that may tend to show that it was or was not a mere experiment; in that view the fact is of some consequence. But if the machine was capable of doing work, then the fact that it was operated but a short time, and abandoned for other reasons than because it failed as a machine, is of no consequence. *Stimpson v. Woodman*, 3 Fish. 98; s. c. 10 Wall. 117.

If a machine has been in public use, whether it fell into disuse or not, a subsequent inventor can not obtain a patent for it so as to exclude others from

using it if they choose to do so. *Evans v. Hettick*, 3 Wash. C. C. 408; s. c. 7 Wheat. 453.

It is sufficient to show that the invention was "known or used" by others before the patentee discovered or invented the article or improvement patented, without showing a general use thereof, in order to defeat the patent for want of novelty. *Rice v. Garnhart*, 34 Wis. 453.

An experiment is such a use as the statute contemplates. If the machine is perfected so as to accomplish the function claimed for it, then it would be a use within the meaning of the patent law. *Singer v. Walmsley*, 1 Fish. 558; *Rice v. Garnhart*, 34 Wis. 453.

An experiment with a machine amounts to a using of it within the meaning of the act, although it is found not to answer as well as expected, and is thrown aside. *Watson v. Bladen*, 4 Wash. C. C. 580.

The imparting of a knowledge of the construction of the mechanism to persons connected with the business to which it appertains, who saw it and understood its arrangement, is the giving to the public of such a knowledge of it as a completed invention as will deprive a subsequent inventor of the right to be considered in law as the first inventor thereof. *Coffin v. Ogden*, 3 Fish. 640; s. c. 7 Blatch. 61.

Patent.

A patent should not be granted when the right to it is doubtful. *Ex parte John F. Kemper*, Cranch Pat. Dec. 89.

There seems to have been no good reason at first, unless it were a fiscal one, on the part of the Government when issuing patents why more than one invention in favor of the same inventor should not be embraced in one instrument, like more than one tract of land in one deed or patent for land. Each could be set out in separate articles or paragraphs as different counts for different matters in libels in admiralty, or declarations at common law, and the specifications could be made distinct for each and equally clear. But to obtain revenue, the public officers have generally declined to issue letters for more than one patent described in them. The courts have been disposed to acquiesce in the practice as conducive to clearness and certainty, and if letters issue otherwise inadvertently, to hold them, as a general rule, null. *Hogg v. Emerson*, 6 How. 437; s. c. 2 Blatch. 1.

If two machines are patented by the same patent which are wholly independent of each other, and distinct inventions for unconnected objects, the patent is void. The same rule applies to a patent for several distinct improvements upon different machines having no common object or connected operation. For if different inventions might be joined in the same patent for entirely different purposes and objects, the patentee would be at liberty to join as many as he might choose at his own mere pleasure in one patent, which seems to be inconsistent with the language of the statute, which speaks of the thing patented and not of the things patented, and of a patent for an invention, and not of a patent for inventions. *Wyeth v. Stone*, 1 Story, 273; *Evans v. Eaton*, 3 Wheat. 454; s. c. Pet. C. C. 322; *Moody v. Fiske*, 2 Mason, 112.

A patent in which *ex majore cautela*, the improvement has been unnecessarily split into three distinct patents, may be treated as one patent with three distinct claims. *Pennsylvania Salt Manuf. Co. v. Guggenheim*, 3 Fish. 423.

It is difficult, perhaps impossible, to lay down any general rule by which to determine when a given invention or improvement shall be embraced in one, two, or more patents. Some discretion must necessarily be left to the commissioner. It is often a nice and perplexing question. *Bennett v. Fowler*, 8 Wall. 445; *Goodyear v. Wait*, 3 Fish. 242; s. C. 5 Blatch. 468.

A patent may be taken out for several machines, if it is a patent for each machine as a distinct and independent invention, but for the same common purpose and auxiliary to the same common end. The patentee may lawfully unite in one patent all the modes in which he contemplates the application of his invention, and all the different sorts of machinery or modifications of machinery by which or to which it may be applied, and if each is new there is no just ground of objection to his patent reaching them all. *A fortiori*, this rule is applicable where each of the machines is but an improvement or invention conducing to the accomplishment of one and the same general end. *Wyeth v. Stone*, 1 Story, 273; *Hogg v. Emerson*, 6 How. 437; s. C. 2 Blatch. 1; 11 How. 587; *Densmore v. Schofield*, 4 Fish. 148; *McComb v. Brodie*, 5 Fish. 384; s. C. 1 Woods, 153; 2 O. G. 117.

The same patent may embrace a combination and the elements which make up the combination. *Foss v. Herbert*, 2 Fish. 31; s. C. 1 Biss. 121; *Jacques v. Wells*, 5 O. G. 364; *Root v. Ball*, 4 McLean, 177.

If the patentee has invented certain improved machines which are capable of a distinct operation, and has also invented a combination of those machines to produce a connected result, the same patent can not be at once for the combination and for each of the improved machines, for the inventions are as distinct as if the subjects were entirely different. *Barrett v. Hall*, 1 Mason, 447.

There may be a patent for a combination of many parts, and at the same time for an arrangement of some of the parts constituting another combination, but still a part of the larger. Yet if there is no patent for the constituents they are open to the public for use in combination, provided all the elements of the patented combination are not employed. *Garratt v. Seibert*, 7 Pac. L. R. 116; s. C. 22 Pitts. L. J. 18.

It is no objection to the validity of a patent that it contains a claim for a machine combining several distinct improvements, each of which is the invention of the patentee, and claims for each of these several and distinct improvements. In other words the patentee may, in such a case, take out a valid patent for the combination, and also include therein a right to each distinct improvement severally contained in the same machine. *Pitts v. Whitman*, 2 Story, 609.

The patentee may embrace two improvements on the same machine in the same patent. *Morris v. Barrett*, 1 Fish. 461; s. C. 1 Bond, 254; *Moody v. Fiske*, 2 Mason, 112.

Although an improvement is practically useful and operative only when taken in connection with other mechanical devices, yet it may be the subject of a separate claim. *Jacques v. Wells*, 5 O. G. 364.

If an inventor has invented a new process producing a new product, he may take a separate patent for each. *Sewall v. Jones*, 6 Fish. 343; s. C. 3 O. G. 630; 91 U. S. 171; 9 O. G. 47.

When an inventor gets all that he has invented or discovered in one claim, it is better that he should not be permitted to set up and embarrass the public

with another claim which gives no additional security or protection to his invention. *Putnam v. Yerringer*, 9 O. G. 689.

The fact that a single invention is made the subject of two distinct claims in the same specification—in other words is claimed twice—will not render the patent void. The blemish is mere tautology which, while it may make the instrument less clear and exact, will not impair its validity. *Tompkins v. Gage*, 2 Fish. 577; s. C. 5 Blatch. 268.

Where a specification, by ambiguity and a needless multiplication of nebulous claims, is calculated to mislead and deceive the public, the patent is void. *Carlton v. Bokee*, 6 Fish. 40; s. C. 17 Wall. 463; 2 O. G. 520.

One void claim does not vitiate the entire patent, if made by mistake or inadvertence, and without any willful default or intent to defraud or mislead the public. *Carlton v. Bokee*, 6 Fish. 40; s. C. 17 Wall. 463; 2 O. G. 520.

If two separate patents are issued at the same time for the same invention, they are both void. *Sewall v. Jones*, 6 Fish. 343; s. C. 3 O. G. 630; 91 U. S. 171; 9 O. G. 47.

A grant of a subsequent patent for an invention is an estoppel to the patentee to set up any prior grant for the same invention which is inconsistent with the terms of the last grant. *Barrett v. Hall*, 1 Mason, 447.

An inventor can have but a single valid patent for his invention. The first he obtains, while it remains unrepealed, is an estoppel to any future patent for the same invention. The public by the first patent acquire an inchoate interest which can not be defeated by any merely ministerial acts of the officers of the Government. *Odiorne v. Amesbury Nail Factory*, 2 Mason, 28; *Morris v. Huntington*, 1 Paine, 348; *Treadwell v. Bladen*, 4 Wash. C. C. 708; *Sickels v. Falls Co.* 2 Fish. 202; s. C. 4 Blatch. 508.

If two patents are obtained for the same invention, the last and not the first is void. *Suffolk Co. v. Hayden*, 3 Wall. 315; *Morris v. Huntington*, 1 Paine, 348; *Johnson v. Fassman*, 5 Fish. 471; s. C. 1 Woods, 138; 2 O. G. 94.

The patentee can not in a court of law show that the first patent is void. It being issued on his own representation, and according to his own specification as to the extent of the right claimed, he is estopped by his own act. *Morris v. Huntington*, 1 Paine, 348.

No subsequent patent can take away rights secured by a prior patent. *Sickels v. Tileston*, 4 Blatch. 109; *Stuart v. Shantz*, 6 Fish. 35; s. C. 9 Phila. 376; 2 O. G. 524.

A patent is not necessarily void by reason of an error in the christian name of the grantee, where it supplies on its face an added description by which the patentee may be certainly identified. Extrinsic proof is admissible to identify the patentee, and if he is thus identified, effect will be given to the grant accordingly. *Northwestern Co. v. Philadelphia Co.* 6 O. G. 34; s. C. 31 Leg. Int. 148.

Invention.

An article to be patentable must not only differ from others, but must also indicate, at least in some degree, an exercise of inventive genius. *Levi C. Coodale*, 2 O. G. 589; *Watts Cooke*, 1 Dec. Com. 6; *E. R. Fenno*, 1 Dec. Com. 9; *James Murphy*, 1 Dec. Com. 24; *Lewis Abraham*, 1 Dec. Com. 59; *Stevens & Powers*, 1 Dec. Com. 63; *P. W. Dean*, 1 Dec. Com. 77; *R. M. Thompson*, 1 Dec. Com. 81; *H. M. Biedler*, 1 Dec. Com. 91; *Thomas M. Taylor*, 1 Dec. Com. 3; *J. C. Gaston*, 2 Dec. Com. 12; *Samuel Sharrock*, 2 Dec. Com. 46; *Abner H. Love*, 2 Dec. Com. 79; *G. W. Schermerhorn*, 2 Dec. Com. 122; *P. Millspaugh*, 2 Dec. Com. 134; *Moule & Bannehr*, 2 Dec. Com. 87; *Jonathan Dennis, Jr.* 3 Dec. Com. 107; *Milligan & Higgins*, 3 Dec. Com. 215; *James McColgan*, 6 O. G. 327; *George W. Lavees et al.* 9 O. G. 921; *Julius Gerson*, 11 O. G. 244; *Wm. S. Hicks*, 10 O. G. 112; *Bates v. Geeger*, 2 O. G. 492; *A. N. Towne*, 1 Dec. Com. 39; *J. H. Sherwood*, 6 O. G. 361; *M. G. Slemmons*, 6 O. G. 604; *Charles H. Ackerson*, 1 Dec. Com. 74; *A. T. Barnes*, 1 Dec. Com. 81; *B. E. Hale*, 2 Dec. Com. 14; *Alanson Cary*, 2 Dec. Com. 38; *Robert Price*, 2 Dec. Com. 48; *Samuel Blue*, 2 Dec. Com. 89; *Henry Heath*, 3 Dec. Com. 212; *W. B. G. Taylor*, 3 Dec. Com. 309; *George Petry*, 3 Dec. Com. 325; *Henry W. Gould*, 4 O. G. 611.

A distinction must be drawn and maintained between invention and skill or good judgment. *D. E. Aiken*, 2 O. G. 274; *Hall & Hall*, 2 O. G. 589; *Stout, T. B.* 1 Dec. Com. 4; *Powers & Stevens*, 1 Dec. Com. 45; *Waldemar Petersen*, 1 Dec. Com. 47; *J. A. Smith*, 1 Dec. Com. 83; *J. W. Sheppard*, 3 Dec. Com. 59; *Samuel Thacker*, 3 Dec. Com. 84; *William H. Foye*, 3 Dec. Com. 188; *Lewis J. Atwood*, 6 O. G. 223; *McLaren & Coventry*, 10 O. G. 335; *Chambers v. Tucker*, 11 O. G. 1009.

The first inventor of a new and useful device is entitled to a patent, even if its production was accidental and not appreciated at the time. *Garratt v. Siebert*, 2 O. G. 469.

The mere knowledge that certain things might be done, and would be valuable, does not amount to the conception of an invention. *Wicks v. Dubois*, 11 O. G. 244.

There is no novelty in practicing on a small scale what has been practiced on a large one before, or in practicing it for a different purpose. *Woodward v. Reist*, 1 Dec. Com. 34.

A conception may of itself require invention, and be novel and patentable, though it requires no ingenuity to put it in practice. *Henry Waterman*, 1 Dec. Com. 51.

An improvement of an existing device rendering its parts more adjustable in a manner well known, and by the exercise of mechanical skill and judgment alone, is not patentable. *Henry Gross*, 11 O. G. 739.

An incomplete conception of a device does not constitute invention as defined either by the courts or the office. *Gordon v. Withington*, 9 O. G. 1009.

An objection to an application may concede that the article is new, but deny that any invention was involved in its production, and no reference is required to establish this ground of rejection. *W. H. Wilkinson*, 2 Dec. Com. 22; *G. Hibbard*, 4 O. G. 54.

If novelty or usefulness is established, invention must be presumed. *Morse v. Clark*, 1 O. G. 275.

Perfected conception is invention. It is sufficient to describe it so accurately, even orally, as to enable an expert to make the thing conceived. *Woodbury v. Wilcox*, 2 A. L. T. R. 129.

When doubt exists as to the applicant's right to a patent, the fact that the granting thereof can do no harm to the public has some weight in determining the action of the office. *Charles P. Mixer*, 1 O. G. 48.

Doubts as to patentability, in cases when a really new thing is produced, ought to be resolved in favor of the inventor; and where he presents a new combination, he is entitled to a liberal consideration of it. *Thomas Bond*, 2 Dec. Com. 2.

If an instrument is the first which has accomplished the desired object, it should receive a patent, although the improvement upon what was known before seems to be such as an ordinary mechanic could have produced. *Jeremiah Kenney*, 1 Dec. Com. 95; *J. J. Urmston*, 2 Dec. Com. 13; *James R. Hyde*, 3 Dec. Com. 109.

Where parts are dispensed with, and other devices employed in their places; rendering certain additions necessary, there is presumptive evidence of invention as distinguished from mere skill. *J. G. & J. S. Armstrong*, 2 O. G. 704; *David F. Fetter*, 2 Dec. Com. 175; *Geo. W. Nesmith*, 3 O. G. 268; *Charles Frazier*, 6 O. G. 681.

Liberal encouragement should be given to the authors of inventions, yet no needless restraint should be placed upon citizens in the exercise of their judgment and skill. *Amos M. Smith*, 2 O. G. 674; *Geo. W. Blake*, 1 Dec. Com. 9; *Joseph Thorne*, 1 Dec. Com. 76.

Inventions in Change.

The mere application of an old device to an old purpose is not patentable. *David H. Morrison*, 2 Dec. Com. 50; *John Underwood*, 2 Dec. Com. 52; *J. R. Bugbee*, 2 Dec. Com. 63; *Nathan Martz*, 2 Dec. Com. 18; *Streeter v. Stoddard*, 2 Dec. Com. 91; *Daniel Hallady*, 3 Dec. Com. 302; *James F. Garratt*, 5 O. G. 148; *G. T. Smith*, 6 O. G. 470.

A patent will be refused where the new application of an old process is but a double use of it. *E. C. Little*, 1 Dec. Com. 25; *H. M. Carter*, 1 Dec. Com. 96; *William Thie*, 2 Dec. Com. 61; *Osborne & Dayton*, 2 Dec. Com. 149; *Jas. T. Cree*, 3 Dec. Com. 83; *Hall & Averill*, 3 Dec. Com. 194; *James Arkell*, 3 Dec. Com. 257; *John Stephenson*, 5 O. G. 363; *Bloomfield Brower*, 7 O. G. 40.

The mere application of an old article to a new use does not involve invention. *Dewitt C. Baxter*, 2 O. G. 470; *E. J. Webster*, 1 Dec. Com. 9; *Charles H. Ackerson*, 1 Dec. Com. 74; *Wm. Linden*, 1 Dec. Com. 108; *Ira D. Warner*, 1 Dec. Com. 109; *Adams Glasgow*, 2 Dec. Com. 40; *D. N. B. Coffin, Jr.*, 2 Dec. Com. 62; *A. J. Dexter*, 2 Dec. Com. 90; *Benjamin Greeley*, 2 Dec. Com. 106; *Franklin H. Webb*, 1 Dec. Com. 78; *Kuder Seiple, et al.* 2 Dec. Com. 117; *Charles Powell*, 2 Dec. Com. 134; *Milton G. Wood*, 2 Dec. Com. 180; *Hermann A. Gunther*, 3 Dec. Com. 199; *Holmes & Gilmore*, 3 Dec. Com. 204; *E. S. Renwick*, 3 Dec. Com. 214; *John E. Atwood*, 3 Dec. Com. 216; *J. B. Slawson*, 3 Dec. Com. 281; *J. C. Cooke*, 3 Dec. Com. 294; *William Moleworth*, 3 Dec. Com. 308; *L. C. Clark*, 3 O. G. 239; *B. B. Keyes*, 3 O. G. 268; *Joseph H. Sperry*, 3 O. G. 467; *Ellicott D. Averill*, 8 O. G. 400; *M. E. Berolzheimer*, 2 Dec. Com. 33; *J. G. G. Ganet*, 2 Dec. Com. 48; *H. J. Wickham*, 2 Dec. Com. 61; *Charles H. Toll*, 4 O. G. 500; *Josiah Holmes*, 8 O. G. 1.

When adaptation is required to secure a new result by applying an old device to a new use, invention is presumed, and the new organization may be patentable. *Levi Stevens*, 1 O. G. 223.

The application of an old device to a different and not analogous purpose may be patentable. *Murdick Lytle*, 1 O. G. 359.

The employment of an old device in a new or modified way to produce a new and useful result is patentable. *John Burnham*, 1 O. G. 164.

The mere exchange of a feature of a device for a different but not novel one of the same kind, to be used in the same way, does not indicate invention. *Lloyd v. Engeman*, 2 O. G. 674; *R. A. Leeds*, 1 Dec. Com. 13; *Sherrell & Warner*, 1 Dec. Com. 15; *Louis S. Robbins*, 1 Dec. Com. 84; *George*

Schoenberg, 2 Dec. Com. 36; R. J. Gatling, 2 Dec. Com. 92; Samuel S. McNaughton, 4 O. G. 525; R. D. Young, 6 O. G. 361.

The mere substitution of one material for another does not produce invention. J. P. Chattillon, 2 O. G. 115; Philip C. Schuyler, 2 O. G. 174; P. A. Sabatton, 2 O. G. 703; P. Y. Brown, 1 Dec. Com. 18; Dimond & Doolittle, 1 Dec. Com. 64; L. B. Hamilton, 2 Dec. Com. 14; A. H. Baldwin, 2 Dec. Com. 50; John Farrel, 2 Dec. Com. 105; R. R. Miller, 2 Dec. Com. 114; L. E. Truesdell, 2 Dec. Com. 123; M. Landenberger, 3 Dec. Com. 179; J. W. Wattles, 3 O. G. 291; P. M. J. Chamblant, 4 O. G. 106.

The substitution of one mechanical equivalent for another is not patentable. John D. Wilber, 1 O. G. 379.

A patent may be granted where a different method of operation is produced, and an improvement made by the substitution of one old device for another. John K. Bigelow, 2 O. G. 273; J. J. Munger, 1 Dec. Com. 3; Samuel Sykes, 1 Dec. Com. 9; G. W. Adwen, 1 Dec. Com. 23; J. P. Tuttle, 2 Dec. Com. 3; Jason A. Bidwell, 3 Dec. Com. 59.

Omission followed by reorganization may constitute patentable novelty, but mere omission does not. George McRoy, 1 Dec. Com. 58.

Where redeemable tickets have been used, a plan to redeem a portion only is not patentable. W. W. Bierce, 11 O. G. 1108.

The mere duplication of another's patent is not invention, and can not be patented. G. C. Perkins, 2 O. G. 469; B. F. Peaslee, 2 O. G. 543; Charles Lawrence, 1 Dec. Com. 83; Eccleston & Coville, 2 Dec. Com. 51; Eaton, Hitchcock & Wells, 2 Dec. Com. 51; T. E. Jones, 2 Dec. Com. 87; John Ellerby, 2 Dec. Com. 100; F. M. Shepard, 2 Dec. Com. 104; Chambers *v.* Tucker, 11 O. G. 1009.

If a peculiar situation is discovered, not necessarily obvious before from its nature, in which to apply an old process to produce a useful result, it is patentable, being more than applying an old device to a new use. W. W. Leggett, 2 O. G. 199.

If a new and better result is accomplished by a change in the position of old elements, and in the formation of some of them, a patent will be issued. Eloi Bouscay, Jr. 9 O. G. 743.

If the change is not fundamental, but merely in the degree of the capacity for use, it is not patentable. Millers Falls Manuf. Co. 1 O. G. 47.

If a change produces a difference in degree only, and not a difference in substance, it is not patentable. B. J. Hobson, 1 O. G. 141.

If a change of form modifies the principle of operation, and produces a superior article of manufacture, it is patentable. Chas. P. Mixer, 1 O. G. 48.

A change of form which renders an instrument more useful is patentable, although the change is simple. Ira D. Warner, 1 Dec. Com. 41; Vosburgh & Ludden, Assignors, 1 Dec. Com. 80; King & Rowland, 2 Dec. Com. 136; J. H. McWilliams, 3 Dec. Com. 177; John & James Dobson, 4 O. G. 499; William Wachs, 8 O. G. 907.

Suggestions.

Where one communicates the details of an invention to a workman who has never heard of the principle before, he may be presumed to have originated it, if reduced to practice by the latter at his request. Wilcox *v.* Woodbury, 1 Dec. Com. 17; Foster & Townsend *v.* Fowle, 1 Dec. Com. 35; Spofford *v.* Moore, 2 Dec. Com. 6; Hale *v.* Field, 2 Dec. Com. 12; T. Hall *v.* T. S. Hall, 2 Dec. Com. 25; Duckworth *v.* Crompton, 2 Dec. Com. 43; Hopkins *v.* Hardick, 2 Dec. Com. 141; Spencer & Saylor *v.* Trafford, 3 Dec. Com. 119; Russell & Scow, 5 O. G. 149; Gilbert et al. 5 O. G. 428; Chase *v.* Witter, 9 O. G. 593.

Where one of two who are claiming an invention communicates his ideas to the other who embodies them, there may be good ground for holding the

man who makes the suggestions to be the inventor. *Riley v. Baumann*, 3 Dec. Com. 101; *Hamilton v. Foster*, 1 Dec. Com. 30; *Bates v. Marsh*, 3 Dec. Com. 253.

An inventor may adopt minor improvements in his invention, which are suggested by another, and the latter does not thereby acquire any interest in the invention. *Yost v. Heston*, 3 Dec. Com. 226.

An operative having first constructed and put into actual use an apparatus embodying the invention is the prior inventor as against the employer, he being skilled in the art while his employer was not, and the evidence being contradictory on other points. *Edwards v. Requa*, 1 Dec. Com. 28; *Johnston v. Pimlott*, 2 Dec. Com. 44; *Mallett v. Crosby*, 2 Dec. Com. 56; *Coburn v. Smith*, 3 Dec. Com. 290; *Walter De Sano v. C. F. Ritchel*, 9 O. G. 792.

If one suggests an idea in a general way, and the other falls in with it, and by his aid develops it and gives it practical embodiment, the two may be considered joint inventors. *Chase & White v. Chase*, 4 O. G. 4.

No presumption arises against a workman that an improvement which he makes belongs to his employer, when he is employed to make a specified article, not to labor generally nor to embody an invention of his employer. *Holman v. Foley*, 2 Dec. Com. 97.

When the presumption of a joint invention has been created by the filing of a joint application for a patent, it can be overthrown only by evidence of the most unequivocal character. *Wheeler v. Russell*, 1 O. G. 183.

In a joint invention, the result of mutual suggestions, counsel, and effort, all the parties are entitled to share, and the invention will not be divided. *Shaw v. Keith et al.* 9 O. G. 641; *Joseph Barsaloux*, 9 O. G. 883.

Novelty.

It is not enough that an article of manufacture is new, in the ordinary sense, to render it patentable, but it must possess novelty, as the word is understood in the statute, and give evidence of inventive genius. *Charles A. Moore*, 3 Dec. Com. 249; *Horace Beach*, 3 O. G. 607; *William L. Smith*, 4 O. G. 349; *Judd M. Cobb*, 5 O. G. 751; *John W. Orr*, 6 O. G. 77; *Crouch v. Roemer*, 11 O. G. 1112.

Where the invention differs substantially, and not merely colorably, from some prior patent, there is patentable merit. *Springer v. Stanton*, 2 O. G. 2; *B. P. Corban*, 2 O. G. 30; *Rowley v. Mason*, 1 Dec. Com. 4; *Geo. Schneider*, 1 Dec. Com. 24; *Charles Robinson*, 1 Dec. Com. 44; *P. J. Dwyer*, 1 Dec. Com. 57; *M. H. Collins*, 1 Dec. Com. 82; *B. F. Woodside*, 2 Dec. Com. 1; *George F. Pinkham*, 2 Dec. Com. 34; *L. F. Follansbee*, 2 Dec. Com. 127; *J. B. Slawson*, 2 Dec. Com. 177; *J. A. & T. Wood*, 3 Dec. Com. 56; *James Duthie*, 3 Dec. Com. 85; *Case & Baillie*, 3 Dec. Com. 307; *Thomas Slaight*, 4 O. G. 82; *James D. Culp*, 5 O. G. 427; *Joseph B. Sprague*, 6 O. G. 469.

A machine designed to accomplish a certain object is not anticipated by one accomplishing the same object only occasionally, and without its having been extended. *Geo. H. Brown*, 1 Dec. Com. 10.

Where the improvement is not shown in the references, and is not of so obvious a character that it would have been suggested by any of the prior contrivances, a patent may issue. *Charles Moseley*, 2 Dec. Com. 53; *G. C. Stillman*, 3 Dec. Com. 173; *Arnold v. Wilcox*, 7 O. G. 558; *J. S. McIntire*, 9 O. G. 300; *C. H. Davis*, 9 O. G. 537.

The first inventor is he who makes the article, not he who finds a use for it. *Cheesebrough v. Toppan*, 1 O. G. 464.

If an applicant avails himself of a portion of a plan used to make one article, and supplies everything necessary to constitute a complete and novel process for making another article, a patent should be granted. *Louis McMurray*, 8 O. G. 473.

If a device secures different results by different means from those employed by prior inventors, it is patentable. *J. C. White*, 1 O. G. 163.

If the two machines are different in operation and construction, the later is patentable. *B. P. Corbin*, 2 O. G. 30.

If the application of the article be new and useful, it can not be said to be anticipated by the prior use of any other, which lacks the quality that gives it utility, no matter how striking the resemblance. *Geo. E. Deering*, 1 Dec. Com. 26; *A. C. Platt*, 1 Dec. Com. 42; *Hopson & Brooks*, 3 Dec. Com. 153; *R. C. Phillips*, 3 Dec. Com. 273; *W. W. Goodwin*, 3 O. G. 347.

A patentable difference exists between two processes, when by one a solution could only be forced into a body, and by the other through it. *Ransome v. Norris*, 2 O. G. 295.

An incomplete and practically inoperative device is not sufficient ground for rejecting the product of an operative one, though the two devices may be alike in some respects. *J. L. Mason*, 2 O. G. 644.

An invention will be considered novel, although counterparts of it are referred to of an earlier date than the application, if they do not antedate a previous application to which it relates back. *J. R. McClintock*, 3 Dec. Com. 325.

Where neither of the references upon which an application is rejected is so analagous to the invention presented as to suggest it, the application will be allowed. *A. G. Lesner*, 3 Dec. Com. 204; *Charles A. Moore*, 3 Dec. Com. 249; *Geo. W. Hawes*, 3 Dec. Com. 255; *David H. Morrison*, 3 Dec. Com. 327; *Henry Reynolds*, 6 O. G. 295.

An invention can not be presumed to have been made before the filing of the application, when it was founded on theory alone, and had not been practiced. *Reed v. Roberts*, 1 Dec. Com. 88; *De La Mar v. Gurens & Behrens*, 1 Dec. Com. 94.

If an inventor has devised new means to accomplish a certain result, it is not enough to refer him to devices wherein it is evident that a like intention exists. *Willard Twitchell*, 6 O. G. 506.

A party can not claim what was discovered by a prior inventor, although his improvement has made the article commercially valuable. *Sargent v. Burge*, 11 O. G. 1055.

If two inventors are on equal terms in respect to the invention, and both contribute to its essential parts, the patent would be invalid if issued to one of them. *Carter et al. v. Perry et al.* 8 O. G. 518.

A joint invention can not be carried back to a date earlier than that at which the subject-matter was first discussed by the parties. *Dwyer & Carter v. Dick & Perry*, 10 O. G. 585.

In whatever field of art a new and useful invention appears, a patent for it, duly applied for, can not lawfully be refused. *William Ward*, 4 O. G. 350.

The mere fact of the first inventor having lost his right to a patent does not entitle a junior inventor to step forward and obtain one. *Collins v. England et al.* 1 Dec. Com. 66.

If the invention, covered by a given claim, be novel, the combination of the elements of said claim, with other devices, is allowable in another claim, if legitimate. *M. Smith*, 2 O. G. 117; *Minar, Stevens et al.* 2 Dec. Com. 47.

The oath of the applicant is sufficient to avoid an objection on account of the granting of an English patent to him and another jointly. *C. W. Siemens*, 11 O. G. 1107.

Reducing to Practice.

Priority of conception, coupled with due diligence in reducing to practice, constitutes priority of invention. *Wheeler v. Russell*, 1 O. G. 183.

The merits of an improvement belong to the one who first conceived and

gave practical form and effect to it. *Walter De Sano v. C. F. Ritchel*, 9 O. G. 792.

As between two independent inventors, he who first perfects the invention is entitled to the patent, and it can not avail the other to refer back to crude experiments. *Browne v. Ludlow*, 2 Dec. Com. 16; *Duchemin v. Richardson & Stein*, 2 Dec. Com. 31; *Bingham v. Watkins*, 2 Dec. Com. 42; *Crowell v. Sim*, 2 Dec. Com. 72; *Richardson v. Denza*, 2 Dec. Com. 156; *Knight v. Annan*, 3 Dec. Com. 34; *Davis, Edson et al.* 4 O. G. 500; *Stanton & Percy*, 4 O. G. 500; *Clark & Osborn*, 5 O. G. 667; *Macdonald v. Chase*, 6 O. G. 359; *Rees v. Richards et al.* 7 O. G. 36.

The first of two competitors who reduces the invention to practice is entitled to the patent, although another may have first conceived it. *Hoeltge v. Hoeller*, 3 Dec. Com. 309; *Jones v. Pendleton & Boardman*, 3 Dec. Com. 314; *Smith v. Barter*, 7 O. G. 1; *Ware v. Bullock*, 7 O. G. 39; *Arnold v. Wilcox*, 7 O. G. 558; *Oliver v. Zeller*, 10 O. G. 416.

If an applicant for a patent was the first to clearly originate the invention, and diligent in reducing it to practice, he will be considered the prior inventor, as against a patentee. *Withington v. Locke*, 11 O. G. 417.

The party who originates a device and puts it into general use, is the prior inventor, although his competitor had previously made successful experiments, but had abandoned them. *Merrill & Carlton v. Atwood*, 1 Dec. Com. 6; *Chipman v. Fales*, 1 Dec. Com. 44; *Coles v. Loud*, 2 Dec. Com. 4; *Lamson v. Wardwell*, 2 Dec. Com. 33; *Dimond v. Hayden*, 2 Dec. Com. 34; *Bovey v. Graham*, 2 Dec. Com. 129; *Frevert v. Gahr*, 3 O. G. 660; *Lagowitz v. Topham*, 9 O. G. 742; *Gross v. Sargent*, 11 O. G. 788.

He who first reduces an invention to a practical form, is entitled to the patent, though another conceived it before him, and explained it to others. *Lyon v. Altmaeir*, 1 Dec. Com. 15; *Jennings v. Winter*, 1 Dec. Com. 38.

If the one who first conceives a device exercises reasonable diligence in reducing it to practice, he will be considered the prior inventor, although another has succeeded before him in perfecting it and reducing it to practice. *William S. Carr*, 5 O. G. 30; *Proctor & Lindsay v. Ackroyd*, 6 O. G. 603; *Freeborne v. Foye*, 9 O. G. 884.

The one who first conceives the invention, and completes a model that operates perfectly before his competitor, and carries it to the greatest degree of perfection, is entitled to priority. *Withington & West v. Whitney*, 3 Dec. Com. 310; *Smith v. Edson*, 7 O. G. 827; *Baldwin v. Bigelow*, 7 O. G. 1011.

If a patentee is first to conceive an invention, first to make a model, the first to apply for a patent, and the first to obtain the grant, he is not required to have put his invention to practical use before obtaining a patent. *Busha v. Phelps*, 9 O. G. 1010.

The one who first reduces an invention to a practical form by embodying it in a machine in use, is entitled to a patent, unless a prior inventor is at the time using due diligence in adapting and perfecting the same invention. *Crane v. Whitehead & Atherton*, 7 O. G. 219.

Where an invention is voluntarily laid aside, without anything being done in the way of an application for a patent, and another, in the mean time, without any knowledge of this fact, invents and reduces the same thing to practice, after applying for and taking out a patent, he must be regarded as the original and first inventor. *Edson v. Coffin*, 1 Dec. Com. 58; *Reed v. Roberts*, 1 Dec. Com. 88; *Erbe v. Hill*, 1 Dec. Com. 29; *Wheeler v. Chenoweth*, 1 Dec. Com. 43; *Doty v. Osborne*, 1 Dec. Com. 77; *McClure v. Miller & Mason*, 2 Dec. Com. 122; *Wheeler v. Peters*, 2 Dec. Com. 141; *Gray v. Hale*, 3 Dec. Com. 129; *Willcox v. Duncan*, 3 Dec. Com. 195; *Hanvey v. Willard*, 3 Dec. Com. 297; *Hoeltge v. Hoeller*, 3 Dec. Com. 309; *Pattee v. Russell*, 3 O. G. 181; *Vinton v. Pierce*, 3 O. G. 629; *Hyatt & French*, 4 O. G. 609; *Bradford v. Corbin*, 6 O. G. 223; *Hart v. Little*, 7 O. G. 962; *Lay v. Wiard*, 9 O. G. 349; *Gross v. Sargent*, 11 O. G. 787.

It is only in those cases in which actual use is necessarily demanded to establish the date of the completion of an invention that it becomes important in determining the question of priority. *Little v. Stephenson*, 3 O. G. 379.

If an inventor has used due diligence throughout, he may date his invention back to the time when he made the drawings for the foreign machine, and will be awarded priority over one who invented afterward. *Lay v. Ballard*, 3 O. G. 687.

A drawing alone is not sufficient to show that the inventor reduced his invention to practice. *Millward v. Barnes*, 11 O. G. 1060.

To prove priority of invention, it is not enough to show that the applicant was engaged upon one of the same character, without proof of its identity. *Black v. Locke*, 1 Dec. Com. 13.

If the invention is simple and single, the one who first discovers it can not be superseded as inventor without proof of laches or abandonment, there being nothing left of its construction for experiment to develop. *Smith, Jordan & Coffin*, 5 O. G. 89.

The inventor of an apparatus who has reduced it to actual practice and then left it, can not claim improvements upon it, although he may have contemplated them, if he never reduced them to form. *Trotter v. Bartlett*, 7 O. G. 3.

The question of priority will be decided in favor of the party who, before the other made the invention, had produced specimens shown to be like exhibits on file and embodying it. *Clark v. Fletcher*, 1 Dec. Com. 21; *Logan v. Holdiman*, 2 Dec. Com. 45.

The one who first reduces the invention to practice is entitled to the patent if his competitor rests his claim in suggestions, verbal descriptions and lost sketches, though they were made before. *John W. Cochran*, 1 Dec. Com. 30; *Edson v. Coffin*, 1 Dec. Com. 58; *Wood v. Crowell*, 1 Dec. Com. 107; *Hart v. Little*, 7 O. G. 962; *Dana v. Greenleaf & Adams*, 9 O. G. 198.

An experimental use of an invention, though continued for three days, and though it worked satisfactorily, is not a reduction of it to practice, if no further use was made of the invention, and it was afterwards lost. *Stoddard and Perry*, 6 O. G. 33.

An imperfect and incomplete invention resting in mere theory, or in uncertain experiments, and not actually reduced to practice, and embodied in some machinery, is not patentable. *Lay v. Wiard*, 9 O. G. 349.

Reduction to practice can only be effected by the material embodiment of the invention in the form in which it is designed for use. *Stephenson v. Goodell*, 9 O. G. 1195.

If an adaptation to use, or even use itself, is merely experimental, the invention is not perfected. *Lagowitz v. Topham*, 9 O. G. 742.

In order to defeat a patent, an alleged prior machine must be shown to be practically, and not merely experimentally useful. *Sargent v. Burge*, 11 O. G. 1055.

If the principle of an invention is shown to be practicable in a machine, it is entitled to protection, though the machine is rude and imperfect. *Knight v. Annan*, 3 Dec. Com. 34.

The true date of invention is at the point where the work of the inventor ceases and the work of the mechanic begins. *Cameron v. Brick*, 3 Dec. Com. 89.

An invention which consists of a combination of elements is not complete until all the elements are combined. *Samuel C. Moore*, 7 O. G. 697.

A person may prove priority of invention by establishing that he was the first to conceive the idea of the invention, and the mode of putting it into practice, and used due diligence in adapting and perfecting it. *Chapman v. Candee*, 2 O. G. 245; *Reisinger v. Clark*, 2 O. G. 339; *Mayhew v. Wardwell*, 1

Dec. Com. 5; *Mowbray v. Shaffner*, 2 Dec. Com. 35; *Eames v. Gill*, 2 Dec. Com. 42; *Leonard v. Runyon*, 2 Dec. Com. 56; *Kissam v. Collins*, 2 Dec. Com. 127; *Jenkins & Norton v. Putman*, 2 Dec. Com. 156; *Edison v. Foote & Randall*, 3 Dec. Com. 80; *Corsett & Lowe v. White*, 3 Dec. Com. 154; *Disston v. Emerson*, 3 Dec. Com. 162; *Ives v. Swan*, 3 Dec. Com. 167; *Smith v. Hopkins*, 3 O. G. 347; *Rice v. Winchester*, 3 O. G. 348; *Hollingsworth v. Burligh*, 3 O. G. 583; *Perley and Orr*, 5 O. G. 457; *Hammond v. Laird*, 7 O. G. 170; *McBride v. Henderson*, 7 O. G. 300.

The party who first makes a model and applies for a patent with due diligence is the first inventor, although another made the first machine, for the law rewards the first inventor rather than the first maker. *Morse v. Clark*, 1 O. G. 274.

Diligence.

As between applicants, the question of reasonable diligence only arises where one conceives the idea of the invention first, and the other is first to perfect and reduce it to practice. *Allen v. Gilman*, 2 O. G. 293; *Erbe v. Hill*, 1 Dec. Com. 29; *Hunt v. Woods*, 1 Dec. Com. 34; *Freeland & Ward v. Trent*, 1 Dec. Com. 93; *Duchemin v. Richardson & Stein*, 2 Dec. Com. 31; *Bradley v. Rafael*, 2 Dec. Com. 50; *Hosea Ball*, 2 Dec. Com. 97.

Where one is the first to conceive an invention, and the other was the first to reduce it to practice, the claim of the latter is founded upon the reduction to practice, and derives no aid from his previous efforts; but the former must show that he was reasonably diligent from the time of the conception of the invention to its completion. His diligence is not to be compared with that of his competitor, but must stand as an independent fact. *Millward v. Barnes*, 11 O. G. 1060.

An inventor, in order to preserve his rights, is not required to devote all his energies to the development of his invention, to the exclusion of all other matters. The law only demands reasonable diligence. *Munger v. Connell*, 1 O. G. 491.

The party who first made the invention should prevail if he never intended to abandon it, though he did not apply for a patent until his opponent had applied several years afterward. *Rowley v. Mason*, 1 Dec. Com. 4.

An inventor is not prejudiced in his right to a patent by any delay between the making of his invention and the filing of his application, unless meanwhile the invention has gone into public use. *Israel Townsend*, 3 Dec. Com. 60.

To constitute complete invention it must be shown that the device has been used, or that reasonable diligence has been employed in applying it to this last and surest test. *Hanscom v. Latham*, 9 O. G. 1157; *Palm v. Behel*, 10 O. G. 701; *Stephenson v. Goodell*, 9 O. G. 1195.

A prior inventor has lost his right to an invention if he has delayed applying for a patent for an unreasonable time after his competitor obtained one, although he had a caveat pending when the application of the latter was filed. *Kenyon v. Wesson*, 3 Dec. Com. 10; s. c. 3 Dec. Com. 91.

An inventor has not forfeited his invention by delay, who has obtained a patent for it before his competitor applied for one. *Bingham v. Watkins*, 2 Dec. Com. 42, 186.

If a party has forfeited his right to a patent by want of diligence, he is not the prior inventor, and cannot, therefore, have abandoned his invention to the public. *Jenkins v. Barney & Berry*, 3 O. G. 119.

Although others have applied for a patent to which that sought by the applicant would be subordinate, that furnishes no excuse for his neglecting to make his application for several years. *Wright v. Clay & Ely*, 2 Dec. Com. 11.

If an inventor has fully worked out the idea, and shows that he intends to pursue it to a practical use, he is entitled to a reasonable time to perfect and test. *Tingley & Carpenter*, 3 Dec. Com. 236.

Mere delay in applying for a patent after the invention has been perfected, will not warrant a judgment of priority in favor of a subsequent inventor. *Traut v. Hawley*, 10 O. G. 979.

If nothing is shown in the evidence to account for an inventor's delay in reducing his invention to practice, he must be held chargeable with want of diligence. *Hovey & Hufeland*, 6 O. G. 31.

If an inventor employs an attorney to file his application for a patent, and is deceived by false representations that it was done, the delay thus fraudulently caused is not unreasonable or such as to work abandonment. *Case v. Hastings*, 7 O. G. 557.

If an inventor, after perfecting his invention, keeps it secret, and withholds it from public use, until another invents the same thing and applies for a patent therefor, he loses his right to a patent. *Monce v. Adams*, 1 O. G. 1.

If the delay consists merely in forbearing to apply for a patent, the first inventor is entitled to a patent, although he files the application after the application of a subsequent inventor. *Freund v. King*, 11 O. G. 2.

Utility.

Any invention, however simple, saving time and labor, and not before anticipated, may be awarded a patent. *Geo. Richardson*, 2 O. G. 3; *Samuel Toomey*, 1 Dec. Com. 109; *John R. Harrington*, 2 Dec. Com. 37; *William Brown*, 1 Dec. Com. 45; *W. E. Phelps*, 2 Dec. Com. 48; *A. S. Collins*, 2 Dec. Com. 57; *Arthur Harris*, 2 Dec. Com. 62; *Rutger B. Miller*, 3 Dec. Com. 85; *L. E. Love*, 3 Dec. Com. 276; *Orison Underwood*, 4 O. G. 449.

The utility of an article of manufacture is tested by the advantage gained in its use, and the saving effected in its production. *W. Butterfield*, 2 O. G. 88.

Cheapness alone will not confer patentability upon a machine that possesses no other merit. *McLaren & Coventry*, 10 O. G. 335.

If the simpler means consist in the substitution of one mechanical equivalent for another, the difference is not patentable. *Eloi Bouscay, Jr.* 9 O. G. 743.

What is Patentable.

A party who has devised a mode of doing a particular thing so as to dispense with an instrument formerly used, is entitled to a patent for that mode, but not for every mode of doing it without the use of the instrument. *J. Arkell*, 1 O. G. 28.

A patent will not be allowed for a process which is really intended for the adulteration of an article of food. *Morris & Watson*, 2 Dec. Com. 71; *Peter W. Weida*, 6 O. G. 681.

A claim for a result or effect, and not for the result as produced is bad. *N. J. Simonds*, 2 Dec. Com. 23.

A functional claim is one that has for its subject the performance of an act merely, and not the means by which that act is executed. *Ignatius Hahn*, 8 O. G. 597.

An improved system of irrigation, constituting an improvement in the art, may be the subject of a patent. *James Y. Carmichael*, 10 O. G. 864.

The products of a new process can not be monopolized unless they can be distinguished from the products of other processes. *Henry Loewenberg*, 1 Dec. Com. 92.

The term manufacture seems to distinguish the thing made from the process or machine by which it is made. *Charles H. Ackerson*, 1 Dec. Com.

74; William R. Blanchard, 2 Dec. Com. 59; L. E. Truesdell, 2 Dec. Com. 123.

An applicant can not describe a machine which will perform a certain function, and then claim the function itself and all other machines that may be invented for the same purpose. G. L. Harrison, Jr. 10 O. G. 373.

An article of manufacture is patentable only when it is a complete device, ready for use or for sale in the market. Peter Campbell, 2 O. G. 644; Samuel B. Jerome, 3 O. G. 64; Augustus Adams, 3 O. G. 150.

The product of an invention must be regarded as an entirety, and, if new, applicant is entitled to all the characteristics which it may now be known or may hereafter be discovered to possess. Herbert W. C. Tweddle, 10 O. G. 747.

A single device may contain subject-matter for a design patent, and one for a structure patent, that for one being a particular ornamentation, that for the other the structure of the device, involving its mechanical uses. H. W. Colender, 2 O. G. 360.

The process by which an article is constructed is a matter altogether distinct from the article itself, so far as its patentability is concerned. Geo. H. Sellers, 2 O. G. 246; W. E. Bond, 1 Dec. Com. 17; Robert A. Cheesebrough, 1 Dec. Com. 18.

An article of peculiar shape, intended to serve a useful purpose, may be the subject of a patent. T. D. Doolittle, 2 O. G. 275.

Combinations.

A patentable combination must consist of something more than mere assemblages or arrangement of parts. The parts must act upon each other either mediately or intermediately, so that the action or character of one is affected, influenced or produced by the action or character of the other. Chas. Van Waggenen, 1 O. G. 89; John Burnham, 1 O. G. 164; Lewis Miller, 1 O. G. 431; Phillip E. Ackert, 1 O. G. 253; L. B. Prindle, 1 O. G. 404; Daniel J. La Duc, 1 O. G. 549; Thomas Kerr, 1 Dec. Com. 16; Jones & Boyce, 1 Dec. Com. 16; Joseph Thorne, 1 Dec. Com. 76; John Stephenson, 5 O. G. 363; Clymer & Riley, 6 O. G. 505.

The mere assembling of an aggregation of old devices, each separately performing its own function, into immediate proximity with each other, does not make a combination in a patentable sense. George B. Clarke, 3 Dec. Com. 178; McCormick & Baker, 3 Dec. Com. 246; John H. Coes, 6 O. G. 1; Henry Hooper, 6 O. G. 360; Patrick Fitzgibbons, 10 O. G. 375.

Separate devices or combinations of devices, that have no community of operation in effecting a common result, should not be incorporated in the same application. C. O. Sobinski, 10 O. G. 3; A. L. Bogart, 10 O. G. 113; C. F. Dietrich, 11 O. G. 195.

If the aggregation of the different parts produces a new result, this is decisive of the fact that there has been invention, and that the combination is patentable. J. B. Slawson, 1 O. G. 254.

In order that a combination may be rendered patentable, there must be a novel assemblage of parts exhibiting invention. Lynch v. Dryden, 3 O. G. 407; B. S. Baker, 4 O. G. 156.

If the substitution of one material for another, in a combination, produces a new and useful article of manufacture, it is patentable. W. S. Cottrell, 1 O. G. 436.

A combination should be regarded as an entirety, and it can not be said that some of its features have been used to perform their separate functions in other positions and arrangements. Jesse Reynolds, 9 O. G. 744.

Where neither of several parts of a structure affects or influences the action

of the other, no legitimate combination exists between them. Thomas J. Flagg, 2 Dec. Com. 104; Benjamin Morse, 3 O. G. 467.

A claim will be refused although the combinations specified embrace a device for which a claim has already been allowed, if the latter ought to have been rejected. Amos Rank, 3 Dec. Com. 235.

It is necessary that a combination should contain all the essential elements to secure some distinct and definable result in the operation of a machine. A. A. Rheutan, 5 O. G. 521; George M. Holmes, 6 O. G. 360.

If a new combination produces an old effect more economically, or a new, or a better effect, and all the elements co-operate in producing it, the combination is patentable. David Eynon, 3 Dec. Com. 239; E. Sampson, 3 Dec. Com. 277; Henry Hooper, 6 O. G. 360; Seeley M. Sherman, 7 O. G. 1054.

It is not every change in the arrangement of the elements of a combination which may form the foundation of a legitimate claim, but only such as are necessary to constitute a valid combination of the same parts. Streeter *v.* Stoddard, 2 Dec. Com. 91.

If devices are in their operation especially adapted to each other, belonging to the same class of inventions, and are used in connection to subserve a common end, they constitute a legitimate combination. Warren Noyes, 8 O. G. 818.

If the combination is new and produces new and useful results, the application for a patent can not be refused. Maurice Fitzgibbons, 3 Dec. Com. 77; Fisk, Clark & Flagg, 3 Dec. Com. 172; James P. Hilliard, 3 Dec. Com. 179; J. M. Stone, 4 O. G. 54; T. N. Foster, 4 O. G. 377; George N. Palmer, 6 O. G. 506; Jas. S. Ray, 7 O. G. 40.

If a new ingredient is added to an existing composition of matter, and it is thereby materially changed in form and quality, it is patentable. James & William Horlick, 7 O. G. 828.

A mere transfer of a combination of elements to a new structure, where it operates in the same way to produce the same result, is not patentable. Jacob Dunton et al. 10 O. G. 243.

The new grouping of devices must be accompanied by evidence of invention, and must produce a new result. Horace Holt, 5 O. G. 148; George W. Morse, 6 O. G. 763; John C. Richards, 9 O. G. 1062.

Where the elements of the combination are old, but the combination itself is new, and all the parts of it co-act to produce the result, there is patentable merit. S. C. Forsaith, 1 Dec. Com. 111; T. N. Foster, 4 O. G. 377; John H. Coes, 6 O. G. 1; Hosea Ball, 2 Dec. Com. 110.

A novel arrangement of well-known parts which are specially adapted to co-operate in producing an improved result, shows invention, and is patentable. Jno. Farrel, 2 O. G. 340; Julius King, 2 O. G. 618.

A device, which is already patented, does not thereby render a combination embracing it patentable, if it is not improved, and performs no unexpected function. C. Rubens & Co. 2 Dec. Com. 49; George Petry, 2 Dec. Com. 105.

If an applicant does not present a combination essentially different from a prior one, a patent will be refused. George Crompton, 4 O. G. 82.

A compound consisting of old ingredients arranged in a new manner, and possessing superior qualities, is patentable. Heide & Wirtz, 8 O. G. 817.

An assemblage of distinctive individual parts, which is less than a combination of them, falls short of invention. Benjamin S. Castle, 4 O. G. 179.

Abandonment.

Abandonment can only be established by positive proof, and not by mere presumption or inference. Russell & Scow, 5 O. G. 149; Stephen Hull, 9 O. G. 1; Cushman *v.* Parham, 9 O. G. 1108.

The law permits such use of an invention before applying for a patent as will fully demonstrate whether it is or not useful and practical. *Channing & Farmer*, 3 Dec. Com. 114; *Baldwin v. Bigelow*, 7 O. G. 1011.

It is not necessary that the use should have been a continuing use, extending over more than two years prior to the application, to render a patent void; it is sufficient if it be a public use or sale. *Young v. Hoard*, 2 Dec. Com. 59; *Charles W. Jenkins*, 4 O. G. 351.

If an inventor, by express acts, has raised a strong presumption that he intended to abandon his invention, in order to revive his right he must file a new application. *Timothy Gordon*, 6 O. G. 543.

If a model is destroyed, and the inventor perfects other devices for producing the same results, it affords strong presumptive evidence of an abandonment of the invention shown in such model. *Barnes v. Clinton*, 9 O. G. 1158.

Parties acting as principal and agent in the sale of an article more than two years before filing their application, are equally prevented from obtaining a patent, without regard to which may be the actual inventor. *Keller et al. v. Felder*, 10 O. G. 944.

A public use of an invention must always be distinguished from a merely experimental one, and any use which can reasonably be regarded as experimental should be so held. *Charles W. Jenkins*, 4 O. G. 351.

The mere fact that a patent was granted to another more than two years before the application of the real inventor, is not fatal to his claim. *Page v. Bowers*, 1 O. G. 521.

The abandonment of an invention by sale for more than two years prior to the filing of an application is not established by inferences in the absence of clear proof as to dates. *Massey v. Sawyer*, 8 O. G. 557.

An invention which has been completed and in use seven years before the original application was filed, but not claimed in the patent sought to be reissued, and which has been embodied meanwhile in other patents, has been abandoned. *Doty v. Osborne & Ballard*, 1 Dec. Com. 77.

Abandonment will not arise from mere lapse of time, and will not be presumed where the invention is not in public use, and the applicant is the first inventor. *Woerd v. Bacon*, 1 Dec. Com. 16; *Gillet v. Gillis*, 1 Dec. Com. 68.

Description.

A published description of an invention is sufficient, notwithstanding the testimony of experts that a mechanic could not construct the instrument from it. *Taylor & Banks*, 2 O. G. 519.

A pattern book, without any descriptive matter contained in it, can not be regarded as a printed publication, such as is contemplated as being a bar to the issue of a patent. *T. B. Atterbury*, 9 O. G. 640.

An invention can not be held to antedate patents granted before the application, on the ground that it was described in a still earlier application, if it was there described as connected with an essential device which is now omitted. *James R. McClintock*, 2 Dec. Com. 64.

A rejected application will not be considered a bar to a new application for a patent for the same invention by another party. *Rouse & Stoddard*, 7 O. G. 169; *Brown v. Guild*, 6 O. G. 392; *Crane v. Whitehead & Atherton*, 7 O. G. 219; *S. B. Sexton*, 9 O. G. 251.

A subsequent inventor can not be allowed to patent a device clearly shown in any part of the application for a prior patent. *Edward Strain*, 2 Dec. Com. 150; *Thos. J. Magruder*, 3 Dec. Com. 104; *E. Wheeler*, 4 O. G. 3.

A description in a reissued patent is sufficient, although the matter was improperly introduced on the reissue. *George Richardson*, 7 O. G. 1053.

SEC. 4887. No person shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid, by reason of its having been first patented, or caused to be patented, in a foreign country, unless the same has been introduced into public use in the United States for more than two years prior to the application. But every patent granted for an invention which has been previously patented in a foreign country shall be so limited as to expire at the same time with the foreign patent, or, if there be more than one, at the same time with the one having the shortest term, and in no case shall it be in force more than seventeen years.

Statute Revised—July 8, 1870, ch. 270, § 25, 16 Stat. 201.

Prior Statutes—July 4, 1836, ch. 357, § 8, 5 Stat. 120.—March 3, 1839, ch. 88, § 6, 5 Stat. 354.

The provisions of this section relate to patents which are applied for here after the issue of a foreign patent. *French v. Rogers*, 1 Fish. 133; *American Leather Co. v. American Tool Co.* 4 Fish. 284.

A patent is not void because it runs for a period of seventeen years instead of seventeen years from the date of the foreign patent. *O'Reilly v. Morse*, 15 How. 62; *contra*, *Smith v. Ely*, 5 McLean, 76; S. C. 15 How. 137.

The American patent will expire at the same time with the foreign patent, but can not exceed the term of seventeen years. *Weston v. White*, 13 Blatch. 364; S. C. 9 O. G. 1196.

The provisions of this section evidently refer to the fact that the invention has been patented by the inventor himself. *Kendrick v. Emmons*, 9 O. G. 201.

If a person surreptitiously, without the knowledge or authority of the inventor, takes out letters patent in a foreign country, he can not thereby deprive the inventor of any of his rights. *Kendrick v. Emmon*, 9 O. G. 201.

The mere fact that a patent has been issued does not of itself prove the introduction into common use without the necessity of other testimony. *Weston v. White*, 13 Blatch. 364; S. C. 9 O. G. 1196.

The date upon which the completed specifications were filed and patent sealed will be considered the date of a foreign patent. *Chambers et al. v. Duncan et al.* 9 O. G. 741; *Chambers et al. v. Duncan et al.* 10 O. G. 787; *James Cochrane*, 1 Dec. Com. 60; *Edward Maynard*, 1 Dec. Com. 54.

Where an applicant seeks letters patent for an invention already patented abroad, his American patent, if issued, will be limited to seventeen years from the date of the grant of the foreign patent. *Herman v. Gilmore*, 1 Dec. Com. 23; *Eades v. Jewsbury*, 1 Dec. Com. 90.

If an application is not made here within six months after the invention was patented abroad, the term of the patent should be the usual time from the date of the foreign patent. *James Cochrane*, 1 Dec. Com. 60.

An American patent is not limited in its duration by the life of a foreign

patent for the same invention; it may be issued after the foreign patent has expired, if the term to which the patentee is entitled has not expired. *Eades Jewsbury*, 1 Dec. Com. 90; *Robert Mushet*, 2 Dec. Com. 106.

If a patent is made up of separate and distinct inventions, each of which is the subject of a foreign patent, and the foreign patent for one part either expires or is forfeited for non-payment of a tax thereon, the patentee may either obtain a reissue or file a disclaimer, and thus abandon the claim to such part. *I. L. Pulvermacher*, 10 O. G. 2.

Where an applicant seeks letters patent for an invention already patented by him abroad, and there is a single well-authenticated instance of a use in public, it constitutes a legal "public" use, and the application will be refused. *Hermann v. Gilmore*, 1 Dec. Com. 23.

The American patent need not be confined to the precise matter covered by the foreign patent. *C. W. Siemens*, 11 O. G. 969.

If new features are added to those of the foreign patent, and in combination therewith, a limitation of the grant can not be made, but in such case specific mention should be made of the part patented abroad by particular reference to the date and number of the foreign patent, if the matter is separately claimed. *C. W. Siemens*, 11 O. G. 979.

If the application includes the same subject-matter as the foreign patent, with immaterial variations, the patent should be limited to expire at the same time with the foreign patent. *C. W. Siemens*, 11 O. G. 969.

In all practicable cases, the limitation should appear on the face of the patent. *C. W. Siemens*, 11 O. G. 979.

If the proper restriction in the grant can be accomplished by a division of an application, such division should be required. *C. W. Siemens*, 11 O. G. 979.

Upon the allowance of a patent, the examiner should enter on the file wrapper the fact that a foreign patent has been granted and the date of the same, or, if more than one, the date of the earliest to expire. *C. W. Siemens*, 11 O. G. 979.

A reissue should state the date and number of the foreign patent the same as an original patent. *C. W. Siemens*, 11 O. G. 1107.

SEC. 4888. Before any inventor or discoverer shall receive a patent for his invention or discovery, he shall make application therefor, in writing, to the commissioner of patents, and shall file in the patent office a written description of the same, and of the manner and process of making, constructing, compounding, and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same; and in case of a machine, he shall explain the principle thereof, and the best mode in which he has contemplated applying that principle, so as to distinguish it from other inventions; and he shall particularly point out and distinctly claim the part, improvement, or combination

which he claims as his invention or discovery. The specification and claim shall be signed by the inventor and attested by two witnesses.

Statute Revised—July 8, 1870, ch. 230, § 26, 16 Stat. 201.

Prior Statutes—April 10, 1790, ch. 7, § 2, 1 Stat. 110.—February, 21, 1793, ch. 11, § 1, 1 Stat. 318.—July 4, 1836, ch. 357, § 6, 5 Stat. 119.

Character of Proceeding.

The authority of the commissioner to issue grants is not in the nature of jurisdiction in its common and technical acceptance. He issues the grant when he has evidence satisfactory to his own mind that the claimant is entitled to receive it. But that adjudges nothing as to the real right. That question is unaffected, and remains to be examined and decided between parties contesting it without prejudice or advantage from the letters patent. *Wilder v. McCormick*, 2 Blatch. 31; *Potter v. Stevens*, 2 Fish. 163.

All the proceedings in the patent office on the subject of patents are *ex parte*, except in the case of interfering applications. The department acts rather ministerially than judicially, and upon the representation of the applicant, without entering into an examination of the question of right. *Morris v. Huntington*, 1 Paine, 348; *Potter v. Stevens*, 2 Fish. 163.

The commissioner in issuing patents may be considered as a ministerial officer. If the prerequisites of the law are complied with, he can exercise no judgment on the question whether the patent shall be issued. *Grant v. Raymond*, 6 Pet. 218.

Clearness.

It is not necessary that an inventor shall reduce his invention to practical use before the patent is obtained. No such condition is required by the statute. It is enough that the inventor has perfected his invention, and is able to furnish to the patent office such specifications and model as the law requires. *Wheeler v. Clipper Co.* 6 Fish. 1; s. C. 10 Blatch. 181; 2 O. G. 442.

The requirements of this section are prerequisites to the granting of the patent, and unless the prerequisites are complied with, a party sued for the infringement of a patent may show that they have not been complied with, and in that way defeat the patent. They are conditions precedent to the right of the commissioner to grant the patent. *Ransom v. New York*, 1 Fish. 252; *Seymour v. Osborne*, 3 Fish. 555; s. C. 11 Wall. 516; *Latta v. Shawk*, 1 Fish. 465; s. C. 1 Bond, 259; *Grant v. Raymond*, 6 Pet. 218.

The specification has two objects: One is to make known the manner of constructing the machine, if the invention is of a machine, so as to enable artisans to make and use it, and thus to give the public the full benefit of the discovery after the expiration of the patent. The other is to put the public in possession of what the party claims as his own invention, so as to ascertain if he claim anything that is in common use, or is already known, and to guard against prejudice or injury from the use of an invention which the party may otherwise innocently suppose not to be patented. *Evans v. Eaton*, 7 Wheat.

356; S. C. 2 Wash. C. C. 443; *Forbes v. Barstow Stove Co.* 2 Cliff. 379; *Mabie v. Haskell*, 2 Cliff. 507; *Conover v. Roach*, 4 Fish. 12.

It makes no difference whether the effect is produced by mechanical principles, or by chemical agency, or by the application of discoveries in natural science, as in either case the requirement of the statute is imperative that the patentee must describe the method, process, or means he employs in full, clear, and exact terms, and the end which the invention accomplishes. *Mitchell v. Tilghman*, 4 Fish. 599; S. C. 19 Wall. 287; 5 O. G. 299.

The specification must be perfect of itself, and can not be aided by reference to other matters. *Head v. Stevens*, 19 Wend. 411.

The law confers an exclusive patent right on the inventor of anything new and useful, as an encouragement and reward for his ingenuity, and for the expense and labor attending the invention. But this monopoly is granted for a limited term only, at the expiration of which the invention becomes the property of the public. Unless, therefore, such a specification were made as would at all events enable other persons of competent skill to construct similar machines, the advantages to the public which the statute contemplates would be defeated. It is not necessary, however, that the specification should contain an explanation level with the capacities of every person; but it should be expressed in such full, clear, and exact terms, that a person skilled in the art or science of which it is a branch, would be enabled to construct the patented invention. *Lovell v. Lewis*, 1 Mason, 182; *Wintermute v. Redington*, 1 Fish. 239; *Brooks v. Jenkins*, 3 McLean, 432; *Page v. Ferry*, 1 Fish. 298; *Seymour v. Osborne*, 3 Fish. 555; S. C. 11 Wall. 516; *Teese v. Phelps*, 1 McA. 48; *Westlake v. Carter*, 6 Fish. 519; S. C. 4 O. G. 636.

The skill and knowledge deemed competent is that which is addressed to the subject-matter, and is not the highest skill or the greatest knowledge, but that of practical workmen of ordinary skill in the particular business. *Page v. Ferry*, 1 Fish. 298; *Smith v. O'Connor*, 6 Fish. 469; S. C. 2 Saw. 461; 4 O. G. 633; *Mabie v. Haskell*, 2 Cliff. 507; *Lippincott v. Kelly*, 1 West. L. J. 513.

The description need not be so clear as to be understood by an individual wholly unskilled in the structure of machines. *Brooks v. Bicknell*, 3 McLean, 250; *Many v. Sizer*, 1 Fish. 17; *Mowry v. Whitney*, 3 Fish. 157; S. C. 4 Fish. 141; 5 Fish. 496; 14 Wall. 620; 2 Bond, 45; *Forbes v. Barstow Stove Co.* 2 Cliff. 379.

Unless on the mere description of the thing itself, its utility and the manner of its use are obvious, the patentee should always describe the manner of its employment to make it useful, so that a mechanic of proper skill can not only construct the thing itself, but can give it practical application to the purpose for which it is useful. *Dennis v. Eddy*, 4 Fish. 423.

In determining whether the specification is sufficiently full, clear and exact to enable any person skilled in the art to construct the machine, the jury are to look at the models and drawings as well as the specification, and also to the state of the art at the time of the invention. *Singer v. Walmsley*, 1 Fish. 558; *Earle v. Sawyer*, 4 Mason, 1; *Hogg v. Emerson*, 6 How. 437; S. C. 2 Blatch. 1; 11 How. 587; *Burrall v. Jewett*, 2 Paige, 134.

If, from the specification and the drawings taken together, any person skilled in the art could construct and use the device therein described without

invention of his own, which would attain the result claimed for it in the patent, then the patent is good, although there may be a mistake in describing the action of some part of the device, but which mistake could be easily discovered by the mechanic when he came to examine the same. *Singer v. Walmsley*, 1 Fish. 558.

A patentee has the right to assume that those who desire to understand all the conditions under which the invention can be operated, are acquainted with the preceding state of the art immediately connected with this particular subject. *Tompkins v. Gage*, 2 Fish. 577; s. c. 5 Blatch. 268.

An intelligent mechanic is chargeable with a knowledge of the state of the art in relation to the subject upon which he is called to exercise his skill. *Treadwell v. Parrott*, 3 Fish. 124; s. c. 5 Blatch. 369.

The specification need not describe that which is within the ordinary knowledge of any workman who may be employed to put up the apparatus or construct the machine. Such a workman, however, must have a competent knowledge of the work; that is, technically, be what the law calls an expert. *Page v. Ferry*, 1 Fish. 298; *Monce v. Adams*, 12 Blatch. 1; s. c. 7 O. G. 177; *Mulford v. Pearce*, 13 Blatch. 173; s. c. 9 O. G. 204; *Kneass v. Schuylkill Bank*, 4 Wash. C. C. 9.

The utmost precision in the description of a machine is not to be expected, nor is it essential. Parts of machinery and processes generally known, need not be described. A wedge, pulleys, rollers, rack and pinion, and other things known to all mechanics, will be supplied by the mechanic without stating their size or structure. Nor is it essential to state the proportionate parts of a machine, nor the velocity of its operation. These are matters of adjustment for the eye and judgment of the constructor. Whether a machine be large in its parts or small, its motion slow or quick, makes no difference in the principle of it. By a detailed description of things generally known, and not essential to the invention, the statement is rendered more prolix and less perspicuous. *Brooks v. Jenkins*, 3 McLean, 432.

Absolute precision as to details is not required in the specification. It is only intended as a guide, but it is not the sole instructor. The special skill of the mechanic, derived from familiarity with the art, may be applied in aid of the instruction given by the specification, and this skill may be exerted to modify any direction in the specification as to the matters of mere adjustment or adaptation of the invention to its intended use. *Dorsey Co. v. Marsh*, 30 Leg. Int. 169.

The definiteness of a specification must vary with the nature of its subject. Addressed, as it is, to those skilled in the art, it may leave something to their skill in applying the invention, but it must not mislead them. *Mowry v. Whitney*, 5 Fish. 513; s. c. 14 Wall. 620; 1 O. G. 499.

The statute must have a fair and reasonable construction. If the invention can be constructed by the exercise of skill and judgment on the part of a mechanic, the specification is sufficient. In carrying out any invention, the exercise of some skill and judgment on the part of the mechanic called to construct it, will always be required. Something must necessarily be left to him. If with the exercise of ordinary intelligence and skill, the invention can be constructed from the information given by the patent, the specification answers

the requisite of the statute. *Judson v. Moore*, 1 Fish. 544; s. C. 1 Bond, 285; *Swift v. Whisen*, 3 Fish. 343; s. C. 2 Bond, 115; *Mowry v. Whitney*, 5 Fish. 513; s. C. 14 Wall. 620; 1 O. G. 499.

If a part is omitted which is so common and obvious as to suggest itself to any competent mechanic, this omission will not vitiate the patent. *Union Paper Bag Co. v. Nixon*, 6 Fish. 402; s. C. 4 O. G. 31; *S. & B. Manuf. Co. v. Coke Co.* 7 O. G. 829.

It is not essential that the inventor shall be sufficiently learned to thoroughly understand or accurately state the philosophy of a process which he has invented and reduced to practical use. *Cahill v. Beckford*, 1 Holmes, 48.

If eulogiums on the invention are fraudulently inserted to mislead, and operate to deceive others in regard to the actual construction of the thing claimed and the mode of applying it to use, they may render the patent void, but where the thing is correctly described, notwithstanding such exaggerations, they are immaterial. *Aultman v. Holley*, 6 Fish. 534; s. C. 11 Blatch. 304; 5 O. G. 3.

The patentee is not confined to technical words, but should rather employ those in popular use and better understood by all. The fewer technical terms are used the better, if the subject is intelligible without them. *Hovey v. Stevens*, 3 W. & M. 17.

The specification must be complete in its description of the invention. No defects can be obviated by extraneous evidence at the trial. *Brooks v. Jenkins*, 3 McLean, 432; *Dixon v. Moyer*, 4 Wash. C. C. 68.

Where a useful result is produced by the use of certain means for which the inventor or discoverer obtains a patent, the means described must be the essential and absolutely necessary means, and not mere adjuncts which may be used or abandoned at pleasure. *Russell v. Dodge*, 93 U. S. 460; s. C. 11 O. G. 151.

If the patentee has discovered much and discloses little, he patents no more than he claims. He will not be allowed afterward, when the extent of his right shall be the subject of controversy, either by expanding into a general expression what was limited before in a particular form, or by tracing the line that leads back from consequences to remote causes, to infer the radical mystery of his invention, and then argue that he had described it by implication from the first, and so claim ownership of it in his patent. *Detmold v. Reeves*, 1 Fish. 127.

Against the practical demonstration of the sufficiency of the specification afforded by the actual construction of the machine, argumentative speculation, reinforced though it may be by the untested opinions of experts, will be of little avail. *Dorsey Co. v. Marsh*, 6 Fish. 387; s. C. 9 Phila. 395.

A reference to the specification as embodying the substantial form of the invention is proper, if it does not introduce confusion and uncertainty, and is often necessary for restraining the too great generality or enlarging the literal narrowness of the claim. *Brown v. Guild*, 23 Wall. 181; s. C. 6 O. G. 392; 7 O. G. 739.

A specification is not defective for want of certainty and clearness, if a fixed rule is given, although it declares that the rule may to some extent be safely departed from. *Tilghman v. Work*, 2 Fish. 229; s. C. 1 Bond, 511.

One patent can not derive any aid or support from a subsequent patent to the same inventor. *Wheeler v. Clipper Co.* 6 Fish. 1; S. C. 10 Blatch. 181; 2 O. G. 442.

A remote and extreme defect will not be seized hold of for the purpose of destroying an ingenious and useful invention. *Blanchard's Factory v. Warner.* 1 Blatch. 258.

Mode of Construction.

The inventor is bound so to describe his invention that the article can be made by one skilled in the art, and it is his duty to describe the best mode which he knows. *Magic Ruffle Co. v. Douglass.* 2 Fish. 330; *Page v. Ferry.* 1 Fish. 298.

It is not incumbent upon the patentee to suggest all the possible modes by which his design can be carried out. It is sufficient for him to state the modes which he contemplates to be best, and to add that other mere formal variations from these modes he does not deem to be unprotected by his patent. *Carver v. Braintree Manuf. Co.* 2 Story, 432; *Dibble v. Augur.* 7 Blatch. 86; *Blanchard v. Eldridge.* 2 Whart. Dig. 358.

If the inventor describes his invention so that a person skilled in the art can make it, and attempts *bona fide* to describe the best mode to make it, and fails, this does not avoid his patent. *Magic Ruffle Co. v. Douglass.* 2 Fish. 330.

The patentee need not specify the kind of power to be employed, or the method of applying it in working the machine. *Carr v. Rice.* 1 Fish. 198; *Lippincott v. Kelly.* 1 West. L. J. 513.

If no particular mechanical means are claimed for the mode of applying power in working the machine, the patentee is at liberty to use any known to mechanics skilled in machinery of that particular kind, and not requiring invention to prepare or apply it. *Carr v. Rice.* 1 Fish. 198; *Waterbury Brass Co. v. Miller.* 5 Fish. 48; S. C. 9 Blatch. 77.

It is not essential that the patentee should state of what material every part of the machine should be made. The principle is the same whether such part be composed of wood or metal. *Brooks v. Bicknell.* 3 McLean, 250.

A specification which extends to the material is ill-advised unless it adds, as is usual, that it claims the invention if made of any other material in the form described. *Aiken v. Bemis.* 3 W. & M. 348.

In patents for machines, it is usual to say that the parts may be made of any suitable materials, and that means known materials. But even if it does not, a person who should afterwards discover a new material, would have no right to make the machine; and the inventor is protected against a machine when made of any such material, though the second inventor should have the exclusive right to the new material. In patents for machines, the patentee by such a phrase intends to point out that the arrangement or combination does not depend on the use of the precise material, where others may serve the purpose. *Washing Machine Co. v. Lincoln.* 4 Fish. 379.

If an invention is both new and useful, it can not be impeached because it does not accomplish all that a sanguine inventor has claimed for it. *Eames v. Cook.* 2 Fish. 146.

Claim.

The statute requires that the invention shall be particularly specified for the purpose of warning an innocent purchaser or other person using the machine of his infringement, and at the same time of taking from the inventor the means of practicing upon the credulity or fears of other persons, by pretending that his invention was different from its ostensible objects. *Brooks v. Fisk*, 15 How. 212; *Merrill v. Yeomans*, 11 O. G. 970; S. C. 1 Holmes, 231.

The magnitude and variety of interests involved in patents require accuracy, precision, and care in the preparation of all the papers on which the patent is founded. The public should not be deprived of rights supposed to belong to it, without being clearly told what it is that limits these rights. *Merrill v. Yeomans*, 1 Holmes, 331; S. C. 11 O. G. 970; 5 O. G. 267; *Hovey v. Stevens*, 3 W. & M. 17.

It is the duty of the inventor to describe each modification of his invention in the specification. *Sargent v. Carter*, 1 Fish. 277.

The specification must distinctly indicate the parts or features of a machine which are essential to the production of the proposed result. If they are not described, whether they relate to the construction or the mere adjustment of a machine, their use by others is not unlawful. *Barry v. Gugenheim*, 5 Fish. 452; S. C. 1 O. G. 382.

Where a patentee, in his specification, states and sums up the particulars of his invention, he is confined to such summary, and can not afterwards be permitted to sustain his patent by showing that some part which he claims in his summing up as his invention, though not his invention, is of slight value or importance in his patent. *Moody v. Fiske*, 2 Mason, 112.

In anomalous cases, as, for instance, when a new product has been discovered, and the process of compounding it or obtaining it is disclosed, the patentee, by stating his discovery and revealing his process, does all that he is required to do or can do. The careful separation of new from old, the limitation of claims to particular parts or combinations can not be required as a substantial part of the specification. If a specification sets forth a discovery, a new composition of matter, and the process for compounding it, that should be taken as the extent of his claim and the measure of his franchise. *Good-year v. Central R. R. Co.* 1 Fish. 626; S. C. 2 Wall. Jr. 356.

The nature of the invention must be considered, to see whether its form and its substance are separable. If they are separable, then the inventor, unless he disclaims other forms, is deemed to claim every form in which his invention may be copied. *Murphy v. Eastham*, 5 Fish. 306; S. C. 1 Holmes, 113; 2 O. G. 61.

Composition.

A patent for a new composition of matter should state the component parts of the invention claimed with clearness and precision, and not leave the person attempting to use the discovery to find it out by experiment. *Tyler v. Boston*, 7 Wall. 327; *Jenkins v. Walker*, 5 Fish. 347; S. C. 1 Holmes, 120; 1 O. G. 359.

If a general rule for the proportions in which the ingredients are to be used is given, it is sufficient. In most compositions of matter some small difference in the proportions must occasionally be required, since the ingredients proposed to be compounded must sometimes be, in some degree, superior or inferior to those most commonly used. *Wood v. Underhill*, 5 How. 1; *Goodyear v. Wait*, 3 Fish. 242; s. C. 5 Blatch. 468; *Francis v. Mellor*, 5 Fish. 153; s. C. 8 Phila. 157; 1 O. G. 48; 5 A. L. T. 237.

When the specification of a new composition of matter gives only the names of the substances which are to be mixed together, and states the relative proportions vaguely or ambiguously, the patent is void. *Jenkins v. Walker*, 5 Fish. 347; s. C. 1 Holmes. 120; 1 O. G. 359.

If the invention can not be used with advantage in any case without first ascertaining by experiment the proportion of the ingredients to be employed, it is not patentable, because by the terms of the statute the inventor is not entitled to a patent unless his description is so full, clear, and exact as to enable any one skilled in the art to compound and use it. If from the nature and character of the ingredients to be used they are not susceptible of such exact description, the inventor is not entitled to a patent. *Wood v. Underhill*, 5 How. 1.

When the specification of a new composition of matter gives only the names of the substances which are to be mixed together, without stating any relative proportion, it is the duty of the court to declare the patent to be void. The same rule prevails where it is apparent that the proportions are stated ambiguously and vaguely. In such cases it is evident on the face of the specification that no one can use the invention without first ascertaining by experiment the exact proportion of the different ingredients required to produce the result intended to be obtained. *Wood v. Underhill*, 5 How. 1.

If a man makes a new compound, he is not limited to the use of the same precise ingredients in making that compound. If the same purpose can be accomplished by him by the substitution in part of other ingredients in the composition, he may extend his patent so as to embrace them also. *Ryan v. Goodwin*, 3 Sum. 514.

If the patent merely suggests a substitute for one of the ingredients, it contemplates the same proportions of the two ingredients. *Tyler v. Boston*, 7 Wall. 327.

Improvements.

The patentee is bound to describe in full and exact terms in what his invention consists, and if it be an improvement only upon an existing machine, he should distinguish what is new and what is old in his specification, so that it may clearly appear for what the patent is granted. The reason of this principle of law will be manifest upon the slightest examination. A patent is grantable only for a new and useful invention, and unless it be distinctly stated in what that invention specifically consists, it is impossible to say whether it ought to be patented or not; and it is equally difficult to know whether the public infringe upon or violate the exclusive right secured by the patent. The patentee is clearly not entitled to include in his patent the exclusive use of any machine already known, and if he does, his patent will be broader than his

invention, and consequently void. If therefore the description in the patent mixes up the old and the new, and does not distinctly ascertain for which in particular the patent is claimed, it is void; since if it covers the whole, it covers too much, and if not intended to cover the whole, it is impossible for the court to say what in particular is covered as a new invention. *Lowell v. Lewis*, 1 *Mason*, 182; *Langdon v. De Groot*, 1 *Paine*, 203; *Sullivan v. Redfield*, 1 *Paine*, 441; *Evans v. Hettick*, 3 *Wash. C. C.* 408; *s. c.* 7 *Wheat.* 453; *Smith v. Downing*, 1 *Fish.* 64; *Allen v. Hunter*, 6 *McLean*, 303; *Wayne v. Holmes*, 2 *Fish.* 20; *s. c.* 1 *Bond*, 27; *Wintermute v. Redington*, 1 *Fish.* 239; *Evans v. Eaton*, 7 *Wheat.* 356; *s. c.* 3 *Wash. C. C.* 443; *Phillips v. Page*, 24 *How.* 164; *Seymour v. Osborne*, 3 *Fish.* 555; *s. c.* 11 *Wall.* 516; *Bray v. Hartshorn*, 1 *Cliff.* 538; *Blake v. Sperry*, 2 *N. Y. Leg. Obs.* 251; *Hovey v. Stevens*, 1 *W. & M.* 290; *Brown v. Lilly*, 4 *Fish.* 363; *s. c.* 2 *Biss.* 457; *Cross v. Huntley*, 13 *Wend.* 385; *Davis v. Bell*, 8 *N. H.* 500; *Head v. Stevens*, 19 *Wend.* 411; *Turner v. Johns*, 2 *Cranch C. C.* 287; *Brooks v. Jenkins*, 3 *McLean*, 432; *Barrett v. Hall*, 1 *Mason*, 447; *Dixon v. Moyer*, 4 *Wash. C. C.* 68; *McClure v. Jeffrey*, 8 *Ind.* 79.

If a patent is for an improvement of a machine, the specification must state in what the improvement specifically consists, and it must be limited to such improvement. If therefore the terms are so obscure or doubtful that the court can not 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 *Mason*, 447; *Woodcock v. Parker*, 1 *Gallis.* 438; *Dixon v. Moyer*, 4 *Wash. C. C.* 68.

There is no distinction between an improvement on a machine patented, and one not so. In both cases the improvement must be described, but with this difference that in the former case it may be sufficient to refer to the patent and the specification for a description of the original machine, and then to state in what the improvements on such original machine consist, whereas in the latter case it will be necessary to describe the original machine and also the improvement. *Evans v. Eaton*, 3 *Wash. C. C.* 443; *s. c.* 7 *Wheat.* 356; *Isaacs v. Cooper*, 4 *Wash. C. C.* 259.

The old instrument or thing on which the improvement is made need not be described where there is a reference to it in general terms, for this affords all the information which is necessary to a person skilled in that department. *Many v. Jagger*, 1 *Blatch.* 372; *Davis v. Palmer*, 2 *Brock.* 298; *Winans v. N. Y. & Erie R. R. Co.* 1 *Fish.* 213; *s. c.* 21 *How.* 88.

There is a class of cases to which these stringent rules do not apply, although the discovery is in the nature of an improvement on what is old. Where any new contrivances, combinations or arrangements are made use of in machinery, although the chief agents are well known, those contrivances, combinations or arrangements may constitute a new principle, and then the application or practice will necessarily be new also. In such a case the new and improved method of producing a useful result or effect is as much the subject of a patent as an entire new machine. *Wintermute v. Redington*, 1 *Fish.* 239.

When the invention consists of an improvement on an old machine, it may be taken for granted that a practical mechanic is acquainted with the con-

struction of the machine on which the improvement is made. *Ives v. Hamilton*, 92 U. S. R. 426; s. C. 6 Fish. 244; 1 O. G. 336.

In describing the improvement of a machine in use and well known, it is not necessary to state in detail the structure of the entire and improved machine. It is only necessary to describe the improvement by showing the parts of which it consists, and the effects which it produces. Such a description in reference to the machine improved is sufficient. *Brooks v. Bicknell*, 3 McLean, 250; *Brooks v. Jenkins*, 3 McLean, 432.

In the description of an improvement and the directions for constructing the improved machine, it is not necessary to state those matters which, it is apparent, would be proper or indispensable in its structure. *Wayne v. Holmes*, 2 Fish. 20; s. C. 1 Bond. 27.

There is nothing in the patent law which in terms requires the patentee to state what is new and what is old. If the patentee by his specification, including the summary claim at its close, points out and distinguishes what he claims as his own invention, it is all that is required. It implies that all the rest is old, or, if not old, that the applicant does not claim it so far as that patent is concerned. No particular form of words is necessary if the meaning is clear. This applies equally to patents for combinations and patents for improvements. *Brown v. Guild*, 23 Wall. 181; s. C. 6 O. G. 392; 7 O. G. 739.

If the specification contains a description of what is old and known, as well as what is new, what is claimed as new must be distinguished. In specifying an improvement in a machine, however, it may be necessary and, when so, it is proper to describe the whole machine as it operates with the improvement, in order to make the description understood by a person of the trade to which it belongs, and if the patentee fails to do this, his patent fails for obscurity. The simple purpose of the law in requiring the patentee to distinguish new from old is that it may distinctly appear what his invention is. *Wintermute v. Redington*, 1 Fish. 239.

It is difficult to define the exact cases when the whole machine may be deemed a new invention, and when only an improvement of an old machine. The cases often approach very near to each other. Where a specific machine already exists producing certain effects, if a mere addition is made to such machine to produce the same effect in a better manner, a patent can not be taken for the whole machine, but only for the improvement. In like manner if to an old machine some new combination be added to produce new effects, the right to a patent is limited to the new combination. On the other hand, if well-known effects are produced by machinery in all its combinations entirely new, a patent may be claimed for the whole machine. So if the principles of the machine are new, either to produce a new or old effect, the inventor may well entitle himself to the exclusive right of the whole machine. *Whittemore v. Cutter*, 1 Gallis. 478; *Odiorne v. Winkley*, 2 Gallis. 51.

The patentee need not describe particularly and disclaim all the old parts, and the more especially is this unnecessary when such disclaimer is manifestly in substance the result of his claiming as new only the portions which he does describe specially. *Hogg v. Emerson*, 6 How. 437; s. C. 2 Blatch. 1; *Evans v. Eaton*, 7 Wheat. 356; s. C. 3 Wash. C. C. 443.

Every mechanical part, principle or combination which is mentioned in the

specification, but which is not included in the invention as claimed and limited, must by necessary implication be considered as admitted to be old or in use before, and the patent is not invalid because it has not in express words particularly stated them to be old. *Winans v. N. Y. & Erie R. R. Co.* 1 Fish. 213; S. C. 21 How. 88.

For the purpose of enabling artisans to construct the machine, it may be necessary for the inventor of an improvement to state so much of the old machine as will make his specification of the structure intelligible. *Evans v. Eaton.* 7 Wheat. 356; S. C. 3 Wash. C. C. 443.

A description of the original machine is only necessary when there is no other way in which it can be ascertained with reasonable certainty in what the improvement consists and how it is to be applied. If the patent is for an improvement in a machine already in use and well known to those skilled in the art, there is no need to describe it. *Harmon v. Bird.* 22 Wend. 113.

If the patentee particularly describes and specifies what he claims as new and as his invention, the patent is not void because in the description of the whole machine, including the element that he says is his invention, he includes elements which are old, but which he claims to be newly combined with new elements. *Rheem v. Holliday.* 16 Penn. 547; *Holliday v. Rheem.* 18 Penn. 465.

Combination.

A combination is sufficiently described if the ingredients of which it is composed are named, their mode of operation given, and the new and useful result to be accomplished pointed out so that those skilled in the art and the public may know the extent and nature of the claim, and what the parts are which co-operate to produce the described new and useful result. *Seymour v. Osborne.* 3 Fish. 555, 11 Wall. 516.

If the description of a combination clearly indicates the method of its use and its relation to the other mechanical elements operating with it, a claim for a combination of part of them is good, although it may not embrace some that are essential to the operative efficiency of the combination. A combination to be valid must have the attribute of practical utility; but this is not to be determined by a reference to the abstract practicability of the elements claimed to compose it. Resort must be had to the whole specification, and if it is therein properly described, its relations to co-operative mechanism indicated and explained, and the method of its use in connection therewith directed, it is a good combination, and will support a restricted claim for it if it is practically operative. *Parham v. Sewing Machine Co.* 4 Fish. 468; *Furbush v. Cook.* 2 Fish. 668.

It is not requisite to include in the claim for a combination as elements thereof all parts of the machine which are necessary to its action, save as they may be understood as entering into the mode of combining and arranging the elements of the combination. *Furbush v. Cook.* 2 Fish. 668.

Defects that render Patent Void.

If anything material in respect to the construction or working of the machine is omitted in the specification, the patentee loses all claim to the exclusive use of his discovery. *Carr v. Rice.* 1 Fish. 198.

If the actual invention is not a material and substantial part of the thing patented, and definitely distinguishable from the other parts claimed, the patent is void. *Hotchkiss v. Oliver*, 5 Denio, 314.

If the allegations and suggestions of the petition are not substantially recited in the patent, the patent will be void. *Evans v. Chambers*, 2 Wash. 125.

If the specification is not in such full, clear, and exact terms as to enable any one skilled in the art to construct the invention therein described without experiments of his own, then the patent is void. *Singer v. Walmsley*, 1 Fish. 558; *Hovey v. Stevens*, 3 W. & M. 17; *Gray v. James*, Pet. C. C. 394; *Judson v. Moore*, 1 Fish. 544; S. C. 1 Bond, 285; *Wayne v. Holmes*, 2 Fish. 20; S. C. 1 Bond, 27; *Winans v. Schen. & Troy R. R. Co.* 2 Blatch. 279; *Grant v. Raymond*, 6 Pet. 218; *contra*, *Whittemore v. Cutter*, 1 Gallis. 429.

A claim broader than the actual invention of the patentee is, for that very reason, upon the principles of common law, utterly void, and the patent is a nullity. *Wyeth v. Stone*, 1 Story, 273; *Parker v. Stiles*, 5 McLean, 44; *Tyler v. Devel*, 1 Am. L. J. 248; *Barrett v. Hall*, 1 Mason, 447; *Moody v. Fisk*, 2 Mason, 112; *Hovey v. Stevens*, 3 W. & M. 17; *Parker v. Sears*, 1 Fish. 93. *Vide* *Whitney v. Emmett*, Bald. 303; *Gray v. James*, Pet. C. C. 394; *Park v. Little*, 3 Wash. C. C. 196; *Lowell v. Lewis*, 1 Mason, 182; *Whittemore v. Cutter*, 1 Gallis. 429.

A claim in the alternative is void for uncertainty, for nothing is claimed absolutely. *Carr v. Rice*, 1 Fish. 325; S. C. 4 Blatch. 200.

An alternative claim is invalid only in those cases where it claims positively neither of several subjects, but is good if all of many which are mentioned are claimed as one or the other is employed by an infringer. If it is said that A. or B. is claimed, this asserts a right to neither; but to claim the one or the other as they are used with an assertion that it has been discovered that both are interchangeably available for specified purposes, is not an alternative claim. *Union Paper Bag Co. v. Nixon*, 6 Fish. 402; S. C. 4 O. G. 31.

If the patent is for the whole of a machine, and the discovery is only for an improvement, the patent is void. *Evans v. Eaton*, Pet. C. C. 322; S. C. 3 Wheat. 454; 7 Wheat. 356; *Whittemore v. Cutter*, 1 Gallis. 478; *Odiorne v. Winkley*, 2 Gallis. 51; *Winans v. N. Y. & Erie R. R. Co.* 1 Fish. 213; S. C. 21 How. 88; *Aiken v. Dolan*, 3 Fish. 197; *Holliday v. Rheem*, 16 Penn. 465; *Darst v. Brockway*, 11 Ohio, 462; *contra*, *Goodyear v. Matthews*, 1 Paine, 300.

Unless the vagueness or ambiguity is very clear and unmistakable, the patent will not be declared void on that ground. *Swift v. Whisen*, 3 Fish. 343; S. C. 2 Bond, 115.

A specification void in part is void *in toto*. *Head v. Stevens*, 19 Wend. 411.

Specification.

The public has a right to know the exact limitations of a patentee's monopoly, and for that reason the law requires distinct, exact, and sharply defined claims. *John M. Cornell*, 1 O. G. 573; *T. C. Hopper*, 2 O. G. 4; *Perry & Law*, 1 Dec. Com. 3; *J. C. Cooke*, 3 Dec. Com. 312; *Fairbanks &*

Robinson, 3 O. G. 65; Frederick W. Dahne, 7 O. G. 1095; J. C. Gould, 10 O. G. 203; Charles E. Williams, 10 O. G. 748.

Ambiguous phrases should not be employed in granting letters patent, to make a claim good which, without them, would be bad and unpatentable. C. Rubens & Co. 1 Dec. Com. 107; H. Waterman, 1 Dec. Com. 70; James Arkell, 3 Dec. Com. 263; J. C. Gould, 10 O. G. 203.

Ambiguous words in a claim, such as "substantially as and for the purpose set forth," used as a limiting clause, are insufficient, unless so placed as to be specially significant. John Sperry, 2 O. G. 387; The Collins Co. 2 O. G. 617; Orrin Rice, 5 O. G. 522.

The words, "or equivalent devices, as described," may be used in a claim. W. R. Walton, 10 O. G. 165.

Whenever the words "equivalent" or "equivalents" occur in a claim, in such a connection as to have an equivocal signification, their use in that connection must be inhibited. Daniel F. Haasz, 4 O. G. 610.

Every new device described in an application should be patented under it, or under a division of it. Lewis J. Atwood, 1 Dec. Com. 98; James R. Hyde, 3 Dec. Com. 109.

A specification should be descriptive, and not discuss the merits or demerits of other patents or inventions. Wm. L. Williams, 1 O. G. 225.

Parts which may be rendered unnecessary by a ready substitute need not be explicitly cited in a combination claim. O. E. McMurray, 8 O. G. 943.

The interpretation of the language of a patent must have regard to the objects of the invention, and harmonize therewith. The signification of terms at the date of a patent must govern, and not those acquired afterwards. *McDougal v. Eames & Seely*, 2 O. G. 86.

Claims which recite definitely the article invented, and contain in addition matter descriptive of the functions of certain parts, are not objectionable. J. J. Gray, 11 O. G. 229.

Ambiguous claims should not be allowed on the ground that the courts would sustain them, if they can do so only upon a forced construction. Joseph Thorne, 1 Dec. Com. 76.

So much of the drawings and specification as repeats the description of the patented machine should be stricken out before the case can be examined on its merits. D. M. Smith, 2 Dec. Com. 69.

Applicants must confine their specifications to the matter sought to be claimed by their patent. D. M. Smith, 3 Dec. Com. 84.

Specific reference to devices by letter in a claim is a restriction upon the devices described in the specification. C. W. Marsh, 2 O. G. 197.

The description of an old improvement, even though not claimed, should be eliminated from the specification. James A. Woodbury, 1 Dec. Com. 86.

A reference to a caveat concerns the history, and not the description, of an invention, and should not be cited in a specification in an application for a patent. Thomas J. Chubb, 2 O. G. 519.

It is not required that all the elements entering into the construction of a device be mentioned, unless its novelty demands it; but only such as will constitute it an operative whole need be named. James Farrow, 2 O. G. 57.

The parts of a combination must be specified only up to that point beyond which the presence of the parts not named will be presumed from the known state of the art or the necessities of the case. Moses G. Wilder, 3 Dec. Com. 125; H. J. Kent, 3 Dec. Com. 301.

Where a part of a combination is capable of useful operation by itself, the inventor may embrace a claim for the combination and for such part in one patent. James D. Sturges, 1 O. G. 204.

Where a combination has no function, except in connection with some element not mentioned, the latter is inferentially included, and its introduction into the claim produces no real change. *William F. West*, 2 O. G. 30.

The introduction of dead elements into a claim of several combinations does not change the nature of it; but were a new element is introduced, modifying the operation of the former combination, the claim is not identical with the first. *William F. West*, 2 O. G. 30.

A claim for a combination which is distinguishable from others only by a single element should specify it. *Charles Rubens & Co., Assignees*, 1 Dec. Com. 107; *Henry Waterman*, 2 Dec. Com. 70.

Where the scope of the invention extends only to the specific devices presented, a broad claim will be refused. *Joseph L. Pennock*, 2 O. G. 590.

A feature essential to the operation of a device should be included in the claim therefor. *Farnsworth v. Andrews*, 9 O. G. 195.

Every claim should be so drawn as to plainly indicate the nature of the invention sought to be covered by it. *Thomas J. Mayall*, 4 O. G. 210.

Nothing should be embraced in a claim which has not been previously set forth. *Owen Dorsey*, 2 Dec. Com. 17; *J. W. Wattles*, 3 O. G. 291.

Division.

Under no circumstances can the same inventor become entitled to receive from the government more than one patent for the same invention and covering the same ground. *John C. Duckworth*, 2 Dec. Com. 151; *C. B. Cottrell*, 9 O. G. 495; *Luther O. Crocker*, 1 Dec. Com. 6.

A claim for a machine, and a claim for the product of the machine, will not be allowed in the same application. *Murray & Wuterich*, 3 O. G. 659.

It is not the design of the patent law to grant a separate patent to every possible application of a process. *W. H. Howell*, 9 O. G. 921.

If one has invented a process or a machine, by which he turns out a new and improved manufacture, he is entitled to a patent for the article as well as the process or machine. *George Lupton*, 5 O. G. 489.

A patent will not be granted for a product to one who already has one for the process which describes it. *McCracken v. Russel*, 1 Dec. Com. 35.

A patent will not be granted to the same person for an apparatus, and also for the principle upon which it operates. *William Lowe*, 2 Dec. Com. 39.

If an article is not necessarily the result of the action of a machine, the applications for patents for the article and machine should be separate. 11 O. G. 110.

Where an apparatus is used in a process to produce a new article, the applicant may claim the apparatus, the process and the article, in one patent. *A. D. Elbers*, 12 O. G. 2.

An inventor can not be allowed to go back and obtain a second patent for the same invention upon the earlier form of the application. *James R. Hyde*, 3 Dec. Com. 109.

If two or more distinct inventions are united in one application, that are capable of division, and which belong to different classes, or involve a double labor of examination, or have no community of operation, the commissioner should require the application to be divided. *Linus Yale, Jr.*, 1 Dec. Com. 110; *E. R. Sumner*, 3 Dec. Com. 180; *Abel Combs*, 3 Dec. Com. 209; *Henry M. Stow*, 3 O. G. 322; *John F. Shepard*, 3 O. G. 522; *Lones, Vernon & Holden*, 4 O. G. 582; *Henry Birun*, 5 O. G. 521; *Wm. Tucker*, 6 O. G. 470; *John Gillies*, 10 O. G. 415; *Sol Kuh*, 10 O. G. 587; *A. D. Elbers*, 12 O. G. 2.

Where the improvements have nothing to do with the combination, but are of general application, the applicant is entitled to no more favor than if he attempted to patent improvements upon two independent machines under one grant. *Leopold Lehmann*, 2 Dec. Com. 70; *J. T. Cree*, 2 Dec. Com. 78.

If devices constitute necessary elements in the production of the result they need not be the subjects of separate applications. *Jesse Jopling*, 8 O. G. 1032; *Clinton & Knowlton*, 9 O. G. 249.

In requiring the division of an application, the nature and extent of the division should be clearly indicated. *Kernard Knott*, 8 O. G. 238.

The requirement of a division of an application presupposes that matter exists which might constitute the subjects of two or more patents. *Richard Pintsch*, 11 O. G. 597.

If one ingredient of the composition is omitted in one of the claims, the composition is so changed as to become the subject of a separate application. *G. & I. Loeser*, 9 O. G. 837.

If joint inventors file an application for a patent for a design, and then subsequently conclude to divide the claim and apply for two patents, the second application for a part of the invention must be sworn to. *Tieman*, 11 O. G. 1.

One need not divide his application, and apply for a separate patent for each form which he shows by way of illustration in his specification. *Barak T. Nichols*, 4 O. G. 105.

An application for a patent need not be divided if all the elements of the apparatus are to be used conjointly for a definite and single purpose. *Westenhaven & Adair*, 5 O. G. 695.

Two distinct species can not be embraced in one patent, though belonging to one genus of inventions. *Robert N. Eagle*, 2 Dec. Com. 137.

It is admissible, under proper restrictions, for parties to put their claims in different forms to prevent misconstruction. *Perry & Law*, 1 Dec. Com. 3; *Evans W. Shippen*, 8 O. G. 727.

Every claim in an application, in order to be valid, must, in one sense, cover an independent invention, yet all the claims must pertain to one common device or subject of invention. *Robert M. Franklin*, 4 O. G. 105.

Two claims in an application should be more clearly distinguished than by omitting from one of them a feature specified in the other, and which is usual and indispensable to those that are mentioned. *George Richardson*, 3 Dec. Com. 303.

SEC. 4889. When the nature of the case admits of drawings, the applicant shall furnish one copy signed by the inventor or his attorney in fact, and attested by two witnesses, which shall be filed in the patent office; and a copy of the drawing, to be furnished by the patent office, shall be attached to the patent as a part of the specification.

Statute Revised—July 8, 1870, ch. 230, § 27, 16 Stat. 201.

Prior Statutes—Feb. 21, 1793, ch. 11, § 3, 1 Stat. 321.—July 4, 1836, ch. 357, § 6, 5 Stat. 119.—March 3, 1837, ch. 45, § 6, 5 Stat. 193.

The requirement that the applicant shall furnish drawings, though directory in its terms, is not a condition, and it has obvious reference in point of time to the issuing of the patent, and not to the filing of the petition for it. *French v. Rogers*, 1 Fish. 133.

The drawing becomes a part of the patent, and may be referred to to help out the description. *Hogg v. Emerson*, 2 Blatch. 1; S. C. 6 How. 437.

The drawings are to be treated as part of the written specification, and

may be referred to to show the nature and character, and extent of the claim, as well as to compose a part of the description. *Washburn v. Gould*, 3 Story, 122.

It is not necessary, in order to make a patent valid, that the patentee should so make the drawings in his patent that they can be used as working drawings, or that a machine made in accordance with the exact scale of the drawings which accompany the patent in the patent office, should be an operative machine. All that is necessary, is that the patentee shall so describe his invention that a mechanic skilled in the art to which that invention relates, will be able, by the aid of the description and drawings of the patent, to embody that invention in a practical, operative, efficient and effectual form. *American Leather Co. v. American Tool Co.* 4 Fish. 284.

The express terms of the clause no more require that the written references shall be incorporated in the specification than that the drawings shall be. If the references required are written on the drawings, the terms of the statute are satisfied. *Hogg v. Emerson*, 2 Blatch. 1; S. C. 6 How. 437; 11 How. 587.

Unless references are necessary to an understanding of the invention, their omission cannot vitiate the patent. The description of the machine, accompanied by a drawing, may be in many cases understood without references. *Brooks v. Bicknell*, 3 McLean, 250; *Washburn v. Gould*, 3 Story, 122.

It is not necessary to use letters of reference to the drawing, in order to render a claim more definite. *E. L. Parker*, 3 Dec. Com. 293.

An applicant for a patent need not furnish a model and drawing of the whole of the machine which he claims to have improved, provided the machine is well known to the public, or a description of it readily accessible. *Christopher C. Tracy*, 8 O. G. 144.

An application will be refused where the combination claimed is not shown either in drawings or models. *Rulof Dodge*, 2 Dec. Com. 149.

SEC. 4890. When the invention or discovery is of a composition of matter, the applicant, if required by the commissioner, shall furnish specimens of ingredients and of the composition, sufficient in quantity for the purpose of experiment.

Statute Revised—July 8, 1870, ch. 230, § 28, 16 Stat. 201.

Prior Statutes—Feb. 21, 1793, ch. 11, § 3, 1 Stat. 321.—July 4, 1836, ch. 357, § 6 5 Stat. 119.

If the specification for a composition clearly describes the composition and all the ingredients and proportions in language perfectly intelligible to those skilled in the art, the patent will not be invalidated by a failure to deposit in the patent office a sample of one of the ingredients. This requirement, like some others, is made obligatory before the granting of the patent. It is for the commissioner to decide before granting the patent, whether it has been complied with. If he does so decide and grants the patent, that can not be subsequently impeached by evidence tending to show want of compliance with

the law as to giving notice or paying fees or performing the other acts required to be done before the patent is granted, and the performance of which is to be proved to the satisfaction of the commissioner whose decision on these questions is final where he has jurisdiction. *Tarr v. Folsom*, 1 Holmes, 312; S. C. 5 O. G. 92.

SEC. 4891. In all cases which admit of representation by model, the applicant, if required by the commissioner, shall furnish a model of convenient size to exhibit advantageously the several parts of his invention or discovery.

Statute Revised—July 8, 1870, ch. 230, § 29, 16 Stat. 201.

Prior Statutes—April 10, 1790, ch. 7, § 2, 1 Stat. 110.—February 21, 1793, ch. 11, § 3, 1 Stat. 321.—July 4, 1836, ch. 357, § 6, 5 Stat. 119.

A model will be required in every case when the nature of the invention admits of such illustration, except the applications upon designs. *John Murdock*, 6 O. G. 506.

SEC. 4892. The applicant shall make oath that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used; and shall state of what country he is a citizen. Such oath may be made before any person within the United States, authorized by law to administer oaths, or when the applicant resides in a foreign country, before any minister, chargé d'affaires, consul, or commercial agent, holding commission under the government of the United States, or before any notary public of the foreign country in which the applicant may be.

Statute Revised—July 8, 1870, ch. 230, § 30, 16 Stat. 202.

Prior Statutes—February 21, 1793, ch. 11, § 3, 1 Stat. 321.—July 4, 1836, ch. 357, § 6, 5 Stat. 119.—August 29, 1842, ch. 263, § 4, 5 Stat. 544.

The taking of the oath that the patentee is the true inventor or discoverer of the art, machine, or improvement, is but a prerequisite to the granting of the patent, and in no degree essential to its validity. It is not a condition precedent without which the patent fails. *Whittemore v. Cutter*, 1 Gallis. 429; *Crompton v. Belknap Mills*, 3 Fish. 536; *Dyer v. Rich*, 42 Mass. 180; *contra*, *Child v. Adams*, 1 Fish. 189; S. C. 3 Wall. Jr. 20.

The mere presence of a blank form of the oath, with the jurat not signed by any magistrate, on file in the case in the Patent Office, can not overcome

the direct recital of the letters patent that the oath was taken. *Crompton v. Belknap Mills*, 3 Fish. 536.

The recital in the patent that the required oath was taken before the same was granted is, in the absence of fraud, conclusive evidence that the necessary oaths were so taken. *Seymour v. Osborne*, 3 Fish. 555; S. C. 11 Wall. 516.

The oath may be taken elsewhere than before the commissioner. *Seymour v. Osborne*, 3 Fish. 555; S. C. 11 Wall. 516.

There is no provision which requires that the jurat to the application shall be dated, and consequently the omission of the date of the day or month does not affect the validity of the patent. *French v. Rogers*, 1 Fish. 133.

The oath of an applicant is not a mere formal matter, but is required by act of Congress, because it goes to assure the novelty and utility of the invention. *Eaton, Blodgett & Mills*, 4 O. G. 525.

The objection that a specification was made out on papers signed and sworn to in blank, will be waived if a specification properly described and sworn to is substituted. *De La Mar v. Gurens & Behrens*, 1 Dec. Com. 94.

A new oath must accompany the divisional portion of an application the same as if it were an original application. *James Heginbotham*, 8 O. G. 237.

SEC. 4893. On the filing of any such application and the payment of the fees required by law, the commissioner of patents shall cause an examination to be made of the alleged new invention or discovery; and if on such examination it shall appear that the claimant is justly entitled to a patent under the law, and that the same is sufficiently useful and important, the commissioner shall issue a patent therefor.

Statute Revised—July 8, 1870, ch. 230, § 31, 16 Stat. 202.

Prior Statutes—April 10, 1790, ch. 7, § 1, 1 Stat. 109.—July 4, 1836, ch. 357, § 7, 5 Stat. 119.

The commissioner is required to cause an examination to be made of the alleged invention or discovery, but he is not specifically told by what particular officers he is to have the examination made. *Hull v. Commissioner*, 7 O. G. 559; S. C. 8 O. G. 46.

The commissioner is not bound to issue the patent, although the examiners in chief decide in favor of the applicant; but he may examine the evidence, and withhold the patent. *Hull v. Commissioner*, 7 O. G. 559; S. C. 8 O. G. 46.

The issuing of all patents is at the control of the commissioner, and he may stop any one for good cause, although the examiners in chief have decided on appeal that it ought to issue. *Stephen Hull*, 1 Dec. Com. 68; *Moody & Hudson*, 1 Dec. Com. 108; *Morris v. Watson*, 2 Dec. Com. 71.

The commissioner will not arrest the issue of a patent allowed by the examiners in chief, except in cases in which it is beyond question that their judgment is erroneous or opposed to the general policy of the patent office. *Disston v. Traut*, 1 O. G. 305.

The commissioner can not ignore an objection to patentability whenever his attention is called to it by the examiner in chief or the primary examiner, although the objection may be made in an irregular manner. *William S. Smoot*, 11 O. G. 1010.

SEC. 4894. All applications for patents shall be completed and prepared for examination within two years after the filing of the application, and in default thereof, or upon failure of the applicant to prosecute the same within two years after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the commissioner of patents that such delay was unavoidable.

Statute Revised—July 8, 1870, ch. 230, § 32, 16 Stat. 202.

Prior Statute—March 2, 1861, ch. 88, § 12, 12 Stat. 248.

The statute does not interpose an absolute bar to the granting of a patent where the application has not been completed and prepared for examination within two years. The delay may be condoned by proof that it was unavoidable. The decision of the fact is committed to the commissioner. If it is shown to his satisfaction that the delay was unavoidable, the application is not to be regarded as abandoned. He is invested with power to grant the patent, and he may exercise it subject to the duty of determining that the preparation of the application for examination was not unnecessarily delayed after two years. The sufficiency of the evidence is for him. He is the only judge to be satisfied, and his judgment is conclusive. *McMillin v. Barclay*, 5 Fish. 189; *s. c.* 4 Brews. 275.

If an applicant neglects to prosecute his application for two years after the office have rejected it, it will be held to be abandoned, unless it be shown that such delay was unavoidable. *W. D. Leavitt*, 3 O. G. 212; *vide* *Weitling et al. v. Cabell et al.* 2 O. G. 223.

This section comprehends the abandonment of applications only, which is a different thing from the abandonment of an invention to the public. *William H. Golding*, 8 O. G. 141.

If after an application is withdrawn, another is not filed in two years, it may reasonably be presumed that the applicant has no intention of renewing it. *Hamilton v. Foster*, 1 Dec. Com. 30; *John W. Orr*, 1 Dec. Com. 33; *Edsall v. Coffin*, 1 Dec. Com. 65; *Benson v. Bennett*, 2 Dec. Com. 26; *Gates et al. v. Benson*, 2 Dec. Com. 65; *Wm. W. Williams, adm'r*, 2 Dec. Com. 109; *Hiram H. Marsh*, 2 Dec. Com. 151.

If a second application is filed within two years of the date of the withdrawal, this renewal may be regarded as establishing a continuity of application, which makes it necessary that a public use, such as will operate as a bar to the grant of a patent, shall have taken place two years before the filing of the first application. *S. Howes*, 1 O. G. 227.

Delay in the prosecution of an application may be excused by satisfactory proof. *Alfred Shol*, 3 Dec. Com. 62; *R. A. Stewart*, 4 O. G. 665; *s. c.* 5 O. G. 1; *Stephen Hull*, 9 O. G. 1.

Delay in prosecuting an application is not excused because the applicant is too deeply engaged in other pursuits; nor by anything short of such embarrassments as unavoidably prevent him. *Gray v. Hale*, 3 Dec. Com. 129.

If no steps are taken towards prosecuting an application for two years after notice of the last action of the office upon it, except to enter a formal abandonment and request a return of the model, it must be considered abandoned. *Freham Graham*, 3 O. G. 211; *Lee & Smith*, 5 O. G. 58.

The apparent date of a paper requesting further action may or may not be correct. It may be wholly deceptive and intended to mislead. The only date that can be regarded as entirely reliable is that of filing as indicated by the official stamp on the paper. *Henry H. Blake*, 3 O. G. 2.

A prior rejected or withdrawn application can not be held as a bar to the issue of a patent under a subsequent application. *G. B. Sexton*, 9 O. G. 251.

Neglecting to take any steps in prosecuting an application for a reissue for two years after the last action of the office upon it does not work an abandonment of it. *N. H. Galusha*, 3 O. G. 321.

SEC. 4895. Patents may be granted and issued or reissued to the assignee of the inventor or discoverer; but the assignment must first be entered of record in the patent office. And in all cases of an application by an assignee for the issue of a patent, the application shall be made and the specification sworn to by the inventor or discoverer; and in all cases of an application for a reissue of any patent, the application must be made and the corrected specification signed by the inventor or discoverer, if he is living, unless the patent was issued and the assignment made before the eighth day of July, eighteen hundred and seventy.

Statute Revised—July 8, 1870, ch. 230, § 33, 16 Stat. 202.

Prior Statute—March 3, 1837, ch. 45, § 6, 5 Stat. 193.

A patent can not be granted to an assignee where the inventor himself would not be entitled to a patent. *Tatham v. Loring*, 5 N. Y. Leg. Obs. 207.

If assignments have been made, the commissioner of patents must be governed by the record in determining to whom a patent shall issue. *Thomas A. Edison*, 7 O. G. 423.

SEC. 4896. When any person, having made any new invention or discovery for which a patent might have been granted, dies before a patent is granted, the right of applying for and obtaining the patent shall devolve on the executor or administrator, in trust for the heirs at law

of the deceased, in case he shall have died intestate; or if he shall have left a will, disposing of the same, then in trust for his devisees, in as full manner and on the same terms and conditions as the same might have been claimed or enjoyed by him in his lifetime; and when the application is made by such legal representatives, the oath or affirmation required to be made shall be so varied in form that it can be made by them.

Statute Revised—July 8, 1870, ch. 230, § 34, 16 Stat. 202.

Prior Statutes—April 17, 1800, ch. 25, § 2, 2 Stat. 38.—July 4, 1836, ch. 357, § 10, 5 Stat. 121.

A patent issued to an executor will be valid, although the trust is not expressed on the face thereof, for the law creates the trust. *Stimpson v. Rogers*, 4 Blatch. 333; *Northwestern Co. v. Philadelphia*, 6 O. G. 34; S. C. 31 Leg. Int. 148.

The import of this provision is that while the legal title to the invention is devolved upon the administrator, he must take and hold it subject to any equities existing as against the inventor in his lifetime. Where the inventor parted with the equitable title, the administrator holds it under exactly the same conditions, and subject to the same limitations of his interest in it. *Northwestern Co. v. Philadelphia Co.* 6 O. G. 34; S. C. 31 Leg. Int. 148.

An administrator with relation to letters patent is substantially a trustee for the heirs of the inventor, but in order to act he must make proof of his representative character. Foreign letters of administration are not good evidence of it. *Robert Ransome's Ex'rs*, 2 Dec. Com. 143.

SEC. 4897. Any person who has an interest in an invention or discovery, whether as inventor, discoverer, or assignee, for which a patent was ordered to issue upon the payment of the final fee, but who fails to make payment thereof within six months from the time at which it was passed and allowed, and notice thereof was sent to the applicant or his agent, shall have a right to make an application for a patent for such invention or discovery the same as in the case of an original application. But such second application must be made within two years after the allowance of the original application. But no person shall be held responsible in damages for the manufacture or use of any article or thing for which a patent was ordered to issue under such renewed application prior to the issue of the patent. And upon the hearing

of renewed applications preferred under this section, abandonment shall be considered as a question of fact.

Statute Revised—July 8, 1870, ch. 230, § 35, 16 Stat. 202.

Prior Statutes—June 25, 1864, ch. 159, § 1, 13 Stat. 194 —March 3, 1865, ch. 112, § 1, 13 Stat. 535.

The decision of the commissioner in regard to abandonment upon a renewed application is not conclusive, and all the defenses which can be made to a patent granted upon an original application may be made to a patent granted upon a renewed application. *U. S. Rifle Co. v. Whitney Arms Co.* 11 O. G. 373; *Marsh v. Commissioner*, 5 Fish. 610; S. C. 3 Biss. 321; 2 O. G. 340.

If applicants file new applications, such as have been before filed by them and abandoned, the proper action is not to reject them on reference to the former application, but to refuse to consider them, because the right to file them did not exist. *Andrew Mills*, 7 O. G. 961; *George Crompton*, 9 O. G. 5; *Alfred Shoe*, 3 Dec. Com. 62; *Robert McCully*, 6 O. G. 153; *Timothy Gordon*, 6 O. G. 543; *Davies v. Hartman*, 9 O. G. 351.

The filing of a naked petition for the renewal of a rejected application does not of itself renew the case, but the petition must be accompanied by a demand for the action appropriate to the next stage of proceeding. *P. Mills-paugh*, 2 Dec. Com. 112.

If an application is made for an article and a process, and the claim for the article is rejected, such claim can only be renewed by an application for a re-issue of the patent for the process. *James Arkel!*, 11 O. G. 1111; *C. B. Cottrell*, 9 O. G. 495.

SEC. 4898. Every patent, or any interest therein, shall be assignable in law by an instrument in writing; and the patentee, or his assigns or legal representatives, may, in like manner, grant and convey an exclusive right under his patent to the whole or any specified part of the United States. An assignment, grant, or conveyance, shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the patent office within three months from the date thereof.

Statute Revised—July 8, 1870, ch. 230, § 36, 16 Stat. 203.

Prior Statutes—February 21, 1793, ch. 11, § 4, 1 Stat. 322.—July 4, 1836, ch. 357, § 11, 5 Stat. 121.

Mode of Assigning.

The monopoly granted to the patentee is for one entire thing. It is the exclusive right of making, using, and vending to others to be used, the improvement he has invented, and for which the patent is granted. The monopoly did not exist at common law, and the rights therefore which may be exercised under it, can not be regulated by the rules of the common law. It

is created by the act of Congress, and no rights can be acquired in it unless authorized by statute, and in the manner the statute prescribes. *Gaylor v. Wilder*, 10 How. 477.

There are three classes of persons in whom the patentee can vest an interest of some kind in the patent. They are an assignee, a grantee of an exclusive sectional right, and a licensee. An assignee is one who has had transferred to him in writing the whole interest of the original patent, or any undivided part of such whole interest, in every portion of the United States; and no one, unless he has had such an interest transferred to him, is an assignee. A grantee is one who has had transferred to him in writing the exclusive right under the patent to make and use, and to grant to others to make and use, the thing patented within and throughout some specified part or portion of the United States. Such right must be an exclusive sectional right, excluding the patentee therefrom. A licensee is one who has had transferred to him in writing or orally a less or different interest than either the interest in the whole patent, or an undivided part of such whole interest, or an exclusive sectional interest. *Potter v. Holland*, 1 Fish. 327; s. c. 4 Blatch. 206; *Hill v. Whitcomb*, 1 Holmes, 317; s. c. 5 O. G. 430; *Gaylor v. Wilder*, 10 How. 477; *Blanchard v. Eldridge*, 1 Wall. Jr. 337; *Pitts v. Jameson*, 15 Barb. 310; *Bussey v. Putney*, 38 N. H. 44.

As the grants of the crown were at common law construed with the greatest strictness, the privileges granted by a patent for a monopoly would probably not have been treated as capable of assignment, unless made so by the letter of the grant. Patents are now granted to the inventor, his executor, administrator, and assigns. They are, therefore, assignable as other personal chattels by force of the grant which creates them. *Blanchard v. Eldridge*, 1 Wall. Jr. 337.

A patent, privilege, or monopoly, could not be assigned at common law, except by deed, for the reason that, being a franchise and part of the royal prerogative, it could only subsist by grant. As a general rule, an assignment of an interest in a patent must be in writing, for the reason that such transactions are required to be recorded, and in fact and reality are not authorized to be made in any other way. *Baldwin v. Sibley*, 1 Cliff. 150; *Jordan v. Dobson*, 4 Fish. 232; s. c. 2 Abb. U. S. 398; 7 Phila. 533.

An assignment is a grant in writing of the whole or a part of the exclusive right vested in the patentee by the letters patent, and it makes no difference whether such part be designated as an undivided part of the whole patent, or as the grant of the exclusive right of the patentee within a particular district. *Baldwin v. Sibley*, 1 Cliff. 150; *Farrington v. Gregory*, 4 Fish. 221.

It was obviously not the intention of Congress to permit several monopolies to be made out of one and divided among different persons within the same limits. Such a division would inevitably lead to fraudulent impositions upon persons who desired to purchase the use of the improvement and would subject a party who, under a mistake as to his rights, used the invention without authority, to be harassed by a multiplicity of suits instead of one, and to successive recoveries of damages by different persons holding different portions of the patent right in the same place. *Gaylor v. Wilder*, 10 How. 477; *Suydam v. Day*, 2 Blatch. 20.

Construction.

There is no magic in particular words, and they should be construed as they stand, and are used in the particular instrument, and in searching for the true interpretation, the courts will look to all the provisions of the instrument, and give such effect to it as its obvious object and design require. The words license and empower may be construed to mean grant, if that will effectuate the true intent and apparent object of the parties. *Washburn v. Gould*, 3 Story, 122.

Contracts are usually made with reference to the established law of the land, and should be so understood and construed unless otherwise clearly indicated by the terms of the agreement. *Wilson v. Rousseau*, 4 How. 646; S. C. 1 Blatch. 3.

The exclusive rights of a patentee are specially guarded from intrusion, but the contracts which he makes to share them with third persons are interpreted and enforced just as other legal engagements. *Morse v. O'Reilly*, 6 Penn. L. J. 501.

Reference may be made to the circumstances under which a contract was made, as affording the means of applying the language employed in the instrument to the subject-matter of the agreement. *Read v. Bowman*, 2 Wall. 591.

A reference to the specifications renders it allowable to examine those documents in connection with the assignment as means of ascertaining the true intent and meaning of the parties. *Read v. Bowman*, 2 Wall. 591.

General words in an agreement should be restrained by the particular occasion of using them. *Troy Factory v. Corning*, 14 How. 193; S. C. 1 Blatch. 467.

If an assignment recites the letters patent, giving their date and the name of the patentee, it is sufficient to pass the title to the invention patented, although the invention is misnamed. *Harmon v. Bird*, 22 Wend. 113.

If there is any doubt in the construction of an assignment, it should be resolved against the grantor, for he is chargeable with any obscurity in this respect. *Smith v. Selden*, 1 Blatch. 475; *May v. Chafee*, 5 Fish. 160; S. C. 2 Dillon, 385.

Where there is doubt as to the proper construction of an instrument, a subsequent confirmatory instrument is entitled to great consideration; but where its meaning is clear in the eye of the law, the error of the parties cannot control its effect. *Railroad Co. v. Trimble*, 10 Wall. 367.

The date of a deed may always be controlled by evidence of the actual delivery. If an agreement recites the deed and states that it was then made, this is conclusive that the deed was then made, and the date is immaterial. *Dyer v. Rich*, 42 Mass. 180.

The interpretation of a contract is to be determined by the sense in which the parties intended to use the terms employed to express it. *Wetherill v. Zinc Co.* 6 Fish. 50; S. C. 9 Phila. 385; 2 O. G. 471.

The sense in which the parties intended to use the terms employed in a contract, must be gathered from the instrument itself, irrespective of declarations written or oral by either party, as to his understanding of its meaning or

as to his motives in making it. *Wetherill v. Zinc Co.* 6 Fish. 50; S. C. 9 Phila. 385; 2 O. G. 471.

In aid of the interpretation of a contract, it is proper to consider facts cognate to the subject of the contract and within the knowledge of the parties to which it may therefore be presumed that the stipulations of the contract were intended to be applied, and by which their effect and meaning were to be governed. *Wetherill v. Zinc Co.* 6 Fish. 50; S. C. 9 Phila. 385; 2 O. G. 471.

Each case must be judged of as well by the terms of the grant of privilege as also by the situation of the parties or the circumstances under which they act. *Steam Cutter Co. v. Sheldon*, 5 Fish. 475; S. C. 10 Blatch. 1.

An assignment of an interest in an invention secured by letters patent is a contract, and, like all other contracts, is to be construed so as to carry out the intention of the parties. *Nicolson Co. v. Jenkins*, 14 Wall. 452; S. C. 4 Fish. 201; 5 Fish. 491; 1 Abb. U. S. 567; 1 O. G. 465; 3 A. L. T. (U. S.) 177.

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 appears that some other or different meaning was intended by them. *Goodyear v. Cary*, 4 Blatch. 271.

No court is at liberty to add to the terms used any meaning beyond their ordinary import, unless there are some supplementary expressions to justify such a construction. *Woodworth v. Sherman*, 3 Story, 171.

It is not to be presumed that a grantor intends to grant more than he has a right to grant, or that a grantee intends to receive by way of grant that to which he has a full right without a grant. *Goodyear v. Cary*, 4 Blatch. 271.

Every part of a deed should be examined in order to ascertain whether the interpretation to be given to a particular clause is the true one. *Goodyear v. Cary*, 4 Blatch. 271; *Baldwin v. Sibley*, 1 Cliff. 150.

Courts of equity do not regard the forms of instruments, but look to the intent, and give to the acts of the parties the construction which that intent justifies and requires, so far as it can be done consistently with general principles. *Hall v. Speer*, 6 Pitts. L. J. 403; *Perry v. Corning*, 7 Blatch. 195.

A limitation to patents which the party holds in his own right, applies to patents of which he is the apparent but not real owner, but does not exclude patents of which his tenure is not exclusive. *Wetherill v. Zinc Co.* 6 Fish. 50; S. C. 9 Phila. 385; 2 O. G. 471.

If the grantee is unable to make the stipulated payments, and the transfer is treated as a nullity by both parties, it will not be regarded as in force. *Railroad Co. v. Trimble*, 10 Wall. 367.

If the payment of an annuity is not a condition to the vesting of an interest in the patent, an omission or refusal to pay will not give the patentee a right to rescind the contract, or have the effect to remit him to his interest in the patent as patentee. The right to the annuity rests in covenant. *Hartshorn v. Day*, 3 Fish. 32; S. C. 19 How. 211; *Day v. Union Rubber Co.* 20 How. 216; S. C. 3 Blatch. 488; *Day v. Candee*, 3 Fish. 9; *Goodyear v. Union Rubber Co.* 4 Blatch. 63; *Steam Cutter Co. v. Sheldon*, 5 Fish. 475; S. C. 10 Blatch. 1.

If a party, in consideration of an assignment of a patent, agrees to give the patentee a certain percentage of the profits arising from the sale of the patented article, and of the right to manufacture it, this contains an implied contract that the business shall be carried on if profitable. *Wilson v. Marlow*, 66 Ill. 385.

A deed conveys a title, although it may have covenants in it which have not been performed. There are things which rest in grant, and things which rest in covenant. If the covenant fails by the *laches* of the grantor, the grant nevertheless stands. The covenant does not affect the grant; the grant passes the title and operates *in presenti*. *Day v. Stellman*, 1 Fish. 487.

Assignment.

The consideration expressed in an assignment is not conclusive upon the parties. The assignee, in an action by the assignor for the price, may prove that the assignor for the amount named therein also agreed to give him the benefit of additional improvements, and had not done so. *Wheeler v. Billings*, 38 N. Y. 263.

If an instrument is in words and effect no more than an appointment of a party as the patentee's sole agent, in terms irrevocable, yet giving him only an interest by way of commissions in the proceeds of the sale of the articles manufactured and sold by him in the execution of his agency, the patentee may make an assignment of the same territory to another. *Kempton v. Bray*, 99 Mass. 350.

If an assignment containing a provision for its cancellation on six months' notice, provides that the assignor shall receive a certain sum for each year during the term of the agreement, from the premiums, and the assignee elects to cancel the assignment before the termination of a year, the assignor may recover a proportionate sum for the time that the assignee actually enjoyed the benefit of the contract. *Gale v. Nourse*, 81 Mass. 300.

A mere assignment under a State insolvent law does not pass the debtor's interest in a patent, for the statute contemplates a written instrument signed by the owner of the patent, and duly recorded in the patent office, as necessary to vest the legal title in the purchaser. *Ashcroft v. Walworth*, 5 Fish. 528; s. c. 1 Holmes, 152; 2 O. G. 546.

A judgment debtor may be compelled, on proceedings supplemental to an execution, to execute and deliver an assignment of his interest in a patent to a receiver. *Clan Ranald v. Wyckoff*, 41 N. Y. Supr. 527; *Barnes v. Morgan*, 6 T. & C. 105; s. c. 10 N. Y. Supr. 703.

The thing to be assigned is not the mere parchment on which the grant is written, but the monopoly which the grant confers, the right of property which it creates. *Railroad Co. v. Trimble*, 10 Wall. 367.

If an agent employed to sell a patent right secretly purchases it from the principal without disclosing the fact that he is a purchaser, and then sells parts thereof to others, he can not, upon being called upon to account for the profits, repurchase such parts and tender them to the principal. *Jeffries v. Wiester*, 2 Saw. 135.

An interest in the net proceeds of collections under a patent, does not nec-

cessarily amount to legal ownership of the patent itself. *Jordan v. Dobson*, 4 Fish. 232; S. C. 7 Phila. 533; 2 Abb. U. S. 398.

An assignment by a patentee in such general terms as are usual in speaking of the thing to which the patented part is attached, conveys the right to make and use the thing actually patented. *Myers v. Turner*, 17 Ill. 179; *Hill v. Thuermer*, 13 Ind. 351.

If an assignment is a grant upon a condition precedent, an offer on the part of the grantee to perform the condition does not give effect to the grant so as to vest the title in the grantee. *Pitts et al. v. Hall*, 3 Blatch. 201.

If the purchaser, in consideration of an assignment, agrees to pay a certain sum within a certain time, or reassign the interest so received, and fails to pay within the time, the patentee acquires the right to demand a reassignment, and if not reassigned he can recover the value. All that the purchaser is bound to do is to offer to reassign the interest. *Manvel v. Holdredge*, 45 N. Y. 151.

Limitations in respect to territorial limits, extent of use, and the like, may be, and in general are, provided by express terms or stipulations. *Steam Cutter Co. v. Sheldon*, 5 Fish. 475; S. C. 10 Blatch. 1.

The assignment of an exclusive right to make and use, and to vend to others the patented machine within a certain territory, authorizes the assignee to vend the products of the machine elsewhere. The restriction in the assignment is to be construed as applying solely to the using of the machine. There is no restriction as to place of the sale of the product. *Simpson v. Wilson*, 4 How. 709.

A special grant of the right of vending, over and above that of making and using, in an assignment, is wholly unnecessary where the assignment contemplates the exclusive right within a certain district, so as to give the assignee the whole interest. The exclusive right of fabricating and using necessarily comprises the whole beneficial interest, and the right of parting with it, or any part of it, is incident to the right of property. The latter was specially secured by the statute *ex majori cautela* to obviate all difficulty on the subject. *Bellas v. Hays*, 5 S. & R. 427.

An assignee can not assign the entire right for a particular territory, and then sell single machines to be used in the same territory after the expiration of the patent. *Union Paper Bag Co. v. Nixon*, 9 O. G. 691; S. C. 3 Cent. L. J. 223.

A covenant that the covenantee shall enjoy the exclusive use of the patent within a certain territory, such use being limited to a certain number of machines, passes the entire interest of the patentee in the thing patented for the territory, and vests it in the covenantee. *Ritter v. Serrell*, 2 Blatch. 379.

This section refers to the grant of an exclusive right in a patent, and the term exclusive comprehends not only an exclusive right to the whole patent, but an exclusive right to the patent in a particular section of the country. A limitation of the number of the machines to be manufactured by the grantee, or a reservation of a right by the patentee to construct machines within the territory, does not destroy the exclusive character of a grant. *Washburn v. Gould*, 3 Story, 122.

The assignment of a patent does not carry with it a transfer of the right

to damages for an infringement committed before such assignment. *Moore v. Marsh*, 7 Wall. 515.

A claim for damages arising from an infringement may be assigned. The profits are not regarded in the light of unliquidated damages. The right to recover rests upon the principle that the party complained of has unlawfully appropriated to himself the benefits of an improvement or discovery which belongs to another, and that so far as he has made profit by such appropriation, he is liable to the party injured. This profit is ascertainable by evidence, and does not, like the claim for damages in an action for a tort, rest in the mere discretion of a court or jury. *Jenkins v. Grunwald*, 2 Fish. 37; S. C. 1 Bond, 126.

The right to the damages which accrued in the lifetime of the patent is a mere chose in action after the expiration of the patent, and not assignable. *Bell v. McCullough*, 1 Fish. 380; S. C. 1 Bond, 194.

Agent.

An agency is revocable, but an agency coupled with an interest is not revocable. *Burdell v. Denig*, 2 Fish. 588; S. C. 92 U. S. 716.

Where an assignment is executed by an agent, there must be proof of the agent's authority. *Stone v. Palmer*, 28 Mo. 539.

An agent can not execute an assignment under seal unless he has authority under seal. *Bellas v. Hays*, 5 S. & R. 427.

The execution of an assignment by affixing the name and seal of the agent, and not the name and seal of the principal, is not a good execution of the authority. *Bellas v. Hays*, 5 S. & R. 427.

No confirmation of an assignment defectively executed in the name of an agent, can make it the deed of the principal short of affixing the name and seal of the principal. *Bellas v. Hays*, 5 S. & R. 427.

Corporation.

A certificate of an interest in a patent, purporting to be signed by the secretary of a corporation to be subsequently organized, is not such an assignment as the statute requires. *Hope Iron Works v. Holden*, 58 Me. 146.

A contract will bind a corporation, although its officer uses his private seal instead of the corporate seal, if he was duly authorized to make it, or his act was subsequently ratified. *Eureka Co. v. Bailey Co.* 11 Wall. 488.

An assignment to an incorporated company not at the time organized, will inure to its use when organized, at least by way of estoppel, and be good against the grantor, whether it took effect on its delivery to pass any property or not. *Dyer v. Rich*, 42 Mass. 180.

Personal Representatives.

If the court which pronounced a judgment has jurisdiction over the subject-matter, a proper case for its exercise will be presumed to have been sufficiently presented, and the adjudication to be right. The granting of letters of administration to a party, by a court of competent jurisdiction, is conclusive

of his legal right to the grant of them. *Northwestern Co. v. Philadelphia Co.* 6 O. G. 34; S. C. 31 Leg. Int. 148.

The right of an executor or administrator of the patentee will be determined according to the law of the patentee's domicile at the time of his decease. *Rubber Co. v. Goodyear*, 2 Fish. 499; S. C. 9 Wall. 788; S. C. 2 Cliff. 351.

The right of an administrator in a patent is not acquired, and can not be assigned, under State laws. The act of Congress directs the mode in which an assignment shall be made, and where it shall be recorded. The administrator may sell the patent the same as any other personal property of the estate, and there is no reason why the right may not be conveyed in parts so as to suit purchasers. *Brooks v. Jenkins*, 3 McLean, 432.

Administrators of an estate are not, properly speaking, trustees in whom is vested the legal title. The law clothes them with certain powers, by which they are enabled to transmit the legal title of property. Acts done by one of them, which relate to the delivery, gift, sale, or release of the decedent's goods or personal property are deemed the acts of all. An assignment by one administrator will therefore pass the whole interest in the patent. *Wintermute v. Redington*, 1 Fish. 239.

The purchaser of personal property from an administrator need not show that the formality required by the law has been complied with, for he can hold it unless the transaction is fraudulent. *Brooks v. Jenkins*, 3 McLean, 432.

An assignment by a person as administrator will pass the right held by the person as executor. *Newell v. West*, 13 Blatch. 114; S. C. 8 O. G. 598; S. C. 9 O. G. 1110.

Estoppel.

A man can pass by grant or assignment only that which he now possesses, and which is in existence at the time either actually or potentially. His grant or assignment is therefore by its natural interpretation limited to the rights and things which are then in existence, and which he has power to grant, unless he uses other language which imports an intention to grant what he does not now possess, and what is not now in existence. In the latter case the language does not even then operate strictly as an assignment or grant, but only as a covenant or contract which a court of equity will carry into full effect when the right or thing comes *in esse*. *Woodworth v. Sherman*, 3 Story, 171.

If a party making an assignment at a time when he has no title, subsequently acquires title, and then testifies in an action brought by the assignee, that the assignee became the owner under such assignment, he will be estopped from setting up a title against the respondent. *Littlefield v. Perry*, 21 Wall. 205; S. C. 7 O. G. 964; *Sherman v. Champlain Co.* 31 Vt. 162.

An assignment made by one who has no title, with the written assent of the party in whom the title is vested, is effective as a transfer of the title. *Sherman v. Champlain Co.* 31 Vt. 162.

A mere assignment of the right, title and interest of the assignor, without anything more, will not operate as an estoppel to pass a title subsequently acquired by the assignor. *Perry v. Corning*, 7 Blatch. 195.

Assignment before Patent.

The discoverer of a new and useful improvement is vested by law with an inchoate right to its exclusive use, which he may perfect and make absolute by proceeding in the manner which the law requires. An assignment of his whole interest, whether before or after the patent is issued, is equally within the provisions of the act. If it is made before the issuing of the patent, no new assignment need be made, although the patent is issued to the discoverer. When the patent issues, the legal right to the monopoly and property it creates, is by operation of the assignment vested in the assignee. *Gayler v. Wilder*, 10 How. 477; *Rathbone v. Orr*, 5 McLean, 131; *Rich v. Lippincott*, 2 Fish. 1; *Herbert v. Adams*, 4 Mason, 15; *Rathbone v. Orr*, 5 McLean, 131; *Hammond v. M. & H. Organ Co.* 1 Holmes, 296; s. c. 92 U. S. 724.

Whether the machine is perfected or not at the time of the sale is immaterial, if the inventor agrees to make it perfect and procure a patent. *Rathbone v. Orr*, 5 McLean, 131.

An assignment is valid, although it is made after the rejection of the application of the inventor by the commissioner, and an appeal from that decision. *Gay v. Cornell*, 1 Blatch. 506.

An assignment of an imperfect invention, with all improvements upon it that the inventor may make, is equivalent in equity to an assignment of the perfected results, and the patentee takes the patent for an improvement in trust for the assignee. *Littlefield v. Perry*, 21 Wall. 205; s. c. 7 O. G. 964.

A contract to assign all improvements in a certain machine, may cover everything then in embryo in the mind of the inventor, though not yet matured. An intent to cover all improvements ever made at any future time, would be likely to be expressed in explicit language to that effect. *Nesmith v. Calvert*, 1 W. & M. 34.

If an inventor who has covenanted to take out letters patent for another at his request and cost, takes them out without an advance of the costs or authority from the covenantee, he will be deemed to hold them in trust for the covenantee. *Emmons v. Sladdin*, 9 O. G. 352.

If a covenant to execute deeds of conveyance of the part sold, as soon as may be after letters patent shall have issued, does not give the grantee a legal title, a *jus in re*, it clearly confers on him a *jus ad rem*, an equitable right to the thing itself, and is not a mere executory contract to account for the proceeds. *Clum v. Brewer*, 2 Curt. 506.

A party who engages an inventor to make inventions and improvements for his benefit, has no legal or equitable title to an invention made after the contract was terminated. *Appleton v. Bacon*, 2 Black, 699.

If an inventor who is employed to make improvements takes the patent in his own name, he must put the other party in some default before he can claim the exclusive ownership of the improvements. *Continental Co. v. Empire Co.* 4 Fish. 428; s. c. 8 Blatch. 295.

A contract by an inventor to allow another to take out a patent for the invention in his own name may be proved by parol. *Lockwood v. Lockwood*, 33 Iowa, 509.

If an assignment of an interest in one patent does not purport to give rights

in another invention, it can not operate by way of estoppel to give the assignee an interest in a subsequent patent therefor. *Warren v. Cole*, 15 Mich. 265.

If a party invents or discovers and keeps secret a process of manufacture, whether a proper subject for a patent or not, he has not indeed an exclusive right to it as against the public or against those who in good faith acquire knowledge of it, but he has a property in it which a court of chancery will protect against one who, in violation of contract and breach of confidence, undertakes to apply it for his own use, or to disclose it to third persons. *Peabody v. Norfolk*, 98 Mass. 452.

Extension.

An inventor has not only an inchoate right to obtain letters patent securing to him the exclusive right to his invention for the original term, but also a further inchoate right to have the term extended, provided he shall fail without fault to obtain a reasonable remuneration for the time, ingenuity, and expense bestowed upon the same, and the introduction thereof into public use. This title of an inventor to obtain an extension may be the subject of a contract of sale. There is nothing in the nature or incidents of such a right to distinguish it as a subject of sale from the inchoate right to obtain the original patent. Each appertains to the inventor by reason of his invention. Each is incomplete, and its completion depends upon the compliance by the inventor with conditions, and the performance by public officers of certain acts prescribed by law. It is true the title of an inventor to an extension is still further qualified by a further condition of his failure to obtain remuneration from the enjoyment of the exclusive right for the first term of fourteen years. But though this is an additional condition which may render parties less willing to contract, its existence does not change the nature of the right, and it no more prevents it from being the subject of a contract of sale than any other condition which is attached to it. *Clum v. Brewer*, 2 Curt. 506; *Newell v. West*, 13 Blatch. 114; S. C. 8 O. G. 598; 9 O. G. 1110; *Railroad Co. v. Trimble*, 10 Wall. 367; *Hammond v. M. & H. Organ Co.* 1 Holmes, 296; S. C. 92 U. S. 724; *Hoffheins v. Brandt*, 3 Fish. 218.

The franchise which the patent grants consists altogether in the right to exclude every one from making, using or vending the thing patented without the permission of the patentee. This is all that he obtains by the patent. When he sells the exclusive privilege of making or vending it for use in a particular place, the purchaser buys a portion of the franchise which the patent confers. He obtains a share in the monopoly, and that monopoly is derived from and exercised under the protection of the United States. The interest he acquires necessarily terminates at the time limited for its continuance by the law which created it. The patentee can not sell it for a longer time. The purchaser buys with reference to that period, the time for which the exclusive privilege is to endure being one of the chief elements of its value. He therefore has no just claim to share in a further monopoly subsequently acquired by the patentee. He does not purchase or pay for it. *Bloomer v. McQueenan*, 14 How. 539.

A sale of the invention before letters patent are obtained does not neces-

sarily carry with it the exclusive right for the extended term, because this right is not a mere incident of the invention. Its existence is made to depend not only on matter which is subsequent to the invention, but exclusively personal to the inventor himself, and only he or his personal representatives can obtain it. But where an inventor has in terms sold to another person a part of his invention, he has done that which is quite consistent with the intent to have that other person participate in all the rights which he as an inventor can acquire by law, and where the invention is the subject sold, it would be natural to expect to find in the instrument of sale something showing an intention that the purchaser should be interested not merely in the original letters patent, but in any extension thereof, securing the exclusive right to the same invention which was the subject of sale. *Clum v. Brewer*, 2 Curt. 506.

An ordinary assignment of the right in the patentee will not convey any right in an extension of the patent. The intention to assign such an interest must be expressed. *Case v. Redfield*, 4 McLean, 526; *Gear v. Grosvenor*, 6 Fish. 314; s. c. 1 Holmes, 215; 3 O. G. 380; *Woodworth v. Sherman*, 3 Story, 171; *Brooks v. Bicknell*, 4 McLean, 64; *Hodge v. Railroad Co.* 3 Fish. 410; s. c. 6 Blatch. 85, 165; *Goodyear v. Hulliher*, 3 Fish. 251; *Wetherill v. Zinc Co.* 6 Fish. 50; s. c. 9 Phila. 385; 2 O. G. 471.

The right to an extension is contingent and personal to the inventor, and does not pass as an incident to a grant of the invention and appurtenant thereto. *Mowry v. Railroad Co.* 10 Blatch. 89; *Clum v. Brewer*, 2 Curt. 506.

The phrase "to the full end of the term for which letters patent are or may be granted," will convey a right to an extension. *Railroad Co. v. Trimble*, 10 Wall. 367; *Ruggles v. Eddy*, 5 Fish. 581; s. c. 10 Blatch. 52; *Nicolson Co. v. Jenkins*, 14 Wall. 452; s. c. 4 Fish. 201; 5 Fish. 491; 1 Abb. U. S. 567; 1 O. G. 465; 3 A. L. T. (N. S.) 177; *Thayer v. Wales*, 5 Fish. 448; *Phelps v. Comstock*, 4 McLean, 353; *Gear v. Grosvenor*, 6 Fish. 314; s. c. 1 Holmes, 215; 3 O. G. 380; *Case v. Redfield*, 4 McLean, 526; *Gear v. Holmes*, 6 Fish. 595; *Emmons v. Sladdin*, 9 O. G. 352; *vide Hodge v. Railroad Co.* 3 Fish. 410; s. c. 6 Blatch. 85.

The term "renewal" is a proper and apt word to confer an interest in the extension of a patent. *Pitts et al. v. Hall*, 3 Blatch. 201; *Goodyear v. Cary*, 4 Blatch. 271; *Chase v. Walker*, 3 Fish. 120.

The terms "rights and property that I may have from any letters patent for the same," are broad enough to include the extended letters patent. *Clum v. Brewer*, 2 Curt. 506.

An assignment of the invention after the patent has been issued, without any other language to indicate the intention of the parties, does not import a conveyance of the right to an extended term. *Waterman v. Wallace*, 13 Blatch. 128.

A licensee's or assignee's right is necessarily bounded by the same limits as that of the licensor or patentee, that is to say, to the original term granted by the patent to the licensor or patentee. If afterwards the patent is renewed, it is a new grant independent of the old, and the patentee is entitled to the sole and exclusive benefit thereof, unless the licensees or assignees under them have, by their original contract, secured to themselves by express covenant or

grant, a right to the benefit of the renewed patent. *Washburn v. Gou'd*, 3 Story, 122.

The right of the patentee to an extension will not pass to his trustee in insolvency appointed prior to the expiration of the original patent. *Schaum v. Baker*, 2 A. L. T. (N. S.) 15.

Unless there is an express stipulation in a grant or assignment looking to an extension of the patent by a special act of Congress, the court is bound to construe the instrument and each and all of its provisions as relating to the existing right in respect to which the parties were contracting with each other. *Gibson v. Cook*, 2 Blatch. 144.

An interest in a future extension of a patent by a special act of Congress is not the subject of assignment or grant at common law, or within the sense of this section. *Gibson v. Cook*, 2 Blatch. 144.

Recording.

Three cases only of the recording of assignments are provided for in this section: 1st. An assignment of the whole patent. 2d. An assignment of any undivided part thereof. 3d. A grant or conveyance of the exclusive right under the patent within any specified part or portion of the United States. *Brooks v. Byam*, 2 Story, 525; *Blanchard v. Eldridge*, 1 Wall. Jr. 337; *Stevens v. Head*, 9 Vt. 174.

A license is not required by law to be recorded in the patent office in order to give effect and validity to it. *Brooks v. Byam*, 2 Story, 525; *Chambers v. Smith*, 5 Fish. 12; S. C. 7 Phila. 575; *Farrington v. Gregory*, 4 Fish. 221; *Bussey v. Putney*, 38 N. H. 44.

The provision as to recording assignments is merely directory for the protection of *bona fide* purchasers without notice. Even though they are not recorded within the prescribed time, they are valid against a mere wrong-doer piratically invading the patent right. *Pitts v. Whitman*, 2 Story, 609; *Stone v. Palmer*, 28 Mo. 539; *Hall v. Speer*, 6 Pitts. L. J. 403; *Olcott v. Hawkins*, 2 Am. L. J. 317; *Brooks v. Byam*, 2 Story, 525; *Boyd v. McAlpin*, 3 McLean, 427; *Case v. Redfield*, 4 McLean, 526; *McKernan v. Hite*, 6 Ind. 428.

It seems a necessary, or at least a just inference, from this language, that until the assignee has so recorded the assignment, he is not substituted to the right and responsibility of the patentee, so as to maintain any suit at law or in equity founded thereon. *Wyeth v. Stone*, 1 Story, 273.

It is immaterial that an assignment is not recorded until after the suit is brought. It is like the common case of a deed required by law to be registered where it is sufficient if it be registered before the trial, although after the suit is brought, for it is still admissible in evidence as a deed duly registered. *Pitts v. Whitman*, 2 Story, 609.

An unrecorded assignment is valid between the parties thereto. *Holden v. Curtis*, 2 N. H. 61; *Black v. Stone*, 33 Ala. 327; *Moore v. Bare*, 11 Iowa, 198; *vide Higgins v. Strong*, 4 Blackf. 182; *Mullikin v. Latchem*, 7 Blackf. 136.

In order to guard against an outstanding title of over three months' duration, the purchaser need only look to the records of the patent office. *Gibson v. Cook*, 2 Blatch. 144.

Within the period of three months a purchaser must protect himself in the best way that he can, as an unrecorded prior assignment will prevail. *Gibson v. Cook*, 2 Blatch. 144.

The unrecorded assignment to prevail over a subsequent assignment must be in writing, so that it may be recorded within the time limited. *Gibson v. Cook*, 2 Blatch. 144.

A party claiming under a subsequent assignment does not hold a good title as against the prior unrecorded assignment, unless he paid a valuable consideration therefor. *Saxton v. Aultman*, 15 Ohio St. 471.

Where the assignment merely purports to transfer the right and title of the assignor, it will not cut off an unrecorded assignment, if there is anything upon which the second assignment can operate, although it is recorded first. No inference can be drawn from such language in the absence of any proof upon the subject that the assignor intended a fraud upon the first assignee. *Turnbull v. Plow Co.* 6 Biss. 225; s. c. 7 O. G. 173; *Ashcroft v. Walworth*, 5 Fish. 528; s. c. 1 Holmes, 152; 2 O. G. 546.

If the means of knowledge are at hand, a purchaser will be presumed to know the facts to which an inquiry would lead him. *Mitchell v. Hawley*, 4 Fish. 388; s. c. 6 Fish. 331; 16 Wall. 544; 3 O. G. 241; 10 O. G. 306.

An unrecorded assignment will prevail over the rights of a subsequent purchaser who takes with notice of the prior assignment. *Continental Co. v. Empire Co.* 4 Fish. 428; s. c. 8 Blatch. 295; *Peck v. Bacon*, 18 Conn. 377.

If the assignee is a corporation of which the patentee is a director and manager, it has notice through him of all prior unrecorded assignments. *Continental Co. v. Empire Co.* 4 Fish. 428; s. c. 8 Blatch. 295; *Steam Cutter Co. v. Sheldon*, 5 Fish. 475; s. c. 10 Blatch. 1.

If there is no evidence that there is any purchaser who has a claim paramount to an unrecorded assignment, and the contract has been partially performed, the only remedy of a purchaser from the assignee is in damages for a breach of the contract. *Moore v. Bare*, 11 Iowa, 198.

If there is an omission or misdescription in the assignment, the assignee is not entitled to have the instrument reformed, and the true description inserted, to the prejudice of a subsequent *bona fide* purchaser for a valuable consideration, who took the title after the lapse of more than three months. *Gibson v. Cook*, 2 Blatch. 144; *Woodworth v. Cook*, 2 Blatch. 151.

The record of an assignment by a person purporting to be an administrator is notice of a sale by the same party as executor. *Newell v. West*, 13 Blatch. 114; s. c. 8 O. G. 598; 11 O. G. 1110.

The recording of a license does not affect the rights of any one. *Chambers v. Smith*, 5 Fish. 12; s. c. 7 Phila. 575.

A license to use a machine will prevail over a subsequent assignment. *Continental Co. v. Empire Co.* 4 Fish. 428; s. c. 8 Blatch. 295.

The right of a *bona fide* purchaser for a valuable consideration of an interest, whereof an assignment is not required to be recorded, will prevail over the right of a person holding a contract therefor. *Gibson v. Cook*, 2 Blatch. 144.

License.

A license is an authority coupled with an interest in its execution. It is not so much a property or interest *in rem*, as a right of user for the benefit of the licensee. *Brooks v. Byam*, 2 Story, 525.

Licenses to make and use, when derived from the patentee, or from one holding a territorial right, by virtue of a valid conveyance from him, are not required to be recorded, and consequently need not be in writing. • *Baldwin v. Sibley*, 1 Cliff. 150.

A patent right ought not to be deemed an entirety, but to be divisible so as to permit a grant of the exclusive right to construct to one person, to use to another, and to vend to another. *Adams v. Burke*, 17 Wall. 453; s. c. 1 Holmes, 40; 4 Fish. 392; *Washburn v. Gould*, 3 Story, 122; *Jenkins v. Greenwald*, 2 Fish. 37; s. c. 1 Bond, 126; *Steam Cutter Co. v. Sheldon*, 5 Fish. 475. s. c. 10 Blatch. 1.

A patentee may so convey the right to make as to involve or include the right either to sell or use what the grantee makes. He may also so convey the right to use as to imply the right to sell within the same limits, as well as to make the thing patented, within them. The circumstances, nature, and words of each grant must decide the construction which is just and legal. *Woodworth v. Curtis*, 2 W. & M. 524; *Steam Cutter Co. v. Sheldon*, 5 Fish. 475; s. c. 10 Blatch. 1.

The right to make carries with it the right to sell, but does not necessarily imply the right to use the machine when made and sold. *Jenkins v. Greenwald*, 2 Fish. 37; s. c. 1 Bond, 126; *Bicknell v. Todd*, 5 McLean, 236.

The grant of a right to use and sell the thing patented confers the power to dispose of the right to use to others, because the purchase of a patented thing always carries with it the right to use the thing purchased by implication. *Farrington v. Gregory*, 4 Fish. 221.

The right to use a machine necessarily implies the right to purchase. *Bicknell v. Todd*, 5 McLean, 236.

A patentee may confer upon others such qualified privilege, whether of making, selling to others, or using, as he sees fit, whether within specified limits, or under limitations of quantity or number or restricted use. *Dorsey R. H. Rake Co. v. Bradley Manuf. Co.* 12 Blatch. 202.

A patentee may grant the exclusive right to make and sell the patented invention within specified territory, and yet limit the use of the thing so made and sold within specified limits. *Dorsey R. H. Rake Co. v. Bradley Manuf. Co.* 12 Blatch. 202.

There is a distinction between the grant of the right to make and vend a patented machine, and the grant of the right to use it. Purchasers of the exclusive privilege of making or vending the patented machine, in a specified place, hold a portion of the franchise which the patent confers, and the interest which they acquire terminates at the time limited for its continuance by the law which created it, unless it is expressly stipulated to the contrary. *Bloomer v. Millinger*, 1 Wall. 340; *Blanchard v. Whitney*, 3 Blatch. 307; *Mitchell v. Hawley*, 4 Fish. 599; s. c. 16 Wall. 544; 5 O. G. 299.

A license or contract for the use of an invention, is subject to the same rules of construction as apply to any other contract. *Wetherill v. Zinc Co.* 6 Fish. 50; s. c. 9 Phila. 385; 3 O. G. 471.

If an employee makes an invention and permits his employer to use it prior to the application for a patent, there may be an inference of a license. *M'Clurg v. Kingsland*, 1 How. 202; *Slemmer's Appeal*, 58 Penn. 155; *Chabot v. Button Hole Co.* 9 Phila. 378; s. c. 5 C. L. N. 75.

If a party is allowed to use the invention prior to the application for a patent, without any notice of a claim to an exclusive right, a license or grant from the inventor may be presumed. *M'Clurg v. Kingsland*, 1 How. 202.

A patentee is not estopped by his silence in omitting to assert his claim to an invention, unless it has misled another to his hurt, and that is not done where a patent is obtained before any expenditure is made. *Railroad Co. v. Dubois*, 12 Wall. 47.

An estoppel must necessarily grow out of some declaration or act of the inventor, by which the party was induced to believe that he might rightfully or innocently use the invention. If he appropriated it without consulting the inventor, and the latter was passive when he knew it, because he was powerless to prevent it, he is not estopped from asserting his right when he is in a condition to enforce it. *McMillin v. Barclay*, 5 Fish. 189; s. c. 4 Brews. 275; *Russell Manuf. Co. v. Mallory*, 5 Fish. 632; s. c. 10 Blatch. 140; 2 O. G. 495.

A grant to use and sell the thing patented is not an assignment, but a license. *Farrington v. Gregory*, 4 Fish. 221.

A conveyance of the exclusive right, within a certain specified territory, to use and vend the patented invention, but reserving to the grantor the right to make it, is a license. *Sanford v. Messer*, 5 Fish. 411; s. c. 1 Holmes, 149; 2 O. G. 470.

A contract for a purchase of a portion of a patent right may be good between the parties as a license, and enforced as such in courts of justice, but the legal title to the monopoly remains in the patentee. *Sanford v. Messer*, 5 Fish. 411; s. c. 1 Holmes, 149; 2 O. G. 470.

Construction.

Every person who pays the patentee for a license to use his process, becomes the owner of the product, and may sell it to whom he pleases, or apply it to any purpose, unless he binds himself by covenants to restrict his right of making and vending certain articles that may interfere with the special business of some other licensee. *Washing Machine Co. v. Earle*, 2 Fish. 203; s. c. 3 Wall. Jr. 320.

Where the preliminary arrangement for a license was that the license should be in writing, there is no contract between the parties until it is delivered to and accepted by the licensee, and if he refuses to accept such a license, there is no license. *Tilghman v. Hartel*, 9 O. G. 886; s. c. 33 Leg. Int. 149.

A license to use a machine at one place will not authorize its use at another place. *Wicke v. Kleinknecht*, 7 O. G. 1098.

If a license stipulates that the royalty shall be reduced as soon as a license is granted to another at a lower rate, the licensee is entitled to the reduction upon the granting of a license to manufacture a certain number of machines at a certain price. *Florence S. M. Co. v. G. & B. S. M. Co.* 110 Mass. 70.

If a party takes a license to use certain patented articles for a certain term

and no longer, this is a waiver of any prior permission, although it was taken under a mistake of law. *Wooster v. Taylor*, 12 Blatch. 384; s. c. 8 O. G. 644.

The reasonable construction of a license to a corporation, is that it extends no further than the authority conferred upon it by its charter at the time the license was given. *Emigh v. Chicago B. & I. R. R. Co.* 2 Fish. 387; s. c. 1 Biss. 400.

If a man owns two rights to manufacture goods by patents of different dates, and sells to A. his right under one specifically, and to B. the right to manufacture the goods generally, the fair construction of the latter grant will be held to be a conveyance of the right to manufacture under both patents, because in the first grant, when he intends to limit it to one, he so recites on the face of the grant, and in the second he does not. *Day v. Stellman*, 1 Fish. 487.

Where one having a right for a valuable consideration paid, agrees with another that the latter shall have the enjoyment of that right, and gives a power of attorney to enable him to possess and enforce that right, he is not by law permitted to revoke that power so as to deprive the other party of the right. In such a case the power of attorney is a power coupled with an interest not merely in the execution of the power, not merely an interest in that which is produced by the power, but in the thing itself. *Day v. Candee*, 3 Fish. 9.

If a patentee covenants not to grant licenses to others, an agreement not to make any claim on another for any alleged infringement, is essentially a license, and a breach of the covenant. *Jackson v. Allen*, 120 Mass. 64.

If the license contains no express covenant that the patent is valid, it does not amount to a warranty that the licensee shall enjoy the privilege against persons not claiming under the licensor. *Jackson v. Allen*, 120 Mass. 64.

If a license contains no warranty or covenant that the patentee is the inventor of the improvement, he is not estopped from proving the invalidity of the patent to affect the amount of damages for violating a stipulation to sue infringers. *Jackson v. Allen*, 120 Mass. 64.

Whether an order upon a licensee and a note payable out of the royalty due from him, are taken in full satisfaction of a debt, or only as a method of collecting it, is a question of fact. *Taylor v. Collins*, 102 Mass. 248.

A patentee in granting to another the right to make and sell the patented invention, may retain to himself the exclusive right to make and sell for export or use in other countries. *Dorsey R. H. Rake Co. v. Bradley Manuf. Co.* 12 Blatch. 202.

A licensee, unless restrained by contract, is at liberty to manufacture and sell as many articles as he pleases either by the old method or by any new machine which may be invented. *Burr v. Duryee*, 2 Fish. 275; s. c. 1 Wall. 531.

A license to the licensee and his assigns, to employ six persons in the manufacture of the thing patented, is an entirety, and incapable of division, or of being broken up into fragments in the possession of different persons. If it is assignable, the assignment must be of the entirety of the license to the assignee, and it can not be apportioned among different persons in sev-

eralty. Whoever is to be employed is to be employed by the licensee and his assigns. All must be employed by one and the same party. The language ought to be exceedingly clear that should lead a court to construe an instrument of this sort granting a single right or privilege to a particular person or his assigns, as also granting a right or license to split the same right into fragments among many persons in severalty, and thus make it apportionable as well as transmissible. *Brooks v. Byam*, 2 Story, 525.

A license to use one machine will always be construed to be an authority to use a machine, unless in express terms it be limited to the identical machine referred to. *Wilson v. Stolley*, 4 McLean, 275.

If the license merely authorizes the licensee to use two machines constructed according to the patent, he may use two at all times, whether constructed by himself or another. If he constructs machines and sells them to others to be used, he is an infringer of the patent and liable to an action. If he uses but two, he is within the letter and spirit of his contract. If he should construct a dozen, yet if he use but two, he does not break his contract. *Burr v. Duryee*, 2 Fish. 275; S. C. 1 Wall. 531.

If a license to use one machine covers the whole term, and is not limited to any particular machine, it confers the right to repair or change machines, but only one machine in number can be used at one time. *Woodworth v. Curtis*, 2 W. & M. 524; *Wilson v. Stolley*, 4 McLean, 275; *Steam Cutter Co. v. Sheldon*, 5 Fish. 475; S. C. 10 Blatch. 1.

A licensee of a right to use, may repair his machine, but he can not construct one. *Bicknell v. Todd*, 5 McLean, 236; *Woodworth v. Curtis*, 2 W. & M. 524.

If the contract provides that the proceeds of all suits for violations of the patent shall be divided equally between the patentee and the licensee, but that the licensee shall not institute a suit without the consent of the patentee, the licensee may terminate a suit, or make a settlement which will be binding without the institution of a suit. *Burdell v. Denig*, 2 Fish. 588; S. C. 92 U. S. 716.

A licensee holding under a license which only applies to machines that are both made and sold by him, or used and sold by him, and made without authority from the patentee, is not liable for a royalty upon machines purchased by him from another licensee, if they are purchased before the expiration of the quarter at the end of which the license of the vendor by its terms would be forfeited. *Howe v. Wooldredge*, 94 Mass. 18.

If the license contains a provision that if the licensee ceases to use the machine for a certain time, such neglect shall be considered as an abandonment of the license on his part. A formal notice by the patentee that he considers the neglect an abandonment is not necessary. A refusal to receive the royalty would be sufficient. *Wilson v. Stolly*, 5 McLean, 1.

Assignment of License.

Whether a license is assignable is to be determined not merely by the term "license," but by an inquiry into the fair meaning and intention of the parties, and it may be determined not merely by the words of license, but by the nature of the transaction, the consideration paid, and other circumstances.

showing that an assignable right was conferred. *Dorsey R. H. Rake Co. v. Bradley Manuf. Co.* 12 Blatch. 202.

A mere license to a party, without having his assigns, or equivalent words to them, showing that it was meant to be assignable, is only the grant of a personal power to the licensee, and is not transferable by him to another. *Troy Factory v. Corning*, 14 How. 193; s. c. 1 Blatch. 467; *Rubber Co. v. Goodyear*, 2 Fish. 499; s. c. 9 Wall. 788; 2 Cliff. 351; *Baldwin v. Sibley*, 1 Cliff. 150; *Bull v. Pratt*, 1 Conn. 342.

A license to a licensee and his assigns to use one machine is assignable. A machine, and the right to use it, is personal property rather than a mere patent right, and has all the incidents of personal property, and is thus subject to pass by sale. *Woodworth v. Curtis*, 2 W. & M. 524; *Wilson v. Stolley*, 4 McLean, 275; *Wilson v. Stolly*, 5 McLean, 1.

If a license is personal, the licensee cannot arrange with others to manufacture the patented article for him. *Houghton v. Rowley*, 30 Leg. Int. 60; *Rubber Co. v. Goodyear*, 9 Wall. 788; s. c. 2 Fish. 499; 2 Cliff. 351.

The receipt of the royalty from the party to whom a licensee has transferred his license will be deemed a waiver of a requirement that such transfer shall not be made without the written consent of the licensor. *Bloomer v. Gilpin*, 4 Fish. 50.

A mere license is not apportionable, so as to permit the licensee to grant to others separate rights to use or work the patent by subdividing the rights which have been granted to him. *Consolidated Fruit Jar Co. v. Whitney*, 31 Leg. Int. 229.

If a licensee assigns his contract, the question whether the licensor and assignee agreed that the latter should become a party to the contract, is a question of fact, although the licensor received money as royalty from such assignee. *Gaylord v. Case*, 1 C. L. B. 382.

A party who has taken an assignment of a license obtained by fraud is not entitled to be permitted to complete contracts entered into after notice of the fraud. *Consolidated Fruit Jar Co. v. Whitney*, 31 Leg. Int. 229.

If two corporations, each having a license to use the thing patented, are consolidated, the new corporation will also have the right to use it. *Leightner v. Railroad Co.* Lowell, 338.

A transfer of the rolling stock of a railroad, to which the thing patented is attached, to a creditor with the right to receive the revenues until his debt is paid, constitutes him merely an agent or trustee of the corporation, and his use of the thing patented is covered by a license to the corporation, and he is not an infringer. *Emigh v. Chamberlain*, 2 Fish. 192; s. c. 1 Biss. 367.

If the licensees form a corporation, and then transfer the patented articles to it, with the intent that it shall have the right to sell them without being liable to the patentee, this constitutes such a sale as to render them liable for the royalty. *Marsh v. Dodge*, 6 T. & C. 568; s. c. 11 N. Y. Supr. 278.

If a licensee takes a partner in the business of manufacturing the thing patented, a sale to his partner of his interest in the firm is such a sale as to render him liable for the royalty. *Wilder v. Stearns*, 48 N. Y. 656.

If a license is made to a firm, one partner may, upon the dissolution of the

firm, purchase the interest of his copartner, and continue to use the thing patented. *Belding v. Turner*, 4 Fish. 446; S. C. 8 Blatch. 321.

The patentee is not required to give notice of any restriction to a voluntary purchaser of a licensee's right to enable him to hold such purchaser to the restricted use and enjoyment of the invention stipulated in the license. It is the duty of the purchaser to inform himself of the nature of the licensee's ownership and the extent of his right. *Chambers v. Smith*, 5 Fish. 12; S. C. 7 Phila. 575.

A purchaser of a licensee's interest at a judicial sale acquires only the licensee's title in the thing sold. *Chambers v. Smith*, 5 Fish. 12; S. C. 7 Phila. 575.

If a license which is granted in consideration of a royalty is assigned, the assignee takes it with the incumbrance attached to it, and a duty and obligation rest upon him to pay the royalty. *Goodyear v. Congress Rubber Co.* 3 Blatch. 449.

In the absence of an express stipulation, a patentee has no lien upon a license to secure the royalty due under it when it is assigned to another. *Goodyear v. Congress Rubber Co.* 3 Blatch. 449.

Purchase of Patented Article.

A purchaser, in using a patented implement or machine, exercises no rights created by the act of Congress, nor does he derive title to it by virtue of the franchise or exclusive privilege granted to the patentee. The inventor might lawfully sell it to him, whether he had a patent or not, if no other patentee stood in his way. When the machine passes to the hands of the purchaser, it is no longer within the limits of the monopoly. It passes outside of it, and is no longer under the protection of the act of Congress. If his right to the implement or machine is infringed, he must seek redress in the courts of the State, according to the laws of the State, and not in the courts of the United States, nor under the law of Congress granting the patent. The implement or machine becomes his private individual property, not protected by the laws of the United States, but by the laws of the State in which it is situated. Contracts in relation to it are regulated by the laws of the State, and are subject to State jurisdiction. *Bloomer v. McQuewen*, 14 How. 539; *Chaffee v. Boston Belting Co.* 22 How. 217; *Mitchell v. Hawley*, 4 Fish. 388; S. C. 6 Fish. 331; 16 Wall. 544; 3 O. G. 241; 10 O. G. 306.

The patentee may make any covenant he pleases with his licensees, but he can not compel the public to notice or regard such agreements, or the right conferred or reserved by them. Such covenants do not run with the product like a covenant on land. If his licensees do not perform their agreements, his remedy is by an action against them on the covenants, and not by a recourse to a chancellor to restrain third persons who have purchased from his licensees. *Washing Machine Co. v. Earle*, 2 Fish. 203; S. C. 3 Wall. Jr. 320.

A patent for a process does not give the patentee the power to control the use which persons who purchase may make of the product. A covenant restricting such use to certain articles binds only the parties to it. If a stranger purchase the product from one licensed to use the process, he need look no

further, and may use it for his own purposes without inquiring for or regarding any private agreement of licensees. *Washing Machine Co. v. Earle*, 2 Fish. 203; S. C. 3 Wall. Jr. 320.

If a party makes a contract for the thing patented, and the patentee grants a license to the contractor with a reservation of a right to obtain a royalty from such party, which reservation is unknown to him, the reservation is inconsistent with the license. The license to the contractor relieves the party from responsibility. The relieving of the parties primarily liable by a universal rule of law as well as of justice, relieves those who are only secondarily responsible. *Bigelow v. Louisville*, 3 Fish. 602.

The sale of a machine does not necessarily give an implied right to use it, where the sale is made by a person who has no exclusive right, but a license merely of use. The extent of the transfer must therefore depend on the facts and circumstances of the case. *Wilson v. Stolley*, 4 McLean, 275; *Mitchell v. Hawley*, 16 Wall. 544; S. C. 4 Fish. 388; 6 Fish. 331; 3 O. G. 241; 10 O. G. 306.

The purchase of a patented article lawfully manufactured and sold, without condition or restriction, by a territorial grantee within the territory, gives the purchaser the right to use or sell the article in another territory for which another person has taken a grant under the patent. If this were not so, the purchaser of a manufactured patent article of wearing apparel might be liable for the use of the patented article in every town and city through which he might travel. By the sale the article ceases to be within the monopoly. *Adams v. Burke*, 4 Fish. 392; S. C. 1 Holmes, 40; 17 Wall. 453; 1 O. G. 282; *McKay v. Wooster*, 6 Fish. 375; S. C. 2 Saw. 373; 3 O. G. 44; 6 A. L. T. 169; *May v. Chaffee*, 5 Fish. 160; S. C. 2 Dillon, 385.

The patentee himself can not, by a subsequent assignment of his patent, limit the right of the purchaser already vested. *McKay v. Wooster*, 6 Fish. 375; S. C. 2 Saw. 373; 3 O. G. 44; 6 A. L. T. 169.

If a person legally acquires title to that which is the subject of letters patent, he may continue to use it until it is worn out, or he may repair it or improve upon it as he pleases, in the same manner as if dealing with property of any other kind. *Chaffee v. Boston Belting Co.*, 22 How. 217.

Like other individual property, the patented machine or implement in the hands of a purchaser is subject to State taxation. *Bloomer v. McQuewen*, 14 How. 539.

If a municipal charter requires that work shall be let by contract to the lowest bidder, the city can not contract for the use of a patented article which is owned by one firm. *Dean v. Charlton*, 23 Wis. 590.

If a statute authorizes a public officer to use a patented article, a provision that the contract must be awarded to the lowest bidder must be so construed as not to defeat the authority. *Greaton v. Griffin*, 4 Abb. Pr. N. S. 310.

When Licensee Estopped.

A licensee who manufactures articles similar to the thing patented is estopped to deny that they are made under the license, so long as he retains it. *Marsh v. Dodge*, 6 T. & C. 568; S. C. 11 N. Y. Supr. 278.