

The clerk has no authority to fix the compensation to be allowed to a master. *Doughty v. Manuf. Co.* 4 Fish. 318.

If the costs are not taxed in the circuit court before the transcript of the record is transmitted to the supreme court, they may be taxed and inserted in the blank left for that purpose in the original record, upon the receipt of the mandate by the circuit court. *Sizer v. Many*, 16 How. 98.

Taxable Costs.

A taxation of costs is a right given or refused by statute. *Hathaway v. Roach*, 2 W. & M. 63.

The expenses of the complainant, or his counsel, in attending court, can not be allowed. *Hussey v. Bradley*, 5 Blatch. 210.

Money properly and necessarily paid for telegrams in the progress of the cause may be allowed, but the affidavit showing the actual expenditure should state the payment in detail, and the particular purpose of each telegram, so that the taxing officer may judge of the necessity and propriety of the expenditure, and of its allowance on taxation as a proper disbursement in the suit. *Hussey v. Bradley*, 5 Blatch. 210.

No expenditure for making copies of the pleadings or proofs can be allowed. *Hussey v. Bradley*, 5 Blatch. 210.

The expense of reporting the argument of counsel at the final hearing can not be taxed as a part of the costs. *Hussey v. Bradley*, 5 Blatch. 210.

If the record is printed by an order of the court, the expense may be divided equally between the parties. *Brooks v. Byam*, 2 Story, 553.

The expense of printing the testimony is not chargeable against the losing party as an item of costs. The law does not require the testimony to be printed, and if it is, it must be done voluntarily by the party desiring it, and at his own expense. *Spaulding v. Tucker*, 4 Fish. 633; *Hussey v. Bradley*, 5 Blatch. 210; *Troy Factory v. Corning*, 7 Blatch. 16.

The defendant is entitled to have the costs of copies of the various assignments made by the plaintiff taxed. *Hathaway v. Roach*, 2 W. & M. 63.

The defendant can not have the cost of a copy of the patent taxed. *Hathaway v. Roach*, 2 W. & M. 63; *Woodruff v. Barney*, 2 Fish. 244; *S. C. 1 Bond*, 528.

The defendant may be allowed a reasonable compensation for the expense of procuring models of the invention claimed in the patent. *Hathaway v. Roach*, 2 W. & M. 63.

The expense of procuring models not referred to in the patent can not be taxed. *Woodruff v. Barney*, 2 Fish. 244; *S. C. 1 Bond*, 528; *Hussey v. Bradley*, 5 Blatch. 210; *Parker v. Bigler*, 1 Fish. 285; *Hathaway v. Roach*, 2 W. & M. 63.

No fee can be allowed as mileage to the marshal for serving a rule to plead on the defendant. *Parker v. Bigler*, 1 Fish. 285.

The postage paid upon the transmission and return of a commission may be allowed as a part of the costs. *Prouty v. Draper*, 2 Story 99.

When the parties are not the same, the witness has a right to fees in each suit, and cases where the plaintiff alone is a party are in the same category with those where all the parties are different. *Parker v. Bigler*, 4 Fish. 285.

The fees of a witness attending merely by the request of a party, without subpoena, can not be legally taxed against the losing party as a part of the costs for which he is liable. Such a witness does not attend "pursuant to law." *Woodruff v. Barney*, 2 Fish. 244; s. c. 1 Bond, 528; *Spaulding v. Tucker*, 4 Fish. 633; *Hathaway v. Roach*, 2 W. & M. 63; *contra*, *Prouty v. Draper*, 2 Story, 199.

There can not be two different modes of calculating distances, an air line for jurisdiction and a zig-zag for mileage. When the subpoena is served in another district, mileage can only be allowed for one hundred miles, although the marshal may have actually traveled a greater distance. *Parker v. Bigler*, 4 Fish. 285.

When witnesses come twice at the same term on account of a postponement by agreement of the parties, and not by any order of the court, and not on public account, the presumption of law and fact must be that they continued their attendance, and were paid for it till discharged by the parties or the court, and double travel can not be allowed. *Hathaway v. Roach*, 2 W. & M. 63.

The fees of witnesses who actually attend before the plaintiff becomes nonsuit, though not examined, may be allowed. *Hathaway v. Roach*, 2 W. & M. 63.

Courts of equity may allow costs other than those prescribed in the statute, according as justice and equity may require according to the circumstances of each case. If the testimony of witnesses is taken under a commission by consent, a reasonable sum, as costs for necessary expenses in procuring the attendance of the witnesses, may be allowed. *Spaulding v. Tucker*, 4 Fish. 633.

If a party dispenses with the deposition of a witness, and examines him, the cost of the deposition can not be taxed. *Hathaway v. Roach*, 2 W. & M. 63.

The fee for depositions relates to testimony taken out of court under authority which will entitle it to be read as evidence in court, and has no relation to oral testimony taken in court or before a master. It applies in cases at common law where depositions are given in evidence on the trial, and in suits in equity where depositions are read at the hearing. *Troy Factory v. Corning*, 7 Blatch. 16.

No *per diem* allowance should be taxed for the attendance before the master, of witnesses whose testimony was afterwards abandoned or given up, or was stricken out or rejected by the master, where the striking out or rejection has been sustained by the court. It would be unreasonable and against the established rule of taxation to tax costs in favor of a party for acts or services which were useless or illegal, and which only led to increased expense and to a waste of the time of the court and of all persons concerned. *Troy Factory v. Corning*, 7 Blatch. 16.

The docket fee of twenty dollars is the highest compensation allowed to a solicitor in a cause, and can be allowed but once. *Troy Factory v. Corning*, 7 Blatch. 16.

Trial and final hearing have well-known definite meanings in the law, and they are used in this statute in that well-known sense. "Trial" is used to

describe the process of determining the issues in an action at law, and "final hearing" the submission of the case for a determination thereof upon the pleadings, or pleadings and proofs, or otherwise, so that the case may be finally disposed of. The proceedings before a master, or on a reference for a provisional or interlocutory purpose are neither a trial nor a final hearing, and the docket fee of twenty dollars can not be allowed. *Doughty v. Manuf. Co.* 4 Fish. 318.

SEC. 4921 A (Act of February 16, 1875, § 2, 18 Stat. 316). That said courts, when sitting in equity for the trial of patent cases, may impanel a jury of not less than five and not more than twelve persons, subject to such general rules in the premises as may, from time to time, be made by the Supreme Court, and submit to them such questions of fact arising in such cause as such circuit court shall deem expedient; and the verdict of such jury shall be treated and proceeded upon in the same manner and with the same effect as in the case of issues sent from chancery to a court of law and returned with such findings.

SEC. 4922. Whenever, through inadvertence, accident or mistake, and without any willful default or intent to defraud or mislead the public, a patentee has, 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 or discoverer, every such patentee, his executors, administrators, and assigns, whether of the whole or any sectional interest in the patent, may maintain a suit at law or in equity for the infringement of any part thereof, which was *bona fide* his own, if it is a material and substantial part of the thing patented, and definitely distinguishable from the parts claimed without right, notwithstanding the specifications may embrace more than that of which the patentee was the first inventor or discoverer. But in every such case in which a judgment or decree shall be rendered for the plaintiff, no costs shall be recovered unless the proper disclaimer has been entered at the patent office before the commencement of the suit. But no patentee shall be entitled to the benefits of this section if he has unreasonably neglected or delayed to enter a disclaimer.

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

Prior Statute—March 3, 1837, ch. 45, § 9, 5 Stat. 194.

SEC. 4923. Whenever it appears that a patentee, at the time of making his application for the patent, believed himself to be the original and first inventor or discoverer of the thing patented, the same shall not be held to be void on account of the invention or discovery, or any part thereof, having been known or used in a foreign country, before his invention or discovery thereof, if it had not been patented or described in a printed publication.

Statute Revised—July 8, 1870, ch. 230, § 62, 16 Stat. 208.

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

No description in any printed publication of the thing patented can avoid the patent, unless such description in such printed publication was prior in point of time to the invention of the patentee. A publication after the invention, but before the application for a patent, is not sufficient. *Bartholomew v. Sawyer*, 1 Fish. 516; s. c. 4 Blatch. 347; *Howe v. Morton*, 1 Fish. 586; *Cochrane v. Deener*, 11 O. G. 637; s. c. 4 W. L. R. 99.

The description in a foreign publication, in order to invalidate a patent, must contain and exhibit a substantial representation of the patented improvement, in such full, clear and exact terms, as to enable any person skilled in the art or science to which it appertains, to make, construct, and practice the invention to the same practical extent as they would be enabled to do if the information were derived from a prior patent. *Seymour v. Osborne*, 3 Fish. 555; s. c. 11 Wall. 516; *Sewall v. Jones*, 6 Fish. 343; s. c. 3 O. G. 630; *Cohn v. U. S. Corset Co.* 93 U. S. 366; s. c. 12 Blatch. 225; 6 O. G. 259; 11 O. G. 457; *Ex parte John McClosky*, 9 C. L. N. 313; *Judson v. Cope*, 1 Fish. 615; s. c. 1 Bond, 327; *Hays v. Sulsor*, 1 Fish. 532; s. c. 1 Bond, 279.

Although there has been a previous discovery in a foreign country, yet the patent will be good, unless such discovery or some substantial part of it had been patented or described in a printed publication prior to the application. *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; *Roemer v. Simm*, 5 O. G. 555; *Furbush v. Cook*, 2 Fish. 668; *Dawsen v. Follen*, 2 Wash. 311; *Judson v. Cope*, 1 Fish. 615; s. c. 1 Bond, 327; *Bartholomew v. Sawyer*, 1 Fish. 516; s. c. 4 Blatch. 347; *Reutgens v. Kanowrs*, 1 Wash. C. C. 168.

If the foreign discovery is not patented or described in any printed publication, it might be known and used in remote places for ages, and the people of this country be unable to profit by it. The means of obtaining knowledge would not be within their reach, and so far as their interest is concerned, it would be the same thing as if the improvement had never been discovered. It is the inventor here that brings it to them and places it in their possession. As he does this by the effort of his own genius, the law regards him as the first and original inventor, and protects his patent, although the improvement had, in fact, been invented before and used by others. *Gayler v. Wilder*, 10 How. 477; *Sewall v. Jones*, 6 Fish. 343; s. c. 3 O. G. 630.

This provision goes upon the presumption that if the foreign publication has been made, the patentee may have acquired a knowledge of it, and this presumption is not rebutted by proving as far as a negative can be proved, that the inventor had no knowledge of it. *Allen v. Hunter*, 6 McLean, 303; *Swift v. Whisen*, 3 Fish. 343; s. c. 2 Bond, 115; *Webb v. Quintard*, 5 Fish. 276; s. c. 9 Blatch. 352; 1 O. G. 525.

In considering whether the patentee did believe himself to be the original inventor of what was patented to him, it is material to determine whether he was, in fact, the original inventor thereof. If he was, there is an end to all inquiry on that point. If he was not, still he may have believed himself to be so. *Furbush v. Cook*, 2 Fish. 668.

When there is no evidence to the contrary, the presumption is that a patentee at the time of making his application, believed himself to be the first inventor or discoverer of the thing patented. *Union Sugar Refinery v. Matthiessen*, 2 Fish. 600.

The word "patented," means covered and made known to the world by a public patent, so as to bring home to the public generally and probably a knowledge of its existence, and deprive any one of the credit and protection of being original if he afterward construct a like machine. A private patent is not within this clause. *Brooks v. Norcross*, 2 Fish. 661.

What is meant by Congress, undoubtedly, is in the first place, that there shall have been an invention, and in the second place, that it shall have been made patent to the world—patented. A specification enrolled after the granting of the patent, will be deemed to take effect only from the time of the enrollment so far as it affects other inventors. *Howe v. Morton*, 1 Fish. 586.

The fact whether the patent was private or public ought to be made to appear by the defendant, as he sets up the patent as if coming within the word patented. *Brooks v. Norcross*, 2 Fish. 661.

If no copy of the patent itself is given in evidence, but merely a copy of the specification and drawing, the proof required by law that the invention was in truth patented, is defective. *Brooks v. Norcross*, 2 Fish. 661.

If the machine described in the foreign patent required further invention to make it a practical and operative machine, and to embody the same invention which is described in the American patent, it will not work a forfeiture of the American patent. *American Leather Co. v. American Tool Co.* 4 Fish. 284.

If the description in a foreign patent is sufficient to show the structure of the article, there need not be any proof otherwise of the existence of the article. *Cohn v. U. S. Corset Co.* 93 U. S. 366; s. c. 12 Blatch. 225; 6 O. G. 259; 11 O. G. 457.

The mere existence of a device in a foreign country, unless patented or described in a printed publication, is not a fact having any significance or recognized at all in connection with our patent laws. *Tucker & Davis*, 2 O. G. 224; *Carr v. Davids*, 3 O. G. 440; *Smith v. Barter*, 7 O. G. 1; *Chambers et al. v. Duncan et al.* 9 O. G. 741; *Chambers et al. v. Duncan et al.* 10 O. G. 787.

If the invention has been described in a foreign patent, it is not patentable. *Charles Frampton*, 1 O. G. 381.

A foreign patent, to anticipate the novelty of an invention, must contain the device either in a drawing or a description, and in either case the invention must be so distinctly shown or described as to be a matter of certainty, not of inference. *Abial C. Herron*, 1 O. G. 608.

The date of an invention originated abroad, can be carried back no further than the time when specimens embodying it are shown, on satisfactory evidence, to have reached this country. *Hovey v. Hufeland et al.* 2 O. G. 493.

An English patent is a sufficient anticipation of an application, if the description of the invention is sufficiently full, in view of the state of the art, to enable a skilled mechanic to construct it. *J. McClosky*, 9 O. G. 299.

An English provisional specification, upon which no patent was issued, can be treated only as a published description in ascertaining the state of the art. *R. O. Lowry*, 1 Dec. Com. 85; *Edward Maynard*, 2 Dec. Com. 57.

No previous invention of the same thing, or knowledge or use of the same in any foreign country, can constitute a valid defense to a suit under the patent. *Greil v. Kuhnert*, 1 Dec. Com. 5.

SEC. 4924. Where the patentee of any invention or discovery, the patent for which was granted prior to the second day of March, eighteen hundred and sixty-one, shall desire an extension of this patent beyond the original term of its limitation, he shall make application therefor, in writing, to the commissioner of patents, setting forth the reasons why such extension should be granted; and he shall also furnish a written statement under oath of the ascertained value of the invention or discovery, and of his receipts and expenditures on account thereof, sufficiently in detail to exhibit a true and faithful account of the loss and profit in any manner accruing to him by reason of the invention or discovery. Such application shall be filed not more than six months nor less than ninety days before the expiration of the original term of the patent; and no extension shall be granted after the expiration of the original term.

Statute Revised—July 8, 1870, ch. 230, § 63, 16 Stat. 208.

Prior Statutes—July 3, 1832, ch. 162, § 2, 4 Stat. 559.—July 4, 1836, ch. 357, § 17, 5 Stat. 124.—May 27, 1848, ch. 47, § 1, 9 Stat. 231.

The word "patentee" is used as equivalent to inventor, and the law looks to him as the sole object of its bounty, and means to reward him and him alone for his time, ingenuity and expense in perfecting his invention. *Woodworth v. Sherman*, 3 Story, 171; *Brooks v. Bicknell*, 4 McLean, 64.

After the decease of the patentee an extension of a patent may be granted to his administrator. The rights under the patent before its extension remain in every respect the same after its extension. The administrator acts as the trustee of the heirs; he represents the deceased. *Brooks v. Bicknell*, 3 McLean, 250; *Brooks v. Jenkins*, 3 McLean, 432; *Washburn v. Gould*, 3 Story,

122; *Wilson v. Rosseau*, 4 How. 646; s. c. 1 Blatch. 3; *Woodworth v. Sherman*, 3 Story, 171.

The extension may be granted to the patentee, although the original patent has been surrendered and a reissue granted to an assignee. *Crompton v. Belknap Mills*, 3 Fish. 536; *Potter v. Braunsdorff*, 7 Blatch. 97.

The extension may be of the original patent, although there has been a reissue to an assignee without the assent of the patentee. *Potter v. Braunsdorf*, 7 Blatch. 97.

In computing the period of ninety days, the day on which the application is filed is to be included. *Johnson v. McCullough*, 4 Fish. 170.

Applicant.

The grant of extensions is for the benefit of inventors, and not of assignees and speculators. *G. Peberdy*, 2 O. G. 644; *Charles Waters*, 1 Dec. Com. 42; *Cornelius W. Van Vliet*, 1 Dec. Com. 93; *O. W. Minard*, 2 Dec. Com. 36; *Gleason & Crossman*, 2 Dec. Com. 158; *John L. Mason*, 3 Dec. Com. 182; *T. F. Taft*, 3 Dec. Com. 224; *G. W. Hildreth*, 3 Dec. Com. 261; *L. F. Munger*, 3 O. G. 323.

If one appears without any authority from the patentee, or not as executor or administrator, an extension will be refused him. *Torrey & Tilton*, 3 Dec. Com. 245.

The authority of an attorney who signs a petition for an extension for his principal, need not be antecedent to his filing it; if the principal adopts it afterwards it is sufficient. *Henry Voelter*, 2 Dec. Com. 84; *R. H. Garrigues' Admr.*, 2 Dec. Com. 88.

If one joint inventor alone files the application, and the other ratifies and unites in it before the expiration of the patent, the application will be entertained and acted on in the same manner as if both had originally signed it. *D. E. Beadle*, 1 O. G. 434.

A patent issued to two joint inventors can not be extended upon the several application of one of them. *John B. Wickersham*, 4 O. G. 155.

A patentee may apply for an extension of the original patent, although an assignee without his consent surrendered the original patent and obtained a reissue. *Harriet L. Low*, 1 O. G. 203.

Where an assignment has been recently made of a moiety of the invention for a nominal sum, the rule requiring the patentee to show his interest in the extension will not be waived. *Thomas Lee*, 1 O. G. 434.

A patent may be extended if the inventor owns a half interest in the extended term. *Horace Woodman*, 1 O. G. 550.

An extension will not be granted if the inventor has no interest remaining in the extended term. *John L. Mason*, 3 Dec. Com. 182; *H. H. Furbish*, 3 Dec. Com. 190.

Statement.

The object of the requirement is to furnish the commissioner data for a reliable judgment as to whether the inventor has been reasonably remunerated, and it is only necessary that the account shall be elaborated to this extent. It is not necessary to give by itself every item of expenditure and receipt on account of the patent. *T. H. Willson*, 1 O. G. 185.

In order to obtain the extension of a patent, the applicant must furnish a statement, in detail, of what he has received and expended on account of the invention, under oath. *John R. Harrington*, 2 Dec. Com. 27; *Alva B. Taylor*,

2 Dec. Com. 68; Levi Averill, 2 Dec. Com. 82; Robert A. Smith, 2 Dec. Com. 87; Albert A. Gray, 2 Dec. Com. 88; Reuben Conins, 3 Dec. Com. 27; A. B. Latta, 3 O. G. 349.

The law requiring an applicant to furnish a statement of the ascertained value of the invention does not necessarily contemplate a *numerical* statement. Peter Cook, 3 Dec. Com. 24; E. F. Whiton, 3 Dec. Com. 201.

The extension may be granted although the statement was not filed within thirty days from filing the application. Horace Woodman, 1 O. G. 550.

The statement must be under oath and show the ascertained value of the invention, giving the patentee's receipts and expenditures. R. N. Allen, 1 O. G. 278.

Whether an account will be deemed to be sufficiently in detail, may be affected by the fact that the party opposing the application does not object to it on that ground. T. H. Willson, 1 O. G. 185.

When the application for an extension is not filed in season, it will not be received and the fee will be returned. J. C. Smith's Adm'rs, 2 Dec. Com. 114.

Value.

If the previous demand for a patent had been limited, and it was found useful and met with large sales only after an improvement had been applied to it, an extension will not be granted. P. H. Roots, 6 O. G. 391.

Where, upon an application for an extension, the value of the invention can be ascertained only from the sales of a machine embracing others with it, the proportionate value of each may be determined upon the affidavit of the applicant, if not inconsistent with their apparent importance. Horace Woodman, 2 Dec. Com. 66.

The extension of a patent will be refused where the patentee has sold his interest in it for a trifling consideration. William Gage, 2 Dec. Com. 100; John F. Boynton, 2 Dec. Com. 125; Andrew M. Hall, 2 Dec. Com. 174; John G. Baker, 1 O. G. 632.

A mere allegation that the inventor has sold rights under his patent, is not sufficient unless he produces the affidavits of the vendees to prove the importance of the invention. P. V. Matthews, 1 O. G. 405.

In showing the value of an invention the patentee is entitled to all uses to which his invention may be found adaptable. John G. Baker, 1 O. G. 632.

Affidavits which merely give the opinions of the witnesses, without stating any facts or data, are not sufficient to show the value of the invention. Thomas Lee, 1 O. G. 434; Samuel Falkenberg, 2 O. G. 3; John R. Marston, 1 O. G. 608.

If improvements have been added, the statement of the value of the invention should distinguish how much of the value was due to the portions patented by applicant for extension. John Haseltine, 8 O. G. 45.

Where the value of the invention, and the diligence exercised in introducing it, sufficiently appear from papers filed in the case, though they are not strictly of evidence, the extension of a patent will be allowed. David Munson, 2 Dec. Com. 78.

If a patented machine has proved highly useful, the difference between it and former unsuccessful machines should not be nicely weighed upon a petition for an extension. Cyrus Chambers, Jr. 2 Dec. Com. 124; John A. Montgomery, 4 O. G. 132.

If it is manifest, from the evidence, an invention is valuable, an extension will be granted, although the statements to that effect are defective. David H. Whittemore, 3 Dec. Com. 30; Sidney S. Hogle, 3 Dec. Com. 72; Alonzo M. Giles, 3 Dec. Com. 76.

A patent for a process will not be extended if the composition described to be used in the process was laid aside soon after the patent was granted, and another more effective substituted, which has been kept secret. *H. W. Collender*, 2 O. G. 727.

Old newspapers are not regarded as such well-known printed matter as can be used in argument, for purposes of evidence, without previous notice. *Robert Dick*, 2 O. G. 147.

Upon applications for the extension of a patent, the value of the invention will be estimated according to what it was as described in the original patent, irrespective of modifications, improperly interpolated in a reissue. *John Taggart*, 1 Dec. Com. 102.

Where the invention could have cost but little time, ingenuity or expense, and is not of great public use, an extension will be refused. *Hiram Tucker*, 1 Dec. Com. 39; *M. Riehl*, 1 Dec. Com. 52; *W. O. Hickok*, 1 Dec. Com. 94; *William Gee*, 2 Dec. Com. 8; *Calvin Dodge*, 2 Dec. Com. 23; *Jabez W. Hayes*, 2 Dec. Com. 77; *Charles Moore*, 2 Dec. Com. 83; *G. A. & H. Whipple*, 2 Dec. Com. 123; *Nathan Martz*, 2 Dec. Com. 16; *Jean L. Baudelot*, 2 Dec. Com. 184; *A. C. Gallahue*, 3 O. G. 319.

If no attempt is made to prove the invention valuable and important to the public, and no diligence is shown on the part of the inventors in introducing it into public use, an extension will be refused. *G. & D. Cook*, 3 Dec. Com. 19; *John W. Hoard*, 3 Dec. Com. 49; *Francis D. Ballou*, 5 O. G. 29.

If the invention has created and supplied an extensive demand in the market, and has been recognized by the public as one of great utility, an extension will be granted, although there may be grave doubts of its patentability. *Wm. E. Lockwood*, 3 O. G. 439.

Profits.

A patentee who has not received as much on account of his invention as he has expended, having been compelled by poverty, and the necessity of protecting his rights, to assign most of his interest in the extension, is entitled to have it renewed. *Ira Gill*, 3 Dec. Com. 12; *James E. A. Gibbs*, 3 Dec. Com. 155.

An applicant for an extension is not to be allowed a remuneration increased in proportion to the amount realized from the invention. *Isaac M. Singer*, 2 Dec. Com. 146.

Where different improvements upon the same machine are protected by successive patents, the separate value of which is not easily determinable, and the remuneration received from them all has been small, without any fault or lack of diligence on the part of the inventor, an extension will be granted. *Strong & Ross*, 3 Dec. Com. 8.

Where the patent has been, from first to last, in the hands of the patentee, the burden is on him to show that the benefit which he might have derived from the use of his invention was not lost through any fault or neglect of his, before an extension will be granted. *D. W. Hughes*, 1 Dec. Com. 96; *Christian Shunk*, 2 Dec. Com. 10; *Simon Ingersoll*, 2 Dec. Com. 38; *Smith & Skinner*, 2 Dec. Com. 131; *Kelly & Livingstone*, 3 Dec. Com. 29; *Arnton Smith*, 3 Dec. Com. 208; *Nicholas Whitehall*, 3 Dec. Com. 266.

An applicant who makes liberal charges for time, labor and expense bestowed upon the invention, is not entitled to great liberality in the matter of remuneration. *Robert Dick*, 2 O. G. 147; *Jean L. Baudelot*, 2 Dec. Com. 184.

If two inventions are so intimately connected in their use that it is impossible to make a distinct statement of receipts and expenditures for each, and the remuneration received from them both has been small, without any

fault or lack of diligence on the part of the inventor, an extension will be granted. *J. W. Riggs*, 3 Dec. Com. 291.

If it appears that the inventor has been reasonably remunerated for the time, ingenuity and expense bestowed upon the invention, an extension will be refused. *William R. Landfear*, 2 Dec. Com. 176; *S. H. & Joseph Strouse*, 2 Dec. Com. 182; *Jean L. Baudelot*, 2 Dec. Com. 184; *Orwell H. Needham*, 3 Dec. Com. 3; *Wm. B. Bates, Adm'r*, 3 Dec. Com. 17.

The restriction of the right to manufacture a machine to companies in which the patentee is a shareholder, is perfectly right, if he so chooses, but he will be held to a stricter account of receipts, and will be considered as keeping the manufacture of the invention in his own hands. *Perry G. Gardner*, 2 O. G. 359; *Hiram Tucker*, 1 Dec. Com. 39.

Receipts from foreign patents on account of the invention, must be embraced in the accounts upon an application for an extension. *D. N. Woodward*, 3 Dec. Com. 42.

If it is impossible to furnish a detailed account of expenditures on account of some unavoidable accident, and it is evident the inventor has been insufficiently rewarded without his fault, an extension will be granted. *John Benedict*, 3 Dec. Com. 40; *L. B. & H. A. Myers*, 3 Dec. Com. 55.

If an invention is an obvious one, the first one to produce it is not entitled to the same remuneration for it as the inventor of an improvement less likely to be discovered. *Marcus P. Norton*, 4 O. G. 156.

An applicant for an extension is not required to account for the profits made under the patent by his assignees, to whom he sold under the pressure of poverty. *Roxanna Rice*, 3 Dec. Com. 95.

If a patent covers an improvement in an article which could be applied to any other, the patentee will be sustained in crediting the invention with only the amount saved by it in the manufacture. *Calvin Adams*, 3 Dec. Com. 45.

There is no definite standard as to adequacy of remuneration, and where the invention is of an important character and of great public benefit, the fact of having been liberally compensated will not work against an extension. *Henry Waterman*, 2 O. G. 247; *H. W. Putnam*, 3 O. G. 240; *Benjamin F. Sturtevant*, 5 O. G. 2.

A patent will not be extended if, according to the applicant's statement, large sums must have been received which are not credited in the accounts, and other unexplained discrepancies occur. *E. G. Allen*, 3 Dec. Com. 269.

An extension will be granted, although no detailed accounts were rendered, where it has been rendered impossible by reason of the bankruptcy and death of the patentee, and his failure to receive a reasonable compensation is accounted for. *F. N. Clarke*, 3 Dec. Com. 54; *Brickman & Sisson*, 3 Dec. Com. 92.

A patent will be extended where there has been great outlay in demonstrating its utility without any return, and public interests will be promoted thereby, although the invention is not in public use and its ascertained value not definitely known. *Ross & Winans*, 2 O. G. 440.

Although a subsequent improvement creates a market for a foundation invention, and carries it into more extensive use than it would otherwise have been, yet this is no ground for reducing the account of proceeds from a license of the foundation invention. *Henry W. Fuller*, 5 O. G. 643.

If a patent has been extensively infringed, and the infringers are liable for damages to an amount which will give the inventor an ample remuneration, his patent will not be extended. *Geo. B. Arnold*, 5 O. G. 553.

If the patentee has granted permission to others to make his patented device for a specified royalty, and any considerable number has been thus manufactured, such royalty is the fairest measure of profits. *Lewis Miller*, 1 O. G. 431.

Where the inventor, without neglect or fault on his part, has failed to obtain from the use and sale of his invention a reasonable remuneration for the time, ingenuity and expense bestowed upon it, an extension will be allowed. Theodore T. Woodruff, 2 Dec. Com. 161; Wendell Wright, 2 Dec. Com. 167; Emanuel Andrews, 2 Dec. Com. 170; Thomas Nelson, 2 Dec. Com. 172; Joseph Kingsland, 2 Dec. Com. 173; Joseph H. Goodell, 2 Dec. Com. 174; John J. Squire, 2 Dec. Com. 179; B. G. Dawley, 2 Dec. Com. 181; Isaac A. Dunham, 2 Dec. Com. 186; Henry Eddy, 3 Dec. Com. 4; James P. Cramer, 3 Dec. Com. 6; John G. Vaughan, 3 Dec. Com. 13; D. H. Whittemore, 3 Dec. Com. 14; Azel S. Lyman, 3 Dec. Com. 20; Jas. Stimpson, 3 Dec. Com. 21; Seth C. Ellis, 3 Dec. Com. 22; P. Cook, 3 Dec. Com. 24; Julia M. Milligan, 3 Dec. Com. 29; David H. Whittemore, 3 Dec. Com. 30; Edgar Huson, 3 Dec. Com. 33; J. D. Brown, 3 Dec. Com. 39; C. H. & H. E. Davidson, 3 Dec. Com. 71; Isaac Hayden, 3 Dec. Com. 73; Wm. L. Williams, 3 Dec. Com. 93; A. H. Rowand, 3 Dec. Com. 105; James D. Sarvin, 3 Dec. Com. 170; William Kelly, 3 Dec. Com. 186; John Haw, 3 Dec. Com. 191; F. C. Lowthorp, 3 Dec. Com. 192; L. F. Munger, 3 Dec. Com. 203; John P. Manny, 3 Dec. Com. 205; Benaiah Fitts, 3 Dec. Com. 211; B. D. Whitney, 3 Dec. Com. 211; Philip W. McKensie, 3 Dec. Com. 223; Lovejoy & Butterfield, 3 Dec. Com. 267; C. Chambers, 3 O. G. 320; Michael H. Simpson, 2 Dec. Com. 88; Ethan Rogers, 2 Dec. Com. 92; Emily J. Lamson, 2 Dec. Com. 94; Sopia & P. L. Moen, Adm'rs, 2 Dec. Com. 98; Samuel Thomas, 2 Dec. Com. 99; W. & Wm. H. Lewis, 2 Dec. Com. 118; Tobias J. Kindleberger, 2 Dec. Com. 121; D. P. Estep, 2 Dec. Com. 123; George Thompson, 2 Dec. Com. 128; Samuel Morrill, 2 Dec. Com. 134; El Dora Louis, Adm'x, 2 Dec. Com. 148; Thaddeus Fairbanks, 3 Dec. Com. 15; Samuel R. Smith, 3 Dec. Com. 16; D. W. Shares, 3 Dec. Com. 19; Samuel R. Wilmot, 3 Dec. Com. 31; Wm. C. Hicks, 3 Dec. Com. 50; George F. Hutchins, 3 Dec. Com. 57; Elliott Savage, 3 Dec. Com. 69; An M. Cooley, 3 Dec. Com. 187; John Toulman, 3 Dec. Com. 214; Charles H. Sayer, 3 Dec. Com. 224.

SEC. 4925. Upon the receipt of such application, and the payment of the fees required by law, the commissioner shall cause to be published in one newspaper in the city of Washington, and in such other papers published in the section of the country most interested adversely to the extension of the patent as he may deem proper, for at least sixty days prior to the day set for hearing the case, a notice of such application, and of the time and place when and where the same will be considered, that any person may appear and show cause why the extension should not be granted.

Statute Revised—July 8, 1870, ch. 230, § 64, 16 Stat. 208.

Prior Statute—July 4, 1836, ch. 357, § 17, 5 Stat. 124.

A notice of an application for an extension of the original patent is sufficient, although it has been surrendered and a reissue granted. *Crompton v. Belknap Mills*, 3 Fish. 536.

The judgment of the commissioner settles conclusively all questions of notice. *Crompton v. Belknap Mills*, 3 Fish. 536; *Brooks v. Bicknell*, 3 McLean. 250; *Gear v. Grosvenor*, 6 Fish. 314; s. c. 1 Holmes, 215; 3 O. G. 380.

SEC. 4926. Upon the publication of the notice of an application for an extension, the commissioner shall refer the case to the principal examiner having charge of the class of inventions to which it belongs, who shall make the commissioner a full report of the case, stating particularly whether the invention or discovery was new and patentable when the original patent was granted.

Statute Revised—July 8, 1870, ch. 230, § 65, 16 Stat. 208.

Prior Statutes—July 4, 1836, ch. 357, § 17, 5 Stat. 124.—May 27, 1848, ch. 47, § 1, 9 Stat. 231.

SEC. 4927. The commissioner shall, at the time and place designated in the published notice, hear and decide upon the evidence produced, both for and against the extension; and if it shall appear to the satisfaction of the commissioner that the patentee, without neglect or fault on his part, has failed to obtain from the use and sale of his invention or discovery a reasonable remuneration for the time, ingenuity, and expense bestowed upon it, and the introduction of it into use, and that it is just and proper, having due regard to the public interest, that the term of the patent should be extended, the commissioner shall make a certificate thereon, renewing and extending the patent for the term of seven years from the expiration of the first term. Such certificate shall be recorded in the patent office, and thereupon such patent shall have the same effect in law as though it had been originally granted for twenty-one years.

Statute Revised—July 8, 1870, ch. 230, § 66, 16 Stat. 208.

Prior Statute—July 4, 1836, ch. 357, § 17, 5 Stat. 124.

The granting of an extended patent is a judicial act. Authority to that end is conferred upon the commissioner of patents. The manner in which it is to be exercised, and the time within which it may be exercised, are prescribed by the act. When an extension is granted in apparent conformity to the act of Congress, the decision of the officer has the attribute of a final judgment. It is not subject to appeal or revision. It can not be shown that the commissioner exceeded or irregularly exercised his authority, except by matter apparent on the face of the patent. *Dorsey Co. v. Marsh*, 6 Fish. 387; s. c. 9 Phila. 395; *Clum v. Brewer*, 2 Curt. 506; *Colt v. Young*, 2 Blatch. 471; *Brooks v. Bicknell*, 3 McLean, 250; *Goodyear v. Providence Rubber Co.* 7 Fish. 499; s. c. 9 Wall. 788; 2 Cliff. 351; *Jordan v. Dobson*, 4 Fish. 232; s. c. 2 Abb. U. S. 398; 7 Phila. 533.

The decision of the commissioner is not conclusive as to the right of the

party to whom an extension is granted to obtain it. *Brooks v. Bicknell*, 3 McLean, 250.

The decision of the commissioner in extending a patent is not conclusive upon the question of his jurisdiction to act in a given case. *Wilson v. Rousseau*, 4 How. 646; s. c. 1 Blatch. 3.

The entry of a decision upon the file wrapper provisionally, without being promulgated, will be regarded as a minute of the views of the commissioner, and not as a decision. *Wood Paper Co. v. Glen Falls Co.* 4 Fish. 561; s. c. 8 Blatch. 513.

The expiration of a foreign patent for the same invention forms no objection to the granting of an extension. *Tilghman v. Mitchell*, 4 Fish. 615; s. c. 9 Blatch. 18.

An extension vests an absolute title in the patentee, although he may not have had it at the time of making a surrender and taking a reissue. *Potter v. Empire Sewing Machine Co.* 3 Fish. 474.

A transcript of an extension is sufficient, although it does not state the payment of the fees, the notice or the grounds of the decision. The proceeding is summary, and does not require the same degree of particularity as a judicial record. The function of the commissioner is in its nature judicial. Parties are brought before him, as well those who oppose the extension of the patent as those who apply for it, and evidence on both sides being heard, the commissioner pronounces his judgment. The proceeding, therefore, is not like a tax sale, where every step must be proved, or the title fails, but it is in the nature of a judicial action, where, jurisdiction being acquired, no subsequent errors can affect the title of a purchaser under execution. The courts can not prescribe the form in which duties devolved upon the executive branch of the government shall be performed. They can only say whether enough appears to show that the subject was before the commissioner, and his decision. *Brooks v. Jenkins*, 3 McLean, 452.

An allegation that the patent was extended by the commissioner is substantially supported by proof of an extension by the acting commissioner. A provisional officer, who is invested by law with the functions of the commissioner of patents, is properly described as commissioner so far as the efficacy of his official acts is concerned. *Dorsey Co. v. Marsh*, 6 Fish. 387; s. c. 9 Phila. 395.

The form of an extension, under a special act, may be the same as that in general use. *Agawam Co. v. Jordan*, 7 Wall. 583.

The function of the commissioner in extending a patent is judicial, and his decision is conclusive until it is impeached in a proceeding had directly for that purpose. The extension can not be impeached for fraud not apparent on its face in a collateral proceeding. The regular tribunal is chancery founded on a proceeding by *scire facias*, or by bill or information. *Rubber Co. v. Goodyear*, 2 Fish. 499; s. c. 9 Wall. 788; 2 Cliff. 351; *Gear v. Grosvenor*, 6 Fish. 314; s. c. 1 Holmes, 215; 3 O. G. 380; *Crompton v. Belknap Mills*, 3 Fish. 536; *Eureka Co. v. Bailey Co.* 11 Wall. 488; *Mowry v. Whitney*, 3 Fish. 120; s. c. 4 Fish. 207; 5 Fish. 496; 14 Wall. 620; 2 Bond, 45; *Wood Paper Co. v. Glen Falls Co.* 4 Fish. 324; s. c. 8 Blatch. 513; *Tilghman v. Mitchell*, 4 Fish. 615; s. c. 9 Blatch. 18.

The proof of the alleged fraud in obtaining the extension of a patent must be clear and satisfactory. *Goodyear v. Providence Rubber Co.* 2 Fish. 499; s. c. 9 Wall. 788; 2 Cliff. 351.

A bill to vacate an extension filed after the expiration thereof, will not be entertained, for the extension has ceased to be of any effect, and there remains nothing which can be the subject of a suit. *Bourne v. Goodyear*, 9 Wall. 811; *Mowry v. Whitney*, 5 Fish. 513; s. c. 14 Wall. 434; 1 O. G. 499.

A party who has consented to an act can not afterwards complain of it as a fraud. *Goodyear v. Providence Rubber Co.* 2 Fish. 499; s. c. 9 Wall. 788; 2 Cliff. 351.

If a special act extending a patent is procured by fraud, it is nevertheless binding on the courts, and the only remedy is to obtain a repeal. *Gibson v. Gifford*, 1 Blatch. 529.

Practice.

Extensions are not granted, like patents, as a matter of strict right, to which the party is entitled on fulfilling certain requirements; they are more subject to the discretion of the commissioner. *Henry Bessemer*, 2 Dec. Com. 9; *Robert Mushet*, 2 Dec. Com. 106; *Wm. E. Ward*, 2 Dec. Com. 126.

Reason of opposition to an extension must be filed twenty days before the day of hearing, and must not be confounded with the notice of opposition. *Christopher Amazeen*, 2 Dec. Com. 132.

In any application for extension, absence of satisfactory proof, both of the value and importance of the invention, and of due diligence in introducing it into notice, is a fatal defect. *Samuel Falkenberg*, 2 O. G. 3; *John M. Heck*, 1 Dec. Com. 19; *Jonathan F. Barrett*, 1 Dec. Com. 40; *R. W. Lewis*, 2 Dec. Com. 8; *William P. Maxson*, 2 Dec. Com. 87; *W. M. Storm*, 2 Dec. Com. 97; *John F. Boynton*, 2 Dec. Com. 125; *Samuel A. Knox*, 2 Dec. Com. 126; *E. W. Sperry*, 2 Dec. Com. 139; *George Hoyt*, 2 Dec. Com. 183; *Lydia Moore*, 3 Dec. Com. 82; *Sylvester Bennett*, 3 Dec. Com. 191; *W. M. C. Cushman*, 3 O. G. 29.

Although the evidence does not give all the information as to the value of the invention, and the diligence of the patentee, which the rules require, yet, if it gives enough to satisfy the commissioner, an extension will be granted. *Henry R. Robbins*, 3 O. G. 292.

The application of a pioneer, whose invention has been made more practical by subsequent improvement, is regarded with favor. *Hymen L. Lipman*, 1 O. G. 304; *Eli W. Blake*, 1 O. G. 605.

Public policy may demand the extension of a patent to be refused on account of claims which the patentee might insist upon on a reissue. *T. J. Stealey*, 3 Dec. Com. 317.

Where matters have been improperly interpolated in a reissued patent, an extension of it will be refused. *John A. Krake*, 1 Dec. Com. 100; *Mary G. Pratt*, 2 Dec. Com. 2; *Christian Shunk*, 2 Dec. Com. 10; *Abner G. Bevin*, 2 Dec. Com. 68; *Robert H. Fletcher*, 3 Dec. Com. 7; *Ethan Allen*, 5 O. G. 148.

The extension of a patent will be refused where the claim is practically worthless, and the device has gone into extensive use without any effort to obtain a reissue or check notorious infringements. *Sarah A. Holmes, Executrix*, 2 Dec. Com. 155.

An application for the extension of a patent which has been reissued in several divisions, will be allowed as to one which embraces the same claim substantially as the original patent, and found to be of value; but will be denied as to the others which embrace claims not in the original. *Walter*

Hunt's Adm'rs, 2 Dec. Com. 29; Levi Bissell, 3 Dec. Com. 207; James R. Floyd, 6 O. G. 541.

When a claim which is allowed to remain on extending a patent, defines the invention by reference to another which is required to be disclaimed, the latter will be understood to remain valid so far as it is connected with the other. S. B. Sexton, 3 O. G. 409.

A patent will not be extended unless it is restricted to the special use described by the device named, if it is one that has been known before in other applications. Sarah Stone, Adm'x, 1 Dec. Com. 48.

Although a patent covering the principle on which a process depends, has already been extended, yet a patent to another person, who first discovered the method of making the principle available, and reduced it to successful practice, will also be extended. Samuel Wetherill, 1 Dec. Com. 87.

A reissued patent will not be extended which claims more than was originated by the patentee. W. W. Lyman, 2 O. G. 705; E. W. Goodale, 1 Dec. Com. 82; S. B. Sexton, 3 O. G. 409.

Although the term for which a patent issued has not elapsed, it can not be extended if it has expired in consequence of the expiring of a foreign patent for the same invention. Ernest Gessner, 3 Dec. Com. 48.

The extension of a patent should not be denied because a previous English patent for the same invention has expired, if the specification in the latter was enrolled less than six months before the application was filed on which the American patent was granted. Apperly & Clissold, 2 Dec. Com. 163; John Neville, 2 Dec. Com. 167; Silas G. Putnam, 2 Dec. Com. 168.

Results are not patentable; therefore, functional claims, or for results, are refused extension. Robert Dick, 2 O. G. 147.

An extension will be refused where the article did not involve invention, or was not new. P. A. Sabbaton, 2 O. G. 703; T. N. Lupton, 1 Dec. Com. 10; John M. Heck, 1 Dec. Com. 19; Samuel Pelton, 1 Dec. Com. 112; W. H. King, 2 Dec. Com. 79; Edwin et al. 2 Dec. Com. 117; Matthew A. Crooker, 2 Dec. Com. 133; John Worsley, 2 Dec. Com. 176; B. T. Babbitt, 3 Dec. Com. 70; Gideon B. Massey, 3 Dec. Com. 213; Lawton & Bliss, 3 O. G. 150; R. A. Stewart, 4 O. G. 665; Francis D. Ballou, 5 O. G. 29; H. H. King, 2 Dec. Com. 79.

An extension may be granted and the question of novelty left for the determination of the courts. A. J. Johnson, 1 O. G. 631.

If the courts have sustained the validity of a patent, and no new references are introduced to the notice of the office, the patent is regarded as unimpeachable, and will be extended. Henry Blandy, 2 O. G. 174; George Johnson, Adm'r, 2 Dec. Com. 86; W. W. Lewis, 3 O. G. 92.

If the novelty of the invention has been sustained by the courts, it will be assumed to have been satisfactorily established. Eli W. Blake, 1 O. G. 605.

The extension of a patent will be refused if it be found that the device patented is wanting in novelty, although it has been sustained in two suits at law in which that question was not raised. Mary J. Osborn, Adm'x, 2 Dec. Com. 80; Geo. B. Arnold, 5 O. G. 553.

The question whether an invention was sufficiently perfected when the patent was granted, having been considered at the time, and discussed upon trials in which the patent was sustained, should not be agitated anew upon an application for extension, without good reason. John E. Burrow, 1 Dec. Com. 48.

The novelty of an invention described in a patent for which an extension is prayed, can not be impeached upon the ground that it is described in another patent of nearly the same date, if the grantee in the latter patent has conceded in a written instrument that the applicant is the prior inventor. Thomas J. Chubb, 3 Dec. Com. 233.

An extension may be granted upon *ex parte* affidavits showing that the patentee was the first inventor, although a prior patent had been granted to another. Frederick Nishwitz, 1 O. G. 143.

If it is doubtful whether the inventions shown in a previous patent to the same party were perfected when the prior patent was applied for, an extension will be granted. John Tyler, 2 Dec. Com. 159.

The extension of a patent will be refused, if it appears that the process and machine claimed in the reissues of the patent had been described in a prior printed publication. F. P. E. Carré, 4 O. G. 180.

The extension of a patent will be refused where the applicant has held a previous patent, embodying essentially the same principle. W. G. Creamer, 2 Dec. Com. 133; A. B. Latta, 3 O. G. 349.

Upon an application for extension, in determining whether the alleged invention is new or not, the consideration that the patent has been reissued, and has been extended, and has been sustained in litigation, is of especial weight. Calista E. Cox, 2 O. G. 491.

There can be no extension of an original patent when it has been reissued by the patentee himself, or if he has in any manner assented to such reissue. Henry H. Packer, 2 O. G. 31; Chas. G. Dickinson, 3 O. G. 91.

If one has failed to cure an insufficient specification by reissue during the life of the patent, an extension can not be allowed merely to afford an opportunity. George W. Morse, 6 O. G. 296.

Extended patents should contain only such matters as are proved valuable to the public, and the inventor has no right to an extension of what has no value, that subsequent inventors may not be embarrassed. C. W. Marsh, 2 O. G. 197; Thomas Allender, 1 Dec. Com. 46; Robert M. Wilder, 2 Dec. Com. 40; Darlington & Piper, 2 Dec. Com. 133; John L. Mason, 3 Dec. Com. 182; B. J. Lamothe, 3 Dec. Com. 201; Behr & Mongel, Adm'r, 3 O. G. 292.

If the patentee has made an application for a reissue which has been rejected, he can not ask for an extension on the ground that the invention contains a feature which might be covered by a reissue, where it is the same as that named in the application. Ezra Emmert, 1 O. G. 90.

It is sufficient if, upon an extension, devices are disclaimed, except when used in a certain combination which is new. James A. Woodbury, 1 Dec. Com. 86; Timothy Bailey, 1 Dec. Com. 93; Charles T. Eames, 2 Dec. Com. 47; R. M. Hoe, 2 Dec. Com. 68.

A patent may properly be extended with reference to features in the invention which are not covered by the claims, but which are capable of being embraced in a reissue. Ezra Emmert, 1 O. G. 90.

Phrases intended to extend the scope of an invention, although of genuine import, when they overreach the features of the device, can not be allowed in an extension. M. Smith, 2 O. G. 117; Benjamin F. Avery, 2 Dec. Com. 1.

If other conditions are favorable, it is the established practice of the commissioner to grant extensions of patents having only such defects as may be cured by reissue. Thomas J. Mayall, 4 O. G. 582.

A patent will be extended notwithstanding the claim is too broad, when there is not sufficient time to correct it by a reissue. Mary F. Crocker, Adm'r, 1 Dec. Com. 85.

Diligence.

Where the inventors are themselves the manufacturers of their improvements, but have had their profits decreased by infringers introducing inferior machines into the market, and they have used due diligence in bringing them to justice, it can not be charged that their proper remuneration failed by reason of their own neglect or fault. Henry & F. J. L. Blandy, 2 O. G. 174; Lauris-

ton Towne, 3 Dec. Com. 258; John W. Masury, 4 O. G. 1; Hosea Ball, 2 Dec. Com. 110.

An application for extension will be refused where the failure to receive proper remuneration has arisen mainly from applicant's own fault and neglect. John B. Read, 2 Dec. Com. 137; George W. Morse, 2 Dec. Com. 139.

A patent will not be extended where the patentee has not been diligent in introducing his invention, nor where the affidavits as to the value of the invention are general, and no data are furnished from which it can be estimated. Henry A. Rains, 2 Dec. Com. 82; George U. White, Adm'r, 2 Dec. Com. 160; G. W. Francis, 3 Dec. Com. 268; Wm. M. Draper, 3 O. G. 3.

The question of loyalty or disloyalty during the rebellion has no effect upon the status of the applicant, except so far as it pertains to the question of due diligence in introducing his invention into public use. Geo. W. Morse, 1 O. G. 489; Geo. W. Morse, 1 O. G. 607.

The extension will be refused if the patentee did not use due diligence to introduce the invention into public use. Samuel Falkenberg, 2 O. G. 3.

Extension will not be granted an applicant who has failed to receive a reasonable remuneration in consequence of suffering a foreign patent, previously granted, to run out before its regular determination. Robert Mushet, 2 Dec. Com. 106; Wm. E. Ward, 2 Dec. Com. 126; Jos. E. Boyer, 2 Dec. Com. 130.

SEC. 4928. The benefit of the extension of a patent shall extend to the assignees and grantees of the right to use the thing patented, to the extent of their interest therein.

Statute Revised—July 8, 1870, ch. 230, § 67, 16 Stat. 209.

Prior Statute—July 4, 1836, ch. 357, § 17, 5 Stat. 124.

The extension of a patent is a new grant of the exclusive right or monopoly in the subject of the invention. All the rights of assignees or grantees, whether in a share of the patent or to a specified portion of the territory held under it, terminate and become reinvested in the patentee. This clause is a qualification of such exclusive right. It refers to those who are in the use of the patented article at the time of the extension, and is intended to save to them that right which, without the clause, would be vested again exclusively in the patentee. The phrase "the thing patented" as used in the connection here found, with the right simply to use the thing patented, not the exclusive right which would be a monopoly, necessarily refers to the patented machine and not to the invention, and indeed it is in that sense that the expression is to be understood generally throughout the patent law, when taken in connection with the right to use in contradistinction to the right to make and sell. The phrase "to the extent of their respective interests therein" refers to their interests in the thing patented, and in connection with the right simply to use means their interests in the patented machines, be that interest in one or more at the time of the extension. *Wilson v. Rousseau*, 4 How. 646; S. C. 1 Blatch. 3; *Woodworth v. Sherman*, 3 Story, 171; *Wilson v. Turner*, 4 How. 712; *Taney*, 278.

If that interest was short of the whole of the original term for which the patent was originally issued, it is still to be bounded by it. But if it is an in-

terest in terms designed to be co-extensive with all the interest which the patentee now has or may hereafter acquire, not merely to his present rights *in esse* but with his contingent rights *in posse*, then the section makes that a legal interest which otherwise would be but a mere potential equitable interest to be enforced in equity as a mere right under contract and not as a fixed present vested interest. *Woodworth v. Sherman*, 3 Story, 171; *Brooks v. Bicknell*, 4 McLean, 64.

When a patentee has made and vended to others to be used, one or more of the things patented, to that extent he parts with his exclusive right. He is entitled to but one royalty for a patented machine, and consequently, when he has himself constructed the machine and sold it or authorized another to construct and sell it, or to construct and use and operate it, and the consideration has been paid to him for the right, he has then to that extent parted with his monopoly, and ceased to have any interest whatever in the machine so sold or so authorized to be constructed and operated. Where such circumstances appear, the owner of the machine, whether he built it or purchased it, if he has also acquired the right to use and operate it during the lifetime of the patent, may continue to use it until it is worn out in spite of any and every extension subsequently obtained by the patentee or his assignee. *Bloomer v. Millinger*, 1 Wall. 340; *Blanchard v. Whitney*, 3 Blatch. 307; *Wooster v. Seidenberg*, 13 Blatch. 88; S. C. 9 O. G. 244.

The patentee under the extension is to be vested with the consequences of the acts of his predecessors. He takes the extension just as it falls to him on the expiration of the original patent from those holding under the original patent, and of course is not to be reinstated in all his original rights in every respect as they stood when the original patent was issued. *Goodyear v. Honsinger*, 3 Fish. 147; S. C. 2 Biss. 1.

The protection which the clause affords is limited to those who have a right to use, and in the construction and operation of the clause it should be limited to the exercise of that particular right, although the persons holding that right may also have held during the original term the exclusive right to use, to make and to vend. This right to use is protected, continued and secured only to the extent of the respective interests of such assignees and grantees therein. If the right to use before the extension was limited, it continues under this clause subject to the same limitation. *Day v. Union Rubber Co.* 3 Blatch. 488; S. C. 20 How. 216.

If a licensee contracts to pay a royalty during the original term and any renewal thereof, he will not be released from his liability upon an extension of the patent. *Union Manuf. Co. v. Lounsbury*, 41 N. Y. 363; S. C. 42 Barb. 125.

If the licensor prohibits the licensee from granting the right to use a machine beyond the original term, a purchaser of a machine from the licensee can not use it during an extended term. Notice to the purchaser of this limitation is not necessary, as the law imposes upon the purchaser the risk as to whether the title of the vendor is such that he can make a valid conveyance as against the real owner. *Mitchell v. Hawley*, 4 Fish. 388; S. C. 6 Fish. 331; 16 Wall. 544; 1 O. G. 306; 3 O. G. 241.

If a party was not rightfully in the enjoyment of the thing patented during the original term of the patent, he has no right to use it during the extended

term, unless he shows that the use is with the license, consent or knowledge of the patentee, or of some person authorized under him to convey the right. *Chaffee v. Boston Belting Co.* 22 How. 217.

A party who buys a machine from an infringer, and then subsequently purchases a territorial right from the patentee, thereby acquires a lawful title to the machine, and may use it after the expiration of the patent. *Eunson v. Dodge*, 18 Wall. 414; S. C. 5 O. G. 95.

An assignee who holds the right to make and use the thing patented may continue to use it after the expiration of the patent, but can not make it for use or for any other purpose. *Wood v. Railroad Co.* 3 Fish 464; S. C. 2 Diss. 62; *Hodge v. Hudson River R. R. Co.* 6 Blatch. 165.

Those who construct machines, or cause them to be constructed, under the authority of the patentee or his assigns, have the same rights as grantees or assignees. *Bloomer v. Millinger*, 1 Wall. 340.

This clause has no reference to the rights or interests of assignees and grantees under the new and extended term. *Wilson v. Rousseau*, 4 How. 646; S. C. 1 Blatch. 3.

The terms of the clause are broad and general, and appropriate enough to secure the just rights of all who can be regarded as assignees or grantees of the right to use the patented invention, whether under a purchase of a machine, or a direct assignment or grant of a limited or unlimited right to use, and the equities of the case and the policy of the patent laws require that the clause should be so construed as to give such security. *Day v. Union Rubber Co.* 20 How. 216; S. C. 3 Blatch. 488; *Woodworth v. Curtis*, 2 W. & M. 524; *Woodworth v. Cook*, 2 Blatch. 151.

The term "the thing patented," as used in connection with the right simply to use, necessarily refers to the patented machine and not to the invention. A licensee of a patented process has no right to use the process after an extension of the patent. *Wetherill v. Zinc Co.* 6 Fish. 50; S. C. 9 Phila. 385; 2 O. G. 471; *vide Day v. Union Rubber Co.* 20 How. 216; S. C. 3 Blatch. 488.

Where a process requires a peculiar machine or apparatus for its practice, and the right to each is held by different persons under different patents, the right to use the machine will not give the right to use the process under an extension. *Wetherill v. Zinc Co.* 6 Fish. 50; S. C. 9 Phila. 385; 2 O. G. 471.

The right to use the machine after the expiration of the term is not a mere personal right. It is a right of property. The value of it is attached to the thing used. The machine and the right attached to it may pass by sale, devise or levy of execution, or assignment of an insolvent's effects. *Woodworth v. Curtis*, 2 W. & M. 524.

Between repairing and replacing there is a difference. Form may be given to a piece of any material, so as to produce an original result, or to aid the efficiency of one already known, and that would be the subject for a patent. It would be the right of a purchaser to repair such a thing as that, so as to give to it what was its first shape, if it had been turned from it, or by filing, grinding or cutting, to keep it up to the performance of its original use. But if, as a whole, it should happen to be broken, so that its parts could not be readjusted, or so much worn out as to be useless, then a purchaser can not

make or replace it by another, but he must buy a new one. The doing of either would be entire reconstruction. *Wilson v. Simpson*, 9 How. 109.

The right to repair may extend to a replacement of an essential part of a combination. It comprehends and permits the resupply of the effective ultimate tool of the invention, which is liable to be often worn out or to become inoperative for its intended effect, which the inventor contemplates would have to be frequently replaced anew during the time that the machine, as a whole, might last. The right to replace is not because the tool is of perishable materials, but because the inventor of the machine has so arranged it as a part of the combination that the machine can not be continued in use without a succession of replacements at short intervals. Unless it were replaced the invention would be of but little use to the inventor or others. The other constituent parts of the invention may not be made with reference to any use of them, which will require them to be replaced. These, without having a definite duration, are contemplated by the inventor to last so long as the materials of which they are formed can hold together in use in such combination. No replacement of them at intermediate intervals is meant or is necessary. They may be repaired as the use may require. With such intention they are put into the structure. So it is understood by a purchaser, and beyond the duration of them a purchaser of the machine has not a longer use. But if another constituent part of the combination is meant to be only temporary in the use of the whole, and to be frequently replaced, because it will not last as long as the other parts of the combination, the inventor can not complain, if he sells the use of the machine, that the purchaser uses it in the way the inventor meant it to be used, and in the only way in which the machine can be used. Such a replacement of temporary parts does not alter the identity of the machine, but preserves it, though there may not be in it every part of its original material. *Wilson v. Simpson*, 9 How. 109; *Farrington v. Commissioners*, 4 Fish 216.

If the different parts of a machine are covered by separate patents, the purchase of a machine will not confer upon the purchaser the right to replace one of the parts when it is worn out. *Aiken v. Manchester Print Works*, 2 Cliff. 435.

When the material of a combination ceases to exist, in whatever way that may occur, the right to renew it depends upon the right to make the invention. If the right to make does not exist, there is no right to rebuild the combination. *Wilson v. Simpson*, 9 How. 109.

When the wearing or injury is partial, then the repair is restoration and not reconstruction. Repairing partial injuries, whether they occur from accident or from wear and tear, is only refitting a machine for use. *Wilson v. Simpson*, 9 How. 109.

A party who purchased a machine during the existence of the original patent is entitled to continue the use of it during the time for which the patent is extended by a special act of Congress, unless there is something in the language of the law requiring a different construction. *Bloomer v. McQuewen*, 14 How. 539; *Bloomer v. Millinger*, 1 Wall. 340; *Blanchard v. Whitney*, 3 Blatch. 307.

If there is no provision in a license beyond the term of the patent, and no

condition is imposed by Congress in favor of the licensee in a special act extending a patent, he has no right under the patent after the expiration of the term. *Bloomer v. Stolley*, 5 McLean, 158.

An assignee has no interest in an extension procured by a special act, unless his rights are expressly mentioned and reserved. *Gibson v. Gifford*, 1 Blatch. 529.

SEC. 4929. Any person who, by his own industry, genius, efforts and expense, has invented and produced any new and original design for a manufacture, bust, statue, alto-relievo, or bas-relief; any new and original design for the printing of woollen, silk, cotton, or other fabrics; any new and original impression, ornament, patent, print, or picture to be printed, painted, cast, or otherwise placed on or worked into any article or manufacture; or any new, useful and original shape or configuration of any article of manufacture, the same not having been known or used by others before his invention or production thereof, or patented or described in any printed publication, may, upon payment of the fee prescribed, and other due proceedings had the same as in cases of inventions or discoveries, obtain a patent therefor.

Statute Revised—July 8, 1870, ch. 230, § 71, 16 Stat. 209.

Prior Statutes—Aug. 29, 1842, ch. 263, § 3, 5 Stat. 543.—March 2, 1861, ch. 68, § 11, 12 Stat. 248.

The patent allowed by this clause is simply for the design itself, and not for the means of producing the design. *Clark v. Bousfield*, 10 Wall. 133.

To entitle a party to the benefit of this provision, there must be an exercise of the inventive faculty. Mere mechanical skill is insufficient. There must be something akin to genius, an effort of the brain as well as the hand. *Northrup v. Adams*, 2 C. L. B. 84; *Wooster v. Crane*, 2 Fish. 583; s. c. 5 Blatch. 282.

To constitute an inventor of a design it is not necessary that the party should have the manual skill and dexterity to make the drafts. If the ideas are furnished by him for producing the result aimed at, he is entitled to avail of the mechanical skill of others to carry out his contrivance practically. *Sparkman v. Higgins*, 1 Blatch. 205.

It is essential to the validity of a patent for a design, that it should be a new and an original one, but the law does not require that it should be useful. *Miller v. Young*, 33 Ill. 354.

A beautiful appearance is not in itself patentable. The design must be new and original, and the work of invention and genius. *Ex parte Frederick G. Neidringhaus*, 8 O. G. 279; s. c. 2 McArthur, 149.

A combination of old designs, to be patentable, must produce a new appearance. If the effect produced is simply an aggregation of the old designs, it is not patentable. *Northrup v. Adams*, 2 C. L. B. 84.

A mere design, which is practically a suggestion that a greater degree of inclination of the sides, will make a billiard table more convenient, when other tables already existed, which with a view to the same useful result in kind, were constructed with a similar bevel, is not invention. *Collender v. Griffith*, 11 Blatch. 212; S. C. 3 O. G. 689.

If the patent for a design is not put in evidence, the court can not, without knowing what is patented, adjudge it to be void for want of novelty. *Miller v. Young*, 33 Ill. 354.

The acts of Congress which authorize the grant of patents for designs, were plainly intended to give encouragement to the decorative arts. They contemplate not so much utility as appearance, and that not an abstract impression or picture, but an aspect given to those objects mentioned in the acts. It is a new and original design for a manufacture, whether of metal or other material. A new and original design for a bust, statue, bas-relief, or composition in alto or basso relievo; a new or original impression or ornament to be placed on any article of manufacture; a new and original design for the printing of woolen, silk, cotton, or other fabrics; a new and useful pattern, print or picture, to be either worked into or on any article of manufacture; or a new and original shape or configuration of any article of manufacture—it is one or all of these that the law has in view. The thing invented or produced for which a patent is given, is that which gives a peculiar or distinctive appearance to the manufacture or article to which it may be applied, or to which it gives form. The law manifestly contemplates that giving certain new and original appearances to a manufactured article may enhance its salable value, may enlarge the demand for it and may be a meritorious service to the public. It therefore proposes to secure for a limited time to the ingenious producer of those appearances, the advantages flowing from them. Manifestly, the mode in which those appearances are produced, has very little if anything to do with giving increased salableness to the article. It is the appearance itself which attracts attention and calls out favor or dislike. It is the appearance itself, therefore, no matter by what agency caused, that constitutes mainly if not entirely the contribution to the public which the law deems worthy of recompense. The appearance may be the result of peculiarity of configuration or ornament alone or both conjointly, but in whatever way produced, it is the new thing or product which the patent law regards. To speak of the invention as a combination or process, or to treat it as such is to overlook its peculiarities. As the acts of Congress embrace only designs applied or to be applied, they must refer to finished products of invention rather than to the process of finishing them, or to the agencies by which they are developed. A patent for a product is a distinct thing from a patent for the elements entering into it, or for the ingredients of which it is composed, or for the combination that causes it. In determining whether two designs are substantially the same, the controlling consideration is the resultant effect. *Gorham Manuf. Co. v. White*, 6 Fish. 94; S. C. 14 Wall. 511; 7 Blatch. 513.

To constitute an infringement, it is not essential that the appearance should be the same to the eye of an expert. Such a test would destroy all the protection which the statute intended to give. There never could be a piracy of a patented design, for human ingenuity has never yet produced a design in all its details exactly like another, so like that an expert could not distinguish them. No counterfeit bank note is so identical in appearance with the true, that an experienced artist can not discern a difference. It is said, an engraver distinguishes impressions made by the same plate. Experts therefore are not the persons to be deceived. Much less than that which would be substantial identity in their eyes, would be undistinguishable in the eyes of men generally, of observers of ordinary acuteness, who bring to the examination of the article upon which the design has been placed, that degree of observation which men of ordinary intelligence give. It is persons of the latter class who are the principal purchasers of the articles to which designs have given novel appearances, and if they are misled and induced to purchase what is not the article they supposed it to be, the patentee is injured, and that advantage of a market which the patent was granted to secure, is destroyed. The purpose of the patent law must be effected if possible, but plainly it can not be if, while the general appearance of the design is preserved, minor differences of detail in the manner in which the appearance is produced, observable by experts, but not noticed by ordinary observers, are sufficient to relieve an imitating design from condemnation as an infringement. If in the eye of an ordinary observer, therefore, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other. *Gorham Manuf. Co. v. White*, 6 Fish. 94; S. C. 14 Wall. 511; 7 Blatch. 513.

The true test of identity of design is sameness of appearance, and mere difference of lines in the drawing or sketch, a greater or smaller number of lines, or slight variances in configuration, if insufficient to change the effect upon the eye, will not destroy the substantial identity. An engraving which has many lines, may present to the eye the same picture, and to the mind the same idea or conception as another with much fewer lines. The design, however, would be the same. So, a pattern for a carpet or a print may be made up of wreaths of flowers arranged in a particular manner. Another carpet may have similar wreaths arranged in a like manner, so that none but very acute observers could detect a difference. Yet in the wreaths upon one there may be fewer flowers, and the wreaths may be placed at wider distances from each other. Surely in such a case the designs are alike. The same conception was in the mind of the designer, and to that conception he gave expression. *Gorham Manuf. Co. v. White*, 6 Fish. 94; S. C. 14 Wall. 511; 7 Blatch. 513; *Root v. Ball*, 4 McLean, 177.

What may be Patented.

A device which manifestly is intended for a trade-mark, can not be patented as a design. *William Whyte*, 3 Dec. Com. 304; *William King*, 2 Dec. Com. 109.

If a device relates wholly to its mechanical function, and not to ornamenta-

tion, an application for a design patent will be refused. Charles A. Seaman, 4 O. G. 691.

The ordinary use of an article, is a controlling consideration in determining whether or not it presents proper subject-matter for a design patent. Bloomfield Brower, 4 O. G. 450.

A patent will not be granted for a design which is shown in the drawings annexed to a patent already issued for a machine. Alois Kohler, 4 O. G. 53.

The material used, or the mode in which an article is constructed, can not be monopolized under a patent for a design. Walter L. Tyler, 3 Dec. Com. 106.

An application for a patent for a product can not be changed into an application for a patent for a design. George H. Sellars, 2 Dec. Com. 58.

Where the function of a device enters into the claim, a patent for a design will not be given. J. F. Diffenderfer, 2 O. G. 57; Peter C. Parkinson, 3 Dec. Com. 251.

After having obtained a patent for a stove, the inventor can not have a patent for a design. Stuart & Bridge, 2 Dec. Com. 15.

New shapes and configurations may be patented as designs, on account of their utility, when that is owing to their form. William N. Bartholomew, 1 Dec. Com. 103.

An old form, when applied to a new article of manufacture, may be considered as a new design. William N. Bartholomew, 1 Dec. Com. 103.

A mere substitution of one color for another possesses no element of originality, and indicates no exercise of genius, and can not, therefore, become the subject of a design patent. Philip Weinberg, 3 Dec. Com. 244.

Designs which promote convenience and utility are embraced within the statute, as well as those which are merely ornamental. Jason Crane, 1 Dec. Com. 7; E. R. Fenno, 3 Dec. Com. 52.

When an alteration in any article is calculated to give it a better appearance merely, it can be protected only by a design patent. T. B. Oglesby, 3 O. G. 211.

Practice.

Although the specification of a design patent, embraces a description of the mode in which the article contemplated is constructed, it will not bar a separate patent for such construction. W. N. Bartholomew, 3 Dec. Com. 298.

There is no provision in the act relating to letters patent for designs, which forbids the union of two or more claims or clauses of claim in a single patent. Isaac A. Sheppard, 2 Dec. Com. 22.

All descriptions of the mechanical construction of the article should be eliminated in a design patent, as well as all reference to its purpose as a matter of utility. L. W. Fairchild, 3 O. G. 323.

If the specification and claim are deficient in the requirements of the law respecting clearness, exactness, and particularity, an application for a design patent should not be granted by the examiner. F. G. & W. F. Niedringhaus, 7 O. G. 171.

SEC. 4930. The commissioner may dispense with models of designs when the design can be sufficiently represented by drawings or photographs.

SEC. 4931. Patents for designs may be granted for the term of three years and six months, or for seven years, or for fourteen years, as the applicant may, in his application, elect.

Statute Revised—July 8, 1870, ch. 230, § 73, 16 Stat. 210.

Prior Statutes—August 29, 1842, ch. 263, § 3, 5 Stat. 543.—March 2, 1861, ch. 88, § 11, 12 Stat. 248.

An applicant for a design patent, must elect at the time of his application, the term for which he desires his patent to issue, and the payment of a fee corresponding to that election. *Israel C. Mayo*, 2 Dec. Com. 14.

SEC. 4932. Patentees of designs issued prior to the second day of March, eighteen hundred and sixty-one, shall be entitled to extension of their respective patents for the term of seven years, in the same manner and under the same restrictions as are provided for the extension of patents for inventions or discoveries, issued prior to the second day of March, eighteen hundred and sixty-one.

Statute Revised—July 8, 1870, ch. 230, § 74, 16 Stat. 210.

Prior Statute—March 2, 1861, ch. 88, § 11, 12 Stat. 248.

Upon extending a patent for a design, its utility may be taken into account in estimating its value and importance to the public. *B. L. Solomon*, 1 Dec. Com. 49.

SEC. 4933. All the regulations and provisions which apply to obtaining or protecting patents for inventions or discoveries, not inconsistent with the provisions of this title, shall apply to patents for designs.

Statute Revised—July 8, 1870, ch. 230, § 76, 16 Stat. 210.

SEC. 4934. The following shall be the rates for patent fees :

On filing each original application for a patent, except in design cases, fifteen dollars.

On issuing each original patent, except in design cases, twenty dollars.

In design cases : For three years and six months, ten dollars ; for seven years, fifteen dollars ; for fourteen years, thirty dollars.

On filing each caveat, ten dollars.

On every application for the reissue of a patent, thirty dollars.

On filing each disclaimer, ten dollars.

On every application for the extension of a patent, fifty dollars.

On the granting of every extension of a patent, fifty dollars.

On an appeal for the first time from the primary examiners to the examiners in chief, ten dollars.

On every appeal from the examiners in chief to the commissioner, twenty dollars.

For certified copies of patents and other papers, including certified printed copies, ten cents per hundred words.

For recording every assignment, agreement, power of attorney, or other paper, of three hundred words or under, one dollar; of over three hundred and under one thousand words, two dollars; of over one thousand words, three dollars.

For copies of drawings, the reasonable cost of making them.

Statutes Revised—July 8, 1870, ch. 230, §§ 68, 75, 16 Stat. 209, 210.—March 24, 1871, ch. 5, § 2, 17 Stat. 1.

Prior Statutes—April 10, 1790, ch. 7, § 7, 1 Stat. 112.—February 21, 1793, ch. 11, § 5, 11 Stat. 323.—July 4, 1836, ch. 357, §§ 4, 9, 11, 5 Stat. 118, 121.—March 3, 1839, ch. 88, § 8, 5 Stat. 354.—May 27, 1848, ch. 47, § 2, 9 Stat. 231.—March 2, 1861, ch. 88, § 10, 12 Stat. 248.—June 27, 1866, ch. 143, § 1, 14 Stat. 76.

SEC. 4935. Patent fees may be paid to the commissioner of patents, or to the treasurer or any of the assistant treasurers of the United States, or to any of the designated depositaries, national banks, or receivers of public money, designated by the Secretary of the Treasury for that purpose; and such officer shall give the depositor a receipt or certificate of deposit therefor. All money received at the patent office, for any purpose, or from any source whatever, shall be paid into the treasury as received, without any deduction whatever.

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

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

SEC. 4936. The treasurer of the United States is authorized to pay back any sum or sums of money to any person who has through mistake paid the same into the treasury, or to any receiver or depository, to the credit of the treasury, as for fees accruing at the patent office, upon a certificate thereof being made to the treasurer by the commissioner of patents.

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

Prior Statute—August 29, 1842, ch. 263, § 1, 5 Stat. 543.

CHAPTER TWO.

TRADE-MARKS.

Sec.		Sec.	
4937.	Registration of trade-marks authorized.	4943.	Restriction upon actions for infringement.
4938.	Accompanying declaration under oath.	4944.	Penalty for false registration of trade-marks.
4939.	Restriction on the registration of trade-marks.	4945.	Former rights and remedies preserved.
4940.	Time of receipt of trade-mark for registration to be certified.	4946.	Saving as to rights after expiration of term for which a trade-mark has been registered.
4941.	Duration of protection of registered trade-marks, and renewal.	4947.	Regulations for transfer of rights to trade-marks.
4942.	Remedy for infringement of registered trade-marks.		

SEC. 4937. Any person or firm domiciled in the United States, and any corporation created by the authority of the United States, or of any State or territory thereof, and any person, firm, or corporation resident of or located in any foreign country which by treaty or convention affords similar privileges to citizens of the United States, and who are entitled to the exclusive use of any lawful trade-mark, or who intend to adopt and use any trade-mark for exclusive use within the United States, may obtain protection for such lawful trade-mark by complying with the following requirements:

First. By causing to be recorded in the patent office a statement specifying the names of the parties, and their residences and place of business, who desire the protection of the trade-mark; the class of merchandise, and the particular description of goods comprised in such class, by which the trade-mark has been or is intended to be appropriated; a description of the trade-mark itself, with fac-similes thereof, showing the mode in which it has been or is intended to be applied and used; and the length of time, if any, during which the trade-mark has been in use.

Second. By making payment of a fee of twenty-five dollars, in the same manner and for the same purpose as the fee required for patents.

Third. By complying with such regulations as may be prescribed by the commissioner of patents.

Statute Revised—July 8, 1870, ch. 230, § 77, 16 Stat. 210.

The statute does not define the word "trade-mark," or say of what it shall consist. The term is used as though its signification were already well known in the law. Resort must therefore be had to the law outside of the statute, to ascertain what is or what may become a lawful trade-mark. *Moorman v. Hoge*, 2 Saw. 78.

If an arbitrary mark or device has been so long used in connection with an article of manufacture, that it has become well known to the trade as designating a particular person's goods, it constitutes a lawful trade-mark. *Morrison v. Case*, 9 Blatch. 548; S. C. 2 O. G. 544.

A simple illustration of a crown in connection with an article, to designate its origin and ownership, is a lawful trade-mark. *Smith v. Reynolds*, 10 Blatch. 100; S. C. 3 O. G. 216.

The name of a town joined to the name of an article is not a legal trade-mark, nor can it be made so by adding the name and place of business of the manufacturer. *Armistead v. Blackwell*, 1 O. G. 603.

The word "centennial" applied to medals generally, is not a good trade-mark. *Hartell v. Vinez*, 2 W. N. 602.

A barrel of peculiar form and dimensions, without any marks, symbols, or devices of any kind impressed upon or connected with it, can not become a trade-mark or a substantive part of a trade-mark. *Moorman v. Hoge*, 2 Saw. 78.

A party can not claim an ornamented tin pail, when used to contain a certain article, as a trade-mark. *Harrington v. Libby*, 4 A. L. T. (N. S.) 47; S. C. 12 O. G. 188.

If a trade-mark is claimed by a firm, it is sufficient to give the name of the firm, without giving the names of the individual members. *Smith v. Reynolds*, 3 O. G. 216; S. C. 6 A. L. T. 38.

A statement of the number in the street, the city, county, and State where the firm is, is a sufficient statement of the residence and place of business of the firm. *Smith v. Reynolds*, 10 Blatch. 100; S. C. 3 O. G. 216.

If a person is engaged in the manufacture and sale of paints generally, a designation of paints as the class of goods intended to be covered by the trade-mark is sufficient without further specification. *Smith v. Reynolds*, 10 Blatch. 100; S. C. 3 O. G. 216.

SEC. 4938. The certificate prescribed by the preceding section must, in order to create any right whatever in favor of the party filing it, be accompanied by a written declaration verified by the person, or by some member of the firm or officer of the corporation by whom it is filed, to the effect that the party claiming protection for the trade-mark has a right to the use of the same, and

that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; and that the description and fac-similes presented for record are true copies of the trade-mark sought to be protected.

Statute Revised—July 8, 1870, ch. 230, § 77, 16 Stat. 270.

The oath annexed to an application for a trade-mark is sufficient, although the seal of the notary is not attached, if that formality is not required by the law of the place where it was administered. *Cochran, McLean & Co.* 2 O. G. 520.

The statute does not require that the applicant's oath shall be in the exact words of the section. *Vidvard & Sheehan*, 8 O. G. 143.

If an applicant has not complied specifically with all the requirements of the statute, he will not be entitled to the registration of a trade-mark. *Hankinson*, 8 O. G. 89.

The law is as imperative in requiring a *description* of the trade-mark as in requiring a fac-simile thereof, and one will not supply the omission of the other. *Volta Belt Company*, 8 O. G. 144.

SEC. 4939. The commissioner of patents shall not receive and record any proposed trade-mark which is not and can not become a lawful trade-mark, or which is merely the name of a person, firm, or corporation, unaccompanied by a mark sufficient to distinguish it from the same name when used by other persons, or which is identical with a trade-mark appropriate to the same class of merchandise and belonging to a different owner, and already registered or received for registration, or which so nearly resembles such last-mentioned trade-mark as to be likely to deceive the public. But this section shall not prevent the registry of any lawful trade-mark rightfully in use on the eighth day of July, eighteen hundred and seventy.

Statute Revised—July 8, 1870, ch. 230, § 79, 16 Stat. 211.

The proceeding before the commissioner is purely *ex parte*. Other parties have no notice, actual or constructive. The decision of the commissioner is not conclusive that the party is entitled to a trade-mark. *Moorman v. Hoge*, 2 Saw. 78.

If a person has registered a trade-mark for a certain article generally, and the same symbol had been in use before he adopted it for certain descriptions thereof, the registration is void, for it is broader than his right. *Smith v. Reynolds*, 10 Blatch. 100; S. C. 3 O. G. 216.

A party who purchases a trade-mark from one partner can not have it registered, for he has not an exclusive right to use it. *Armistead v. Blackwell*, 1 O. G. 603.

No person is entitled to a trade-mark in a numeral which only indicates but does not express the quality of the goods. *Kinney v. Allen*, 4 A. L. T. (N. S.) 258.

If a person uses a numeral of a certain form, size, color and style, he may be entitled to use that as a trade-mark. *Kinney v. Allen*, 4 A. L. T. (N. S.) 258.

Parties who employ a word in an experimental way in five or six instances only, do not thereby gain a title to it as a trade-mark, in opposition to one who has, in the mean time, adopted it and put it into general use. *Sternberger v. Thalheimer*, 3 O. G. 120.

He who was the first to actually adopt and use a trade-mark for the purpose of indicating ownership or proprietorship of the articles to which the mark is applied, is entitled to it as against the person who was the first to suggest and urge its adoption. *Swift v. Peters*, 11 O. G. 1110.

The law does not require a description of every actual and possible matter that can be used in connection with the mark. The thing of value in the matter of registration is the trade-mark itself. No protection is afforded for the use of scrolls, fanciful figures, or other words which are not an essential part of the mark, and a full description of them will not be allowed. *William S. Kimball*, 11 O. G. 1109.

The production of a judgment establishing the validity of the trade-mark is not essential. The fact that the trade-mark was rightfully in use on the eighth day of July, 1870, may be established by the affidavits of disinterested parties, who have knowledge of the facts, setting forth the length of time the mark has been in notorious use, whether or not it has obtained a commercial value, and is considered by the trade as an indication of the origin and ownership of the articles to which it is affixed. *Rubber Clothing Co.* 10 O. G. 111.

The right to registration is founded on the adoption of a proper trade-mark, not the property of another party, and the declared intention to use it. *Rothschild*, 7 O. G. 220.

It is no bar to the registry of a trade-mark that it has already been used as such on articles of a different character. *R. W. English*, 2 Dec. Com. 142.

It is only necessary that trade-marks shall be so far original as that when known in the market the goods of one merchant or manufacturer may be distinguished from those of another. *Porter Blanchard's Sons*, 3 Dec. Com. 97; *R. J. Roberts*, 3 Dec. Com. 100; *Dutcher Temple Co.* 3 Dec. Com. 248; *George E. Glines*, 8 O. G. 435; *Robert Rohland*, 10 O. G. 980.

A word which is descriptive of the quality of the article, can not be used as a trade-mark. *Goodyear Rubber Co.* 11 O. G. 1062.

When matter that is the proper subject of a trade-mark is apparently claimed by another, the applicant must establish his right to it before he can have it included in a register of a label. *Jno. D. Park*, 12 O. G. 2.

A combination of two symbols may be registered, although another has previously registered one of them as a trade-mark for the same article. *Cornwall et al.* 12 O. G. 138.

If a trade-mark is so nearly like that owned by another as to mislead the public, it can not be registered. *Coggin, Kidder & Co.* 11 O. G. 1109.

An arbitrary combination of numerals, having no other meaning than to distinguish the applicant's goods in the market and indicate to purchasers that

all goods having this mark have one and the same origin, may be used as a trade-mark. *Dawes & Fanning*, 1 O. G. 27.

The designation "lion," whether used pictorially, or written or printed, is a lawful trade-mark for a medicine for a particular disease. *P. G. Weaver*, 10 O. G. 1.

The registration of the mere name of a person, firm, corporation, place, or article, or a word or words indicating kind or quality, will be refused. *Rowe & Post*, 9 O. G. 496; *Dundas, Dick & Co.* 9 O. G. 538; *J. Roach*, 10 O. G. 335; *Eagle Pencil Co.* 10 O. G. 981.

A newly coined word may be registered as a trade-mark, though it is suggestive of the material from which the article stamped with it is made. *Francis & Mallon*, 3 Dec. Com. 283.

A person has no right to employ a sign or symbol which, from the nature of the fact it is used to signify, others may employ with equal truth, and therefore with equal right. *Pratt & Farmer*, 10 O. G. 866.

Generic names and words descriptive of quality are common property, and no one has a right to an exclusive use of them. *C. L. Hawthaway*, 3 Dec. Com. 284; *Solon Palmer*, 3 Dec. Com. 289; *C. E. Richardson et al.* 3 O. G. 120.

Initial letters add nothing to a phrase which is not a lawful trade-mark without them; neither does the addition of a date help it any. *J. G. Johnson & Co.* 2 O. G. 315; *Blakeslee & Co.* 3 Dec. Com. 284.

Where the only essential portion of the trade-mark is descriptive and not distinguishing, registration should be denied. *B. Graham*, 2 O. G. 618; *C. L. Hawthaway & Sons*, 3 Dec. Com. 97; *Robert J. Roberts*, 3 Dec. Com. 113; *E. Kane & Co.* 9 O. G. 105; *Dundas, Dick & Co.* 9 O. G. 538.

Every emblem or device that can not be divested of its ordinary signification, and would be either descriptive or deceptive, is unlawful as a trade-mark. *John F. Tolle*, 2 O. G. 415; *The American Sardine Co.* 3 O. G. 495; *American Lubricating Oil Co.* 9 O. G. 687; *Bennage v. Phillippi*, 9 O. G. 1159.

A compound trade-mark, one of whose distinguishing features has already been appropriated and registered by another as applied to the same class of merchandise, can not be registered. *J. Bush & Co.* 10 O. G. 164.

It is no objection to a trade-mark that the several parts of which it is composed have been used separately, provided it is so distinct as not to deceive or mislead the public. *Joseph F. Imbs*, 10 O. G. 463.

It is sufficient if a trade-mark has an original and a distinctive signification as appertaining to the article. *India Rubber Comb Co.* 8 O. G. 905.

Phrases which are merely descriptive of the quality of the article, or its destined use, can not be registered as trade-marks. *Lawrence & Co.* 10 O. G. 163.

An applicant for the registration of a trade-mark may include in his specification either a whole class of merchandise or several specified descriptions thereof. *Frank Boehm & Co.* 8 O. G. 329.

If an individual permanently ceases to use his trade-mark, and consents to its use and adoption by another, he relinquishes his right to it. *Kidd & Co. et al.* 5 O. G. 337.

An interference in trade mark cases can properly be declared in accordance with the usual practice governing interference cases between applications for patents. *Lautz Bros. & Co. v. Shultz & Co.* 9 O. G. 791.

If the applicant is not entitled to the trade-mark, it is not necessary to determine whether another is or not. *Swift v. Peters*, 11 O. G. 1110.

SEC. 4940. The time of the receipt of any trade-mark at the patent office for registration shall be noted and re-

corded. Copies of the trade-mark and of the date of the receipt thereof, and of the statement filed therewith, under the seal of the patent office, certified by the commissioner, shall be evidence in any suit in which such trade-mark shall be brought in controversy.

Statute Revised—July 8, 1870, ch. 230, § 80, 16 Stat. 211.

A certified copy is evidence only that what is shown by it to have been filed was filed. It is not evidence that anything required by the statute to be filed, and not shown by the certificate or by the statement annexed to it to have been filed, was filed. A general certificate of the commissioner can not be taken as evidence that the requirements of the law have been met. *Smith v. Reynolds*, 10 Blatch. 85; S. C. 3 O. G. 213.

The statement required by the statute is a separate and distinct thing from the declaration, and when the statute speaks of certified copies of the statement, it does not thereby include the declaration. *Walker v. Reid*, 2 C. L. B. 133.

A certificate which gives a copy of the statement and shows that a declaration was filed, is sufficient. *Walker v. Reid*, 2 C. L. B. 133.

SEC. 4941. A trade-mark registered as above prescribed, shall remain in force for thirty years from the date of such registration; except in cases where such trade-mark is claimed for and applied to articles not manufactured in this country, and in which it receives protection under the laws of any foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this act at the same time that it becomes of no effect elsewhere. Such trade-mark during the period that it remains in force shall entitle the person, firm, or corporation registering the same, to the exclusive use thereof so far as regards the description of goods to which it is appropriated in the statement filed under oath as aforesaid, and no other person shall lawfully use the same trade-mark, or substantially the same, or so nearly resembling it as to be calculated to deceive, upon substantially the same description of goods. And at any time during the six months prior to the expiration of the term of thirty years, application may be made for a renewal of such registration, under regulations to be prescribed by the commissioner of patents. The fee for such renewal shall be the same as for the original registration; and a certificate of such renewal shall be issued in the same manner as for the original registration; and such

trade-mark shall remain in force for a further term of thirty years.

Statute Revised—July 8, 1870, ch. 230, § 75, 16 Stat. 211.

SEC. 4942. Any person who shall reproduce, counterfeit, copy, or imitate any recorded trade-mark, and affix the same to goods of substantially the same descriptive properties and qualities as those referred to in the registration, shall be liable to an action on the case for damages for such wrongful use of such trade-mark, at the suit of the owner thereof; and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of his trade-mark and to recover compensation therefor in any court having jurisdiction over the person guilty of such wrongful use.

Statute Revised—July 8, 1870, ch. 230, § 70, 16 Stat. 211.

If the trade-mark is for a combination, there is no infringement unless the whole combination is used. *Tucker Manuf. Co. v. Boyington*, 9 O. G. 455.

If a person who has acquired the exclusive use of a mark for particular kinds of paints, obtains a registration of it as a trade-mark for paints generally, this will not enable him to restrain another from its use upon certain paints to which he had been in the habit of affixing the same mark prior to registration. *Smith v. Reynolds*, 13 Blatch. 458.

The protection given by the statute is to the exclusive use of the trade-mark only so far as regards the particular description of goods set forth in the filed statement as the particular description of goods to or by which the trade-mark has been or is intended to be appropriated. *Osgood v. Rockwood*, 11 Blatch. 310.

It is always a matter of discretion whether to issue an injunction or not in a trade-mark case. *Tucker Manuf. Co. v. Boyington*, 9 O. G. 455.

SEC. 4943. No action shall be maintained under the provisions of this chapter by any person claiming the exclusive right to any trade-mark which is used or claimed in any unlawful business, or upon any article which is injurious in itself, or upon any trade-mark which has been fraudulently obtained, or which has been formed and used with the design of deceiving the public in the purchase or use of any article of merchandise.

Statute Revised—July 8, 1870, ch. 230, § 84, 16 Stat. 212.

SEC. 4944. Any person who shall procure the registry of any trade-mark, or of himself as the owner of a trade-mark, or an entry respecting a trade-mark in the

patent office, by making any false or fraudulent representations or declarations, verbally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence of any such registry or entry, to the person injured thereby; to be recovered in an action on the case.

Statute Revised—July 8, 1870, ch. 230, § 82, 16 Stat. 212.

SEC. 4945. Nothing in this chapter shall prevent, lessen, impeach, or avoid any remedy at law or in equity, which any party aggrieved by any wrongful use of any trade-mark might have had if the provisions of this chapter had not been enacted.

Statute Revised—July 8, 1870, ch. 230, § 83, 16 Stat. 212.

A person may maintain an action for an infringement of a trade-mark, although it has not been recorded at the patent office, for a trade-mark is property independently of the statute. The act is not obligatory. It offers to manufacturers an opportunity to have their trade-marks recorded, but imposes no penalty or forfeiture of right for neglect to so record them. *Rodgers v. Philp*, 1 O. G. 29.

The recording of a trade-mark does not convey any higher rights than the owner had independently of the statute. *Popham v. Wilcox*, 14 Abb. Pr. (N. S.) 206.

SEC. 4946. Nothing in this chapter shall be construed by any court as abridging or in any matter affecting unfavorably the claim of any person to any trade-mark after the expiration of the term for which such trade-mark was registered.

Statute Revised—July 8, 1870, ch. 230, § 78, 16 Stat. 211.

SEC. 4947. The commissioner of patents is authorized to make rules, regulations, and prescribe forms for the transfer of the right to the use of trade-marks, conforming as nearly as practicable to the requirements of law respecting the transfer and transmission of copyrights.

Statute Revised—July 8, 1870, ch. 230, § 81, 16 Stat. 211.

A stipulation that any breach of the contract by one party shall release the other party from all obligation under the contract, merely enlarges the right of rescission, but does not enable the party to enjoy the fruits of the contract without compensation where he does not elect to rescind, if the stipulation so broken was not so essential to the contract but that the breach can be compensated by damages. *Coe v. Bradley*, 9 O. G. 541.

CHAPTER THREE.

COPYRIGHTS.

Sec. 4948. Copyrights to be under charge of librarian of Congress.	Sec. 4961. Postmasters to give receipts.
4949. Seal of office.	4962. Publication of notice of entry for copyright prescribed.
4950. Bond of librarian.	4963. Penalty for false publication of notice of entry.
4951. Annual report.	4964. Damages for violation of copyright of books.
4952. What publications may be entered for copyright.	4965. For violating copyright of maps, charts, prints, &c.
4952A. Registration of prints and labels.	4966. For violating copyright of dramatic compositions.
4953. Term of copyrights.	4967. Damages for printing or publishing any manuscript without consent of author, &c.
4954. Continuance of term.	4968. Limitation of action in copyright cases.
4955. Assignment of copyrights and recording.	4969. Defenses to action in copyright cases.
4956. Deposit of title and published copies.	4970. Injunctions in copyright cases.
4957. Record of entry and attested copy.	4971. Aliens and non-residents not privileged.
4958. Fees.	
4958A. Fee for recording and certifying assignments.	
4959. Copies of copyright works to be furnished to librarian of Congress.	
4960. Penalty for omission.	

SEC. 4948. All records and other things relating to copyrights and required by law to be preserved, shall be under the control of the librarian of Congress, and kept and preserved in the library of Congress; and the librarian of Congress shall have the immediate care and supervision thereof, and, under the supervision of the joint committee of Congress on the library, shall perform all acts and duties required by law touching copyrights.

Statute Revised—July 8, 1870, ch. 230, § 85, 16 Stat. 212.

Prior Statute—February 5, 1859, ch. 22, § 8, 11 Stat. 380.

SEC. 4949. The seal provided for the office of the librarian of Congress shall be the seal thereof, and by it all records and papers issued from the office and to be used in evidence shall be authenticated.

Statute Revised—July 8, 1870, ch. 230, § 85, 16 Stat. 212.

SEC. 4950. The librarian of Congress shall give a bond, with sureties, to the treasurer of the United States, in the sum of five thousand dollars, with the condition that he will render to the proper officer of the treasury a true account of all moneys received by virtue of his office.

Statute Revised—July 8, 1870, ch. 230, § 85, 16 Stat. 212.

SEC. 4951. The librarian of Congress shall make an annual report to Congress of the number and description of copyright publications for which entries have been made during the year.

Statute Revised—July 8, 1870, ch. 230, § 85, 16 Stat. 212.

SEC. 4952. Any citizen of the United States or resident therein, who shall be the author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph, or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of the models or designs intended to be perfected as works of the fine arts, and the executors, administrators, or assigns of any such person shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same; and, in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others. And authors may reserve the right to dramatize or to translate their own works.

Statute Revised—July 8, 1870, ch. 230, § 86, 16 Stat. 212.

Prior Statutes—May 31, 1790, ch. 15, § 1, 1 Stat. 124.—April 29, 1802, ch. 36, § 2, 2 Stat. 171.—February 3, 1831, ch. 16, § 1, 4 Stat. 436.—August 18, 1856, ch. 169, § 1, 11 Stat. 138.—March 3, 1865, ch. 126, § 1, 13 Stat. 540.

Subjects of Copyright.

The statute was passed for the encouragement of learning, and was not intended for the encouragement of mere industry, unconnected with learning or science. *Clayton v. Stone*, 2 Paine, 382.

Literary merit is not a necessary element of a legal copyright. *Drury v. Ewing*, 1 Bond, 540.

There may be a valid copyright in the plan of a book as connected with the arrangement and combination of the materials, and the mode of displaying and illustrating the subject, although all the materials employed and the subject of the work may be common to all other writers. *Greene v. Bishop*, 1 Cliff. 186; *Emerson v. Davies*, 3 Story, 768; *Boucicault v. Fox*, 5 Blatch. 87.

A party who first brings together materials drawn from different sources is entitled to a copyright for a compilation. *Gray v. Russell*, 1 Story, 11; *Blunt v. Patten*, 2 Paine, 393.

Where there is nothing immoral or improper in a print itself, the fact that it may be used by persons to violate the law does not of itself deprive it of the protection of the law. To do this it must appear either that there is something immoral, pernicious, or indecent in the thing *per se*, or that it is incapable of any use except in connection with some illegal or immoral act. *Richardson v. Miller*, 15 A. L. J. 340; S. C. 12 O. G. 3.

A dramatic composition which is grossly indecent and calculated to corrupt the morals of the people, is not the proper subject of a copyright. *Martinetti v. Maguire*, 1 Deady, 216; S. C. 1 Abb. C. C. 356.

No reporter can have any copyright in judicial decisions. *Wheaton v. Peters*, 8 Wheat. 591; *Little v. Gould*, 2 Blatch. 165.

A reporter of judicial decisions is entitled to a copyright of his work to the extent of his authorship of the composition contained therein. *Little v. Gould*, 2 Blatch. 165; *Little v. Gould*, 2 Blatch. 362.

Copyrights of the editions of a work other than the original edition, are granted for additions to, emendations of, or improvements in the work, and every copyright should bear date of the day when it was secured. *Lawrence v. Dana*, 7 O. G. 81; S. C. 2 A. L. T. (N. S.) 402.

The term "book" does not carry with it the requirement that it shall be printed. A book may exist without printing, and such book, when made or composed, is to be entitled to copyright. *Roberts v. Myers*, 23 Law Rep. 396; S. C. 17 Leg. Int. 405.

The literary property intended to be protected by the act is not to be determined by the size, form or shape in which it makes its appearance, but by the subject-matter of the work. *Clayton v. Stone*, 2 Paine, 382.

A daily or weekly publication of the state of the market is not the subject of a copyright. *Clayton v. Stone*, 2 Paine, 382.

The preliminary steps required by law can not be reasonably applied to a work of so ephemeral a character as a newspaper. *Clayton v. Stone*, 2 Paine, 382.

A book need not be a book in the common and ordinary acceptance of the word, viz., a volume made up of several sheets bound together. It may be printed only on one sheet. *Clayton v. Stone*, 2 Paine, 382; *Scoville v. Toland*, 6 West. L. J. 84; *Drury v. Ewing*, 1 Bond, 540.

A chart which contains a series of diagrams interspersed with printed instructions as to the mode of using them in taking measurements for and cutting garments, is the subject of copyright. *Drury v. Ewing*, 1 Bond, 540.

A label intended for no other use than to be pasted on vials or bottles containing a medicinal preparation, is not the proper subject of a copyright. *Scoville v. Toland*, 6 West. L. J. 84; *Coffeen v. Brunton*, 4 McLean, 516.

A written work consisting wholly of directions set in order for conveying the ideas of the author on a stage or public place by means of characters who represent the narrative wholly by action, is as much a dramatic composition as if language or dialogue were used in it to convey ideas. *Daly v. Palmer*, 6 Blatch. 256.

A spectacular piece which consists almost wholly of scenic effects or representations, and in which the dialogue is very scant and meaningless, is not a dramatic composition. *Martinetti v. Maguire*, 1 Deady, 216; S. C. 1 Abb. C. C. 356.

Playing cards may be a proper subject of copyright. *Richardson v. Miller*, 15 A. L. J. 340; S. C. 12 O. G. 3.

A person who translates a dramatic composition with the consent of the author, is entitled to a copyright. *Shook v. Rankin*, 6 Biss. 477.

A person who deposits in the copyright office, the title of a drama not original with himself, can not secure to himself such title to the exclusion of others who have applied such title to a dramatic composition founded on the same story before the date of such deposit. *Benn v. Leclercq*, 30 Leg. Int. 185.

The musical composition contemplated by the statute, must be substantially a new and original work, and not a copy of a piece already produced, with additions and variations which a writer of music with skill and experience might readily make. *Jollie v. Jaques*, 1 Blatch. 618; *Reed v. Carusi*, Taney, 72.

If an engraving does not involve invention, it is not a subject of copyright. *Collender v. Griffith*, 11 Blatch. 212; S. C. 3 O. G. 689.

A photograph is not a print, cut or engraving. *Wood v. Abbott*, 5 Blatch. 325.

A publication of a new and revised set of rules regularly adopted by the court, is not a republication of the prior rules. *Banks v. McDivett*, 13 Blatch. 163; S. C. 8 O. G. 860.

Parties.

To constitute an author, the person must, by his own intellectual labor, applied to the materials of his composition, produce an arrangement or compilation new in itself. *Atwell v. Ferrett*, 2 Blatch. 39.

No person is entitled to a copyright in alterations and improvements made by others at his procurement and for him. *Atwell v. Ferrett*, 2 Blatch. 39.

No person is entitled to a copyright of an historical print which he did not invent or design, but which was invented, designed and engraved by others, although he employed them to do so. *Binns v. Woodruff*, 4 Wash. 48.

Although an author produces a work while in the general employment of another, yet he will not be deemed to have parted with his right and transferred it to his employer unless there is a valid agreement to that effect. *Boucicault v. Fox*, 5 Blatch. 87.

If an actor agrees with the proprietor to write a drama and allow it to be performed at the theatre so long as it draws good audiences, he is entitled to copyright, and the proprietor is a mere licensee. *Roberts v. Myers*, 23 Law Rep. 396; S. C. 17 Leg. Int. 405; *Boucicault v. Fox*, 5 Blatch. 87.

If a person give contributions to the proprietor of a work, the title thereto

is vested in the proprietor as the work is done, to the extent of the gift, and no assignment thereof is necessary. *Lawrence v. Dana*, 7 O. G. 81; S. C. 2 A. L. T. (N. S.) 402.

If contributions are given to the proprietor of a work, he may take a copyright. *Lawrence v. Dana*, 7 O. G. 81; S. C. 2 A. L. T. (N. S.) 402.

If contributions are given to be used in one edition of a work, the proprietor acquires no right to use them in any other edition. *Lawrence v. Dana*, 7 O. G. 81; S. C. 2 A. L. T. (N. S.) 402.

The legal assignee of an author is competent to take out a copyright although he takes it in trust for others. *Little v. Gould*, 2 Blatch. 362.

If a person accepts the office of reporter under a law which prohibits him from having any pecuniary interest therein or taking a copyright therefor, he thereby surrenders his rights as author, and can not confer them on another. *Little v. Gould*, 2 Blatch. 165.

If a person enters the employ of the government under a stipulation that all drawings and sketches made by him shall belong exclusively to it, and Congress orders them to be published, he is not entitled to a copyright. *Heine v. Appleton*, 4 Blatch. 125.

Unless there is a most unequivocal dedication of private letters and papers to the public or to some private person, the author has the exclusive right to a copyright thereof. *Folsom v. Marsh*, 2 Story, 100.

Aliens.

The publisher of the work of a foreign author can secure the exclusive right to such publication only by the voluntary and unconstrained forbearance of the trade. *Sheldon v. Houghton*, 5 Blatch. 285.

The term "resident" means a permanent inhabitant. A mere transient visitant whose family, business, intentions and relations are all abroad can not be considered a resident, and the filing of a declaration of an intention to become a citizen can not make him one. *Carey v. Collier*, 56 Niles Reg. 262.

Residence ordinarily means domicile, or the continuance of a person in a place, having his home there. It is not actually necessary that he shall be the occupant of his own house. He may be a boarder or lodger in the house of another. The main question is as to the intention with which a man or person is staying in a particular place. In order to constitute residence, it is necessary that a man shall go to a place with the intention of remaining, making it his home or place of abode. *Boucicault v. Wood*, 2 Biss. 34; S. C. 16 A. L. Reg. 539.

If a party takes a house in this country with the intention of remaining here, he is a resident, although he may subsequently return to his own country. *Boucicault v. Wood*, 2 Biss. 34; S. C. 16 A. L. Reg. 539.

In order to become a resident, the intention to remain must exist at the time when the party takes up his abode. *Boucicault v. Wood*, 2 Biss. 34; S. C. 16 A. L. Reg. 539.

Infringement.

An author may be said to be the inventor or creator both of the ideas contained in his book and the combination of words to represent them. Before publication he has the exclusive possession of his invention. But when he has published his book and given his thoughts, sentiments, knowledge or discoveries to the world, they become the common property of his readers, who have the right to use them and communicate them to others clothed in their own language, by lecture or treatise. *Stowe v. Thomas*, 2 Wall. Jr. 547; *Keene v. Clarke*, 5 Robt. 38.

The claim of literary property after publication can not be in the ideas or sentiments as severed from the language, idiom, style, or the outward semblance and exhibition of them. The author's exclusive property in the creation of his mind is only in the concrete form which he has given to it, and the language in which he has clothed it. When he has sold his book, the only property which he reserves to himself, or which the law gives to him, is the exclusive right to multiply copies of that particular combination of characters which exhibits to the eyes of another the ideas intended to be conveyed. That is what the law terms copy or copyright. *Stowe v. Thomas*, 2 Wall. Jr. 547; *Greene v. Bishop*, 1 Cliff. 186.

In questions of infringement of copyright, the inquiry is not whether the defendant has used the thoughts, conceptions, information or discoveries promulgated by the original, but whether his composition may be considered a new work requiring invention, learning and judgment, or only a mere transcript of the whole or parts of the original, with merely colorable variations. *Stowe v. Thomas*, 2 Wall. Jr. 547.

A translation of an author's ideas and conceptions into another language is not an infringement of a copyright. *Stowe v. Thomas*, 2 Wall. Jr. 547.

If a translator of a dramatic composition obtains a copyright, he can not prevent others from acting a prior translation made with the author's consent in England. *Shook v. Rankin*, 6 Biss. 477.

A fair abridgment of any book is considered a new work, as to write it requires labor and the exercise of judgment. It is only new in the view that the sense of the author is given in a condensed form. *Story v. Holcombe*, 4 McLean, 306; *Folsom v. Marsh*, 2 Story, 100.

Works on law, whether elementary or otherwise, are proper subjects of abridgment. *Story v. Holcombe*, 4 McLean, 306.

There is a clear distinction between a compilation and an abridgment. To abridge requires the exercise of the mind, and that is not copying. To compile is to copy from various authors into one work. An abridgment is a condensation of the views of the author; a compilation consists of selected extracts from different authors. *Story v. Holcombe*, 4 McLean, 306.

It may not be essential to exclude extracts entirely from an abridgment, but in making extracts merely there is no condensation of the language of the author, and consequently there is no abridgment of it. *Story v. Holcombe*, 4 McLean, 306; *Folsom v. Marsh*, 2 Story, 100; *Greene v. Bishop*, 1 Cliff. 186.

A copy of a book must be a transcript of the language in which the conceptions of the author are clothed, of something printed and embodied in a

tangible shape. The same conceptions clothed in another language can not constitute the same composition, nor can it be called a transcript or copy of the same book. *Stowe v. Thomas*, 2 Wall. Jr. 547.

A copy is one thing, an imitation or resemblance another. What degree of imitation constitutes an infringement is a nice question in many cases. *Emerson v. Davies*, 3 Story, 768.

It is not sufficient to show that one work may have been suggested by another, or that some parts and pages of it have resemblances to the other. It must be further shown that the resemblances in those parts and pages are so close, so full, so uniform and so striking as to fairly lead to the conclusion that one is a substantial copy of the other, or mainly borrowed from it. *Emerson v. Davies*, 3 Story, 768.

In order to constitute an invasion of a copyright, it is not necessary that the whole of the work shall be copied, or even a large portion of it, in form or in substance. The entirety of the copyright is the property of the author, and it is no defense that another has appropriated a part and not the whole of any property. *Folsom v. Marsh*, 2 Story, 100; *Greene v. Bishop*, 1 Cliff. 186.

Whether there has been an infringement does not necessarily depend upon the quantity taken. It often depends upon other considerations, the value of the materials taken, and their importance to the sale of the original work. *Folsom v. Marsh*, 2 Story, 100.

If so much is taken that the value of the original is sensibly diminished, or the labors of the author are substantially to an injurious extent appropriated, that is sufficient to constitute a piracy *pro tanto*. *Folsom v. Marsh*, 2 Story, 100; *Greene v. Bishop*, 1 Cliff. 186.

It is not necessary that the infringing book shall be the same, word for word, but a mere alteration of a portion of the book will not deprive the author of the protection given by the law, provided there is a use of the book substantially in all respects. *Boucicault v. Wood*, 2 Biss. 34; s. c. 16 A. L. Reg. 539.

Copying is not confined to literal repetition, but includes the various modes in which the matter of any publication may be adopted, imitated or transferred with more or less colorable alteration to disguise the piracy. *Greene v. Bishop*, 1 Cliff. 186; *Drury v. Ewing*, 1 Bond, 540.

If a copyright is taken of the letters of a famous person, it is a piracy to write a life of him made up mainly by copying certain letters in full. *Folsom v. Marsh*, 2 Story, 100.

In a dramatic composition, the series of events directed in writing by the author in any particular scene is his invention, and a piracy is committed if that in which the whole merit of the scene consists is incorporated in another work without any material alteration in the constituent parts of the series of events, or in the sequence of the events in the series. *Daly v. Palmer*, 6 Blatch. 256.

Movement, gesture and facial expression, which address the eye only, are as much a part of the dramatic composition as is the spoken language which addresses the ear only, and that part of the written composition which gives direction for the movement and gesture is as much a part of the composition, and protected by the copyright, as is the language prescribed to be uttered by the characters. *Daly v. Palmer*, 6 Blatch. 256.

A play which is a mere spectacle, and must be seen to be appreciated, has no value except as it is appreciated by the public. If the result of the exhibition of the original and the alleged infringement is so nearly the same as to produce the impression that they are identical upon ordinary spectators, one should be held to be a mere colorable imitation of the other. *Martinetti v. Maguire, 1 Deady, 216*; s. c. *1 Abb. C. C. 356*.

No compiler of a book which is a mere compilation of facts from common and universal sources of information, has a monopoly of the subject of which the book treats. Any other person is permitted to enter that department of literature and make a similar book. But the subsequent investigator must investigate for himself from the original sources which are open to all. He can not use the labors of a previous compiler, *animo furandi*, and save his own time by copying the results of the previous compiler's study, although the same results would have been obtained by independent labor. *Banks v. McDivett, 13 Blatch. 163*; s. c. *8 O. G. 860*; *Lawrence v. Cupples, 9 O. G. 254*; *Gray v. Russell, 1 Story, 11*; *Blunt v. Patten, 2 Paine, 393, 397*; *Story v. Holcombe, 4 McLean, 306*; *Emerson v. Davies, 3 Story, 768*; *Greene v. Bishop, 1 Cliff. 186*; *Farmer v. Calvert Publishing Co. 5 A. L. T. 168*; s. c. *5 C. L. N. 1*.

If the judge prepares the head notes to the reports, the author of a digest made up of such head notes has no ground to complain because another author in his digest uses the same. *Chase v. Sanborn, 6 O. G. 932*.

In case of a dictionary or other work of that kind, similarities and some use of a prior work, even to copying of small parts is allowed, if the main design and execution are in reality novel or improved, and not a mere cover for an important piracy. *Webb v. Powers, 2 W. & M. 497*.

One compiler can not copy the plan or arrangement of another compilation. *Story v. Holcombe, 4 McLean, 306*.

Although the plan or arrangement of a book may be secured to an author, if it is the product of his own genius, yet a mere list of debtors and creditors, with their residences, and the amount and value of their debts, does not possess any such novelty of plan or arrangement as will preclude any other person from making and publishing similar lists from independent sources of information. *Lawrence v. Cupples, 9 O. G. 254*.

The right secured by the act is the property in the literary composition, the product of the mind and genius of the author, and not in the name or title given to it. The title does not necessarily involve any literary composition. It may not be, and the statute does not require that it should be, the product of the author's mind. It is a mere appendage which only identifies, and frequently does not in any way describe, the literary composition itself or represent its character, and if there is no piracy of the book, there is no remedy for the use of the title. *Osgood v. Allen, 1 Holmes, 185*; s. c. *3 O. G. 124*; *Jollie v. Jaques, 1 Blatch. 618*; *Benn v. Leclercq, 30 Leg. Int. 185*.

When the title itself is original and the product of the author's own mind, and is appropriated by the infringement, as well as the whole or a part of the literary composition itself, in protecting other portions of the literary composition, the courts will probably also protect the title. *Osgood v. Allen, 1 Holmes, 185*; s. c. *3 O. G. 124*.

If a party makes a survey, and deposits it in the navy department, with the understanding that he is to have the exclusive right to publish it, a copy from it will be an infringement. *Blunt v. Patten*, 2 Paine, 393, 397.

No person has the right to publish letters merely because the government bought the manuscript after another had acquired a copyright therein. *Folsom v. Marsh*, 2 Story, 100.

SEC. 4952*a*. (Act of June 18, 1874, ch. 301, § 3, 18 Stat. 79.) That in the construction of this act, the words "engraving," "cut" and "print" shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the patent office. And the commissioner of patents is hereby charged with the supervision and control of the entry or registry of such prints or labels, in conformity with the regulations provided by law as to copyright of prints, except that there shall be paid for recording the title of any print or label not a trade-mark, six dollars, which shall cover the expense of furnishing a copy of the record under the seal of the commissioner of patents, to the party entering the same.

The claim to a label is void if the label was published before its registration. *Marsh v. Warren*, 24 Pitts. L. J. 207; S. C. 9 C. L. N. 395.

The bill should allege that the title and label were deposited before the publication of the label. *Marsh v. Warren*, 24 Pitts. L. J. 207; S. C. 9 C. L. N. 395.

Matter which may be registered as a trade-mark, can not be registered as a label. *Alexius Godillot*, 6 O. G. 641.

If matter in a label is purely arbitrary and fanciful in its nature, it should be required to be stricken out before registration. *W. Simpson & Sons*, 10 O. G. 333.

A print made up of a combination of colors, figures and words, adapted in their use to any goods or merchandise, can be properly registered as a label. *Schumacher & Ettinger*, 9 O. G. 594.

If the superscription is in its main elements a label, the fact that it contains matter which, taken separately might constitute a trade-mark, is not fatal to its registration. *Orcutt & Son*, 8 O. G. 277.

SEC. 4953. Copyrights shall be granted for the term of twenty-eight years from the time of recording the title thereof, in the manner hereinafter directed.

Statute Revised—July 8, 1870, ch. 230, § 87, 16 Stat. 212.

Prior Statutes—May 31, 1790, ch. 15, § 1, 1 Stat. 124.—Feb. 3, 1831, ch. 16, § 1, 4 Stat. 436.

SEC. 4954. The author, inventor, or designer, if he be still living and a citizen of the United States or resident therein, or his widow or children, if he be dead, shall have the same exclusive right continued for the further term of fourteen years, upon recording the title of the work or description of the article so secured a second time, and complying with all other regulations in regard to original copyrights, within six months before the expiration of the first term. And such person shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more newspapers, printed in the United States, for the space of four weeks.

Statute Revised—July 8, 1870, ch. 230, § 88, 16 Stat. 212.

Prior Statutes—May 31, 1790, ch. 15, § 1, 1 Stat. 124.—Feb. 3, 1831, ch. 16, §§ 2, 3, 4 Stat. 436, 437.

This section refers to the author and his family, and not to assignees. *Pierpont v. Fowle*, 2 W. & M. 23.

A renewal will not be valid unless there is a valid copyright for the original term. *Wheaton v. Peters*, 8 Pet. 591.

SEC. 4955. Copyrights shall be assignable in law, by any instrument of writing, and such assignment shall be recorded in the office of the librarian of Congress within sixty days after its execution; in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice.

Statute Revised—July 8, 1870, ch. 230, § 89, 16 Stat. 213.

Prior Statute—June 30, 1834, ch. 157, § 1, 4 Stat. 728.

A parol promise for a good consideration, to transfer an interest in a copyright is binding, for the making of the assignment merely concerns the manner of the performance of the promise. *Gould v. Banks*, 8 Wend. 562.

The statute does not say what interest may be assigned, but there is no sufficient reason for preventing an author from conveying a distinct portion of his right. Divisibility as well as assignability enhances the value of his property, for he may find a purchaser able and willing to pay for a part but not for the whole of his copyright. *Roberts v. Myers*, 23 Law Rep. 396; S. C. 17 Leg. Int. 405.

The exclusive right to act and represent a drama is distinct from that of printing and publishing, and may be assigned for certain territory and a limited time. *Roberts v. Myers*, 23 Law Rep. 396; S. C. 17 Leg. Int. 405.

A mere assignment of a copyright will not pass a right to a renewal subse-

quently granted. *Pierpont v. Fowle*, 2 W. & M. 23; *Cowen v. Banks*, 24 How. Pr. 72.

An assignee may maintain an action, although his assignment has never been recorded, for it is valid between the parties. *Webb v. Powers*, 2 W. & M. 497.

A contract to publish a work and give the author a certain price for each copy published, does not give the publisher the sole and exclusive right to publish the work. *Willis v. Tibbals*, 33 N. Y. Sup. 220.

A mere contract for printing and publishing a book does not usually contain anything about the copyright. That is ordinarily retained by the author unless there is an agreement or understanding that the name of the publisher shall be used for that purpose. *Pulte v. Derby*, 5 McLean, 328.

If a publisher takes a copyright in his own name under a contract to pay a royalty to the author, he holds it for the purposes of the contract, and can not assign the copyright or publish the work except upon the terms of the contract. *Pulte v. Derby*, 5 McLean, 328.

If a contract provides for a first and second edition, and allows the party to print as many as he can sell, the mere fact of inserting the words "third edition" in the title-page of the third impression can not cut off rights expressly given in the agreement. *Pulte v. Derby*, 5 McLean, 328.

If a party who has made a contract with a publisher in his capacity as reporter, is deprived of his office, the legal title to his manuscript not then published, nor given to the publisher for publication, will not vest in the publisher, although the contract stipulated that it should be deemed an assignment of the copyright for all matter furnished under it. *Little v. Hall*, 18 How. 165.

If an author delivers his manuscript to a printer for publication with an agreement that he shall be entitled to the copyright forever, this gives him a right to the renewal. *Paige v. Banks*, 13 Wall. 608; *s. c.* 7 Blatch. 152.

A contract to reprint any literary work the copyright to which has been secured to the author, is void unless it is entered into with the consent of the author or his assignee, and the printer who executes the contract with knowledge of the rights of the author can not recover anything for his labor. *Nichols v. Ruggles*, 3 Day, 145.

If the joint owners of a copyright make an agreement among themselves in regard to the printing of the work, neither can defeat it by setting up his right as owner to publish. *Gould v. Banks*, 8 Wend. 562.

A relinquishment of a copyright in favor of the State by accepting an office under a statute which so vests it, may be regarded as an assignment by operation of law. *Little v. Gould*, 2 Blatch. 165; *Little v. Gould*, 2 Blatch. 362.

The incorporeal right to multiply copies of a work, being intangible and resting altogether in grant, is not subject to seizure and sale under an execution at common law, but may be reached by a creditor's bill in equity, where the court may compel the debtor to execute an assignment. *Stephens v. Cady*, 14 How. 528.

The property in an engraved plate of a map and the copyright of the map are altogether different and independent of each other, and a sale of the engraved plate under an execution will not give the purchaser a right to print and publish the map. *Stephens v. Cady*, 14 How. 528; *Stevens v. Gladding*, 17 How. 447; *s. c.* 8 N. Y. Leg. Obs. 297.

If an author sells the copyright and the matter to be printed, and delivers the matter to the vendee, and the consideration is properly delivered or to be delivered to the author or another for his use, or is money to be paid to the author or another for his use, such property or *chase in action* may be subjected to the payment of the author's debts. *Cooper v. Gunn*, 4 B. Mon. 594.

The statute confers upon all the owners full power, without exacting any obligation in return, to print, publish and sell. It gives no superior right to either. Each can exercise his own rights alone, without using or receiving any aid or benefit whatever from the title or property of the others. When one owner at his own expense publishes and sells the book, he is not liable to account to the co-owners for the profits. *Carter v. Bailey*, 64 Me. 458.

SEC. 4956. No person shall be entitled to a copyright unless he shall, before publication, deliver at the office of the librarian of Congress or deposit in the mail addressed to the librarian of Congress, at Washington, District of Columbia, a printed copy of the title of the book or other article, or a description of the painting, drawing, chromo, statue, statuary, or a model or design for a work of the fine arts, for which he desires a copyright, nor unless he shall also, within ten days from the publication thereof, deliver at the office of the librarian of Congress or deposit in the mail addressed to the librarian of Congress, at Washington, District of Columbia, two copies of such copyright book or other article, or in case of a painting, drawing, statue, statuary, model, or design for a work of the fine arts, a photograph of the same.

Statute Revised—July 8, 1870, ch. 230, § 90, 16 Stat. 213.

Prior Statutes—May 31, 1790, ch. 15, § 3, 1 Stat. 125.—February 3, 1831, ch. 16, § 4, 4 Stat. 437.

Congress by the statute created the right, and no protection can be claimed unless its provisions have been complied with. *Wheaton v. Peters*, 8 Pet. 591; *Bartlett v. Crittenden*, 5 McLean, 82; *Little v. Gould*, 2 Blatch. 165; *Ewer v. Coxe*, 4 Wash. 487; *Baker v. Taylor*, 2 Blatch. 82; *Jones v. Thorne*, 1 N. Y. Leg. Obs. 408.

Any person shall be entitled to copyright who before publication, 1st, shall deliver to the librarian a printed copy of the title of the book; and, 2d, shall within ten days after the publication thereof deliver to the librarian two copies of the same. In order to secure a copyright of a book or dramatic composition, the work must be published within a reasonable time after the filing of the title-page, and two copies be delivered to the librarian. *Boucicault v. Hart*, 13 Blatch. 47; *vide Roberts v. Myers*, 23 Law Rep. 396; S. C. 17 Leg. Int. 405.

If the publication is made before a deposit of a printed copy of the title, the person is not entitled to a copyright. *Baker v. Taylor*, 2 Blatch. 82; *Chase v. Sanborn*, 6 O. G. 932; *Struve v. Schwedler*, 4 Blatch. 23; *Parkinson v. Lasalle*, 3 Saw. 331.

A sale naturally imports publication. As a purchaser has a right to know the contents of a book and make them known to others, the presumption is that a publication followed a sale. *Baker v. Taylor*, 2 Blatch. 82.

The right accrues from the time a copy of the title of the book is deposited in the librarian's office. *Wheaton v. Peters*, 8 Pet. 591.

No copyright is valid unless two copies of the book are delivered to the librarian of Congress within the prescribed time. *Wheaton v. Peters*, 8 Pet. 591; *Chase v. Sanborn*, 6 O. G. 932; *Struve v. Schwedler*, 4 Blatch. 23; *Parkinson v. Lasalle*, 3 Saw. 331; *vide Jollie v. Jaques*, 1 Blatch. 618; *Nichols v. Ruggles*, 3 Day, 145.

If the work consists of several volumes, the delivery of the copies of the first volume within the prescribed time, and of the copies of the other volumes before any piracy is committed, or any action is brought therefor, is sufficient. *Dwight v. Appleton*, 1 N. Y. Leg. Obs. 195.

If there has been no publication, no copies of the book need be deposited with the librarian. *Roberts v. Myers*, 23 Law Rep. 396; s. c. 17 Leg. Int. 405.

SEC. 4957. The librarian of Congress shall record the name of such copyright book or other article, forthwith, in a book to be kept for that purpose, in the words following: "Library of Congress, to wit: Be it remembered that on the _____ day of _____, A. B., of _____, hath deposited in this office the title of a book [map, chart or otherwise, as the case may be, or description of the article], the title or description of which is in the following words, to wit: [here insert the title or description,] the right whereof he claims as author [originator, or proprietor, as the case may be,] in conformity with the laws of the United States respecting copyrights. C. D., librarian of Congress." And he shall give a copy of the title or description, under the seal of the librarian of Congress, to the proprietor, whenever he shall require it.

Statute Revised—July 8, 1870, ch. 230, § 91, 16 Stat. 213.

Prior Statutes—May 31, 1790, ch. 15, § 3, 1 Stat. 125.—Feb. 3, 1831, ch. 16, § 4, 4 Stat. 437.

A copy of the record is *prima facie* evidence that a printed title was deposited. *Roberts v. Myers*, 23 Law Rep. 396; s. c. 17 Leg. Int. 405.

SEC. 4958. The librarian of Congress shall receive, from the persons to whom the services designated are rendered, the following fees:

First. For recording the title or description of any copyright book or other article, fifty cents.

Second. For every copy under seal of such record actually given to the person claiming the copyright, or his assigns, fifty cents.

Third. For recording any instrument of writing for the assignment of a copyright, fifteen cents for every one hundred words.

Fourth. For every copy of an assignment, ten cents for every one hundred words.

All fees so received shall be paid into the treasury of the United States.

Statute Revised—July 8, 1870, ch. 230, § 92, 16 Stat. 213.

Prior Statute—June 30, 1834, ch. 157, § 2, 4 Stat. 728.

SEC. 4958a. (Act of June 18, 1874, ch. 301, § 2, 18 Stat. 79.) That for recording and certifying any instrument of writing for the assignment of a copyright, the librarian of Congress shall receive from the persons to whom the service is rendered, one dollar; and for every copy of an assignment, one dollar; said fee to cover, in either case, a certificate of the record, under seal of the librarian of Congress; and all fees so received shall be paid into the treasury of the United States.

SEC. 4959. The proprietor of every copyright book or other article shall deliver at the office of the librarian of Congress, or deposit in the mail addressed to the librarian of Congress at Washington, District of Columbia, within ten days after its publication, two complete printed copies thereof, of the best edition issued, or description or photograph of such article as hereinbefore required, and a copy of every subsequent edition wherein any substantial changes shall be made.

Statute Revised—July 8, 1870, ch. 230, § 93, 16 Stat. 213.

Prior Statutes—May 31, 1790, ch. 15, § 4, 1 Stat. 125.—Feb. 3, 1831, ch. 16, § 4, 4 Stat. 437.—Aug. 10, 1846, ch. 178, § 10, 9 Stat. 106.—March 3, 1865, ch. 126, §§ 2, 4, 13 Stat. 540.—Feb. 18, 1867, ch. 43, § 2, 14 Stat. 395.

SEC. 4960. For every failure on the part of the proprietor of any copyright to deliver or deposit in the mail either of the published copies, or description or photograph, required by sections four thousand nine hundred and fifty-six, and four thousand nine hundred and fifty-nine, the proprietor of the copyright shall be liable to a penalty of twenty-five dollars, to be recovered by the librarian of Congress, in the name of the United States, in an action in the nature of an action of debt, in any district court of the United States, within the jurisdiction of which the delinquent may reside or be found.

Statute Revised—July 8, 1870, ch. 230, § 94, 16 Stat. 213.

Prior Statutes—March 3, 1865, ch. 126, § 3, 13 Stat. 540.—Feb. 18, 1867, ch. 43, § 1, 14 Stat. 395.

SEC. 4961. The postmaster to whom such copyright book, title or other article is delivered, shall, if requested, give a receipt therefor; and when so delivered he shall mail it to its destination.

Statute Revised—July 8, 1870, ch. 230, § 96, 16 Stat. 214.

Prior Statute—Feb. 18, 1867, ch. 43, § 2, 14 Stat. 395.

SEC. 4962 (Act of June 18, 1874, ch. 301, § 1, 18 Stat. 78.) That no person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published, on the title-page or the page immediately following, if it be a book; or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or design, intended to be perfected and completed as a work of the fine arts, by inscribing upon some visible portion thereof, or of the substance on which the same shall be mounted, the following words, viz.: "Entered according to act of Congress, in the year ———, by A. B., in the office of the librarian of Congress, at Washington; or, at his option the word "copyright," together with the year the copyright was entered, and the name of the party by whom it was taken out; thus—"Copyright, 18—, by A. B."

Statute Revised—July 8, 1870, ch. 230, § 97, 16 Stat. 214.

Prior Statutes—April 29, 1802, ch. 36, § 1, 2 Stat. 171.—Feb. 3, 1831, ch. 16, § 5, 4 Stat. 437.

Instead of this section being a limitation of the acts to be performed or alleged in order to entitle a party to maintain an action, it imposes an additional duty upon him as a prerequisite to its maintenance. He must first acquire a copyright under the other provisions of the act, and then in order to enforce his right against infringers, he must also give notice of his right by the means prescribed by this section. *Parkinson v. Lasalle*, 3 Saw. 331.

The number of volumes in which it is stated that a work will be published, forms no part of the title, and may be rejected as surplusage. Another edition may be published in a different number of volumes, with the same entry, without impairing the copyright. *Dwight v. Appleton*, 1 N. Y. Leg. Obs. 195.

If an entire work, embracing a complete system, is composed of several volumes, it is sufficient if the entry is made on the first volume. *Dwight v. Appleton*, 1 N. Y. Leg. Obs. 195.

The omission to cause the date of the entry of a map to be engraved on some visible portion thereof, will prevent a recovery. *King v. Force*, 2 Cranch C. C. 208.

When the required notice is plainly engraved on the plate of an engraving from which the print is taken within the line of a reasonable margin, and where it will not be covered when properly framed, it is impressed on the face within the meaning of the statute. *Rossiter v. Hall*, 5 Blatch. 362.

If a second edition of a map has the proper notice engraved on the face thereof, the use of a different year in the title will not vitiate the copyright. *Farmer v. Calvert Publishing Co.* 5 A. L. T. 168; s. c. 5 C. L. N. 1.

Notice that copyright is secured is full protection for the original edition throughout its term, but is no protection to a second edition with notes, nor to any succeeding edition with improvements. *Lawrence v. Dana*, 7 O. G. 81; s. c. 2 A. L. T. (N. S.) 402.

Neglect to give notice that copyright is secured in a second edition will not vitiate the copyright of the original edition, if that was regularly secured. *Lawrence v. Dana*, 7 O. G. 81; s. c. 2 A. L. T. (N. S.) 402.

Subsequent editions, without alterations or additions, should give the same notice that the copyright is secured as the original edition. *Lawrence v. Dana*, 7 O. G. 81; s. c. 2 A. L. T. (N. S.) 402.

Successive editions, with additions or alterations, need not specify the date of the original copyright. *Lawrence v. Dana*, 7 O. G. 81; s. c. 2 A. L. T. (N. S.) 402.

A copyright of a second edition will not cure material defects in the copyright of the original edition. *Lawrence v. Dana*, 7 O. G. 81; s. c. 2 A. L. T. (N. S.) 402.

SEC. 4963. Every person who shall insert or impress such notice, or words of the same purport, in or upon any book, map, chart, musical composition, print, cut, engraving, or photograph, or other article, for which he has not obtained a copyright, shall be liable to a penalty of one hundred dollars, recoverable one-half for the person

who shall sue for such penalty, and one-half to the use of the United States.

Statute Revised—July 8, 1870, ch. 230, § 98, 16 Stat. 214.

Prior Statutes—April 29, 1802, ch. 36, § 4, 2 Stat. 172.—Feb. 3, 1831, ch. 16, § 11, 4 Stat. 438.

This section does not authorize an action in the name of several persons and the United States for the recovery of the penalties incurred by its violation. The plain language and sense of the statute restricts the right of action to a single person. *Ferrett v. Atwill*, 1 Blatch. 151.

If the plaintiff brings several actions, and the defendant files a demurrer in each, the court will not, on the motion of the plaintiff, order an argument of the demurrer in one of the cases and stay all proceedings in the mean time in the other cases, to abide the event of the one to be argued. *Ferrett v. Atwill*, 1 Blatch. 151.

SEC. 4964. Every person who, after the recording of the title of any book as provided by this chapter, shall within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, or import, or knowing the same to be so printed, published, or imported, shall sell or expose to sale any copy of such book, shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction.

Statute Revised—July 8, 1870, ch. 230, § 99, 16 Stat. 214.

Prior Statutes—May 31, 1790, ch. 15, §§ 2, 6, 1 Stat. 124, 125.—Feb. 3, 1831, ch. 16, § 6, 4 Stat. 437.

The mere recording of the title does not entitle the party to protection for a book not yet made, for the act says a book, but not an intended book. *Centennial Catalogue Co. v. Porter*, 2 W. N. 601.

An action on the case is the appropriate remedy. *Atwill v. Ferrett*, 2 Blatch. 39.

The words "a copy of a book," naturally import a transcript or copy of the entire book. They do not include cases of copying parts of a book, but only the republication of the whole. *Rogers v. Jewett*, 22 Law Rep. 339.

SEC. 4965. If any person, after the recording of the title of any map, chart, musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a

work of the fine arts, as provided by this chapter, shall, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish, or import, either in whole or in part, or by varying the main design with intent to evade the law, or, knowing the same to be so printed, published, or imported, shall sell or expose to sale any copy of such map or other article, as aforesaid, he shall forfeit to the proprietor all the plates on which the same shall be copied, and every sheet thereof, either copied or printed, and shall further forfeit one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported, or exposed for sale; and in case of a painting, statue, or statuary, he shall forfeit ten dollars for every copy of the same in his possession, or by him sold or exposed for sale; one-half thereof to the proprietor and the other half to the use of the United States.

Statute Revised—July 8, 1870, ch. 230, § 100, 16 Stat. 214.

Prior Statutes—May 31, 1790, ch. 15, § 2, 1 Stat. 124.—April 29, 1802, ch. 36, § 3, 2 Stat. 171.—Feb. 3, 1831, ch. 16, § 7, 4 Stat. 438.

As the penalty accrues one-half to the proprietor and one-half to the United States, it is a proper subject only of a *qui tam* action. *Stevens v. Cady*, 2 Curt. 200.

A photograph is an infringement of a copyrighted engraving. The word "copy" is a general term added to the more specific terms before used, for the very purpose of covering methods of reproduction not included in the words engrave, etch, or work. *Rossiter v. Hall*, 5 Blatch. 362.

The penalty of one dollar for every sheet, whether printed, or being printed or published, or exposed to sale, is limited to sheets in the possession of the defendant. *Backus v. Gould*, 7 How. Pr. 798.

SEC. 4966. Any person publicly performing or representing any dramatic composition for which a copyright has been obtained, without the consent of the proprietor thereof, or his heirs or assigns, shall be liable for damages therefor, such damages in all cases to be assessed at such sum, not less than one hundred dollars for the first, and fifty dollars for every subsequent performance, as to the court shall appear to be just.

Statute Revised—July 8, 1870, ch. 230, § 101, 16 Stat. 214.

Prior Statute—Aug. 18, 1856, ch. 169, § 1, 11 Stat. 138.

The object of this section is to secure to the author of a copyrighted play the sole right to its performance after it is printed. While it is in manuscript he needs no protection. *Boucicault v. Fox*, 5 Blatch. 87; *Roberts v. Myers*, 23 Law Rep. 396; S. C. 17 Leg. Int. 405.

A publication of a dramatic composition after the filing of the title is a violation of this section. *Boucicault v. Hart*, 13 Blatch. 47.

The exclusive right to perform a dramatic composition under the statute depends upon a copyright. There is no such right if there is no copyright. *Boucicault v. Hart*, 13 Blatch. 47.

A composition is a written or literary work invented and set in order. A dramatic composition is such a work in which the narrative is not related, but is represented by dialogue and action. When a dramatic composition is represented in dialogue and action by persons who represent it as real by performing or going through with the various parts or characters assigned to them severally, the composition is performed, acted or represented, and if the representation is in public, it is a public representation. *Daly v. Palmer*, 6 Blatch. 256.

To act is to represent as real by countenance, voice or gesture that which is not real. A character in a play who goes through with a series of events on the stage without speaking, if such be his part in the play, is none the less an actor in it than one who, in addition to motions and gestures, uses his voice. *Daly v. Palmer*, 6 Blatch. 256.

An action may be maintained for a representation after the recording of the title, but before publication as well as after publication. *Boucicault v. Wood*, 2 Biss. 34; S. C. 16 A. L. Reg. 539.

If an author receives compensation for permitting the representation of a play after the deposit of the title, he will not lose his right of action merely in consequence of the non-publication of the play. *Boucicault v. Wood*, 2 Biss. 34; S. C. 16 A. L. Reg. 539.

If an author, after depositing the title of a play with the librarian of Congress, consents to its publication in a foreign country prior to the publication here, any manager has the right to import the play and use it on the stage, for this is an abandonment of his rights under our laws. *Boucicault v. Wood*, 2 Biss. 34; S. C. 16 A. L. Reg. 539.

Whenever the identity, resemblance, or dissimilarity of written or printed documents is sought to be established, the documents themselves must be produced. *Boucicault v. Fox*, 5 Blatch. 87.

If the alleged prior book alone is produced without the play, a witness can not be asked whether the scenery, incidents and language are not substantially the same as those in the play. *Boucicault v. Fox*, 5 Blatch. 87.

If neither the play nor the book from which it is alleged to have been dramatized are put in evidence, no evidence can be given of a part of the book, nor can a witness be asked whether such part is identical with or resembles passages in the play. *Boucicault v. Fox*, 5 Blatch. 87.

If evidence has been taken, the court can not direct a nonsuit. *Boucicault v. Fox*, 5 Blatch. 87.

In determining whether an author assented to the representation of his

play, his silence while the piece is being performed may be considered in connection with the other evidence. *Boucicault v. Fox*, 5 Blatch. 87.

SEC. 4967. Every person who shall print or publish any manuscript whatever, without the consent of the author or proprietor first obtained, if such author or proprietor is a citizen of the United States, or resident therein, shall be liable to the author or proprietor for all damages occasioned by such injury.

Statute Revised—July 8, 1870, ch. 230, § 102, 16 Stat. 215.

Prior Statute—February 3, 1831, ch. 16, § 9, 4 Stat. 438.

The word "manuscript" does not include a picture. A picture is the thing itself, but a manuscript is only a description of it in language, and leaves the mind of the reader to make the picture. *Parton v. Prang*, 2 O. G. 619; s. c. 6 A. L. T. 105.

A surreptitious publication of a substantial part of a manuscript is within the principle of the statute. *Bartlett v. Crittenden*, 5 McLean, 32.

If the author is a non-resident alien, his assignee is not entitled to protection under the statute. *Keene v. Wheatley*, 4 Phila. 157; s. c. 9 A. L. Reg. 331.

The jurisdiction of the Federal courts is confined to cases of threatened or actual printing and publication, and probably does not include the public performance of a manuscript play. *Boucicault v. Fox*, 5 Blatch. 87.

Right at Common Law.

The right of an author in his manuscript at common law has not been taken away or abridged by the statute relating to copyright. *Woolsey v. Judd*, 4 Duer, 379; *Crowe v. Aiken*, 2 Biss. 215; s. c. 4 A. L. Rev. 456; *Jones v. Thorne*, 1 N. Y. Leg. Obs. 408.

An author at common law has a property in his manuscript, and may obtain redress against any one who deprives him of it, or by improperly obtaining a copy endeavors to realize a profit by its publication. *Wheaton v. Peters*, 8 Pet. 591; *Bartlett v. Crittenden*, 5 McLean, 82; *Paige v. Banks*, 13 Wall. 608; s. c. 7 Blatch. 152.

The exclusive right of an author in a manuscript yet unpublished rests solely upon the right which every man has to the exclusive possession and control of the products of his own labor. *Woolsey v. Judd*, 4 Duer, 379; *Grigsby v. Breckenridge*, 2 Bush, 480.

The right of the author is not confined to the material on which his manuscript is written. The exclusive right is the right of property in the words, thoughts and sentiments which in their connection form the written composition which his manuscript embodies and preserves. *Woolsey v. Judd*, 4 Duer, 379.

The right of property in the author of a manuscript is absolute and unlimited. As owner he has an absolute right to suppress as well as to publish. *Woolsey v. Judd*, 4 Duer, 379.

An author of a literary work or composition has a right to the first publication of it. He has a right to determine whether it shall be published at all, and if published, when, where, by whom, and in what form. *Palmer v. De Witt*, 47 N. Y. 532; S. C. 36 How. Pr. 222; 40 How. Pr. 293; 5 Abb. Pr. (N. S.) 13; 2 Sweeny, 530.

An author's property in his manuscript is not distinguishable from any other personal property. It is governed by the same rules of transfer and succession. It is personal like other movable property, following the person of the owner, and is governed by the law of his domicile. *Palmer v. De Witt*, 47 N. Y. 532; S. C. 36 How. Pr. 222; 40 How. Pr. 293; 5 Abb. Pr. (N. S.) 13; 2 Sweeny, 530.

After publication an author's exclusive right to his manuscript ceases at common law. Such publication may be either by words, writing, printing, lectures, sermons, or dramatic representation. If in any of these modes the public become possessed of the contents of a manuscript, without restrictions express or implied, it is such a publication as divests the author of an exclusive property in the work. *Palmer v. De Witt*, 5 Abb. Pr. (N. S.) 130; S. C. 36 How. Pr. 222; 40 How. Pr. 293; 5 Abb. Pr. (N. S.) 13; 2 Sweeny, 530.

A publication may be limited or general. It is general, whenever the communication effecting it is not restricted, both as to the persons to whom, and the purpose for which it is made. When general, it is a dedication to the public for such unlimited uses, including all modes of publishing and republishing, as it may be the means of directly or secondarily enabling any person to make. *Keene v. Wheatley*, 4 Phila. 157; S. C. 9 A. L. Reg. 331.

Publication is circulation before the public eye by printing or multiplied copies in writing. *Grigsby v. Breckinbridge*, 2 Bush, 480.

An author retains his right in his manuscript, until he relinquishes it by contract or some unequivocal act indicating an intent to dedicate it to the public. *Palmer v. Dewitt*, 47 N. Y. 532; S. C. 36 How. Pr. 222; 40 How. Pr. 293; 5 Abb. Pr. (N. S.) 13; 2 Sweeny, 530.

When a literary work is exhibited for a particular purpose, or to a limited number of persons, it will not be construed as a general gift or authority for any purpose of profit or publication by others. *Palmer v. De Witt*, 47 N. Y. 532; S. C. 36 How. Pr. 222; 40 How. Pr. 293; 5 Abb. Pr. (N. S.) 13; 2 Sweeny, 530.

If an author permits copies of his manuscript to be taken for the gratification of his friends, he does not authorize them to print it for general use. *Bartlett v. Crittenden*, 4 McLean, 300.

The mere use of a manuscript for the purpose of imparting instruction to pupils, does not constitute an abandonment of it, although they were required or permitted to make copies for that purpose. *Bartlett v. Crittenden*, 5 McLean, 82; *Bartlett v. Crittenden*, 4 McLean, 300.

The right of property in a manuscript may be abandoned the same as any other right of property. *Bartlett v. Crittenden*, 5 McLean, 82.

The intention to publish is only material on the question of abandonment. *Bartlett v. Crittenden*, 5 McLean, 82.

An unqualified publication by printing and offering for sale, is a dedication

to the public. *Palmer v. DeWitt*, 47 N. Y. 532; S. C. 36 How. Pr. 222; 40 How. Pr. 293; 5 Abb. Pr. (N. S.) 113; 2 Sweeny, 530.

A person who has been employed by the State to make surveys and explorations, or to act as draughtsman for a party doing such work, has no right to publish a map from materials so collected. *Comm. v. Desilver*, 3 Phila. 31.

The owner of a manuscript copy of a map which has been dedicated to the public, can not interfere by injunction or otherwise with the right of others to make a copy from manuscripts owned by them, or to put them to any use desired. *Rees v. Peltzer* 75 Ill. 475.

If the manuscript contains the framework of a system, it will be protected although it is incomplete. *Bartlett v. Crittenden*, 4 McLean, 300.

An abstract book which contains a complete history of the title and incumbrances to land in a certain locality, can not be published without the consent of the compiler. *Banker v. Caldwell*, 4 Minn. 94.

If the author of a map gives a copy of it to a municipal corporation for public use, and sells copies to others for their use without restriction, this is such a publication as to deprive him of his proprietorship in the literary property. *Rees v. Peltzer*, 75 Ill. 475.

If the bill alleges that the defendant wrongfully obtained possession of the complainant's manuscript and stereotype plates and published the work, it will be dismissed, for there is ample remedy at law. *Monk v. Harper*, 3 Edw. Ch 109.

A manuscript, however valuable, can not be seized by the author's creditors as property. *Bartlett v. Crittenden*, 5 McLean, 82.

A sheriff who has levied an execution upon an unpublished work, has no right to make copies thereof in the interval between the levy and the sale. The debtor's ownership is not divested by a levy, and the sheriff merely has the custody. *Banker v. Caldwell*, 4 Minn. 94.

The protection afforded by the common law to literary labor, is accorded to alien friend and citizen alike. *Palmer v. De Witt*, 47 N. Y. 532; S. C. 36 How. Pr. 222; 40 How. Pr. 293; 5 Abb. Pr. (N. S.) 113; 2 Sweeny, 530.

Dramatic Compositions.

A manuscript of a dramatic composition is equally under the protection of the law with any other work. *Keene v. Kimball*, 23 Law Rep. 669.

The rights of an author of a drama in his composition are two-fold. He is entitled to the profit arising from its performance, and also from the sale of the manuscript or the printing and publishing it. *Palmer v. DeWitt*, 47 N. Y. 532; S. C. 36 How. Pr. 222; 40 How. Pr. 293; 5 Abb. Pr. (N. S.) 113; 2 Sweeny, 530.

The permission to act a play at a public theatre, does not amount to an abandonment by an author of his title to it, or to a dedication of it to the public. *Palmer v. De Witt*, 47 N. Y. 532; S. C. 36 How. Pr. 222; 40 How. Pr. 293; 5 Abb. Pr. (N. S.) 113; 2 Sweeny, 530.

The performance of a play in public, with the consent of the author, for a compensation, is no evidence of his abandonment of the manuscript to the

public. *Boucicault v. Fox*, 5 Blatch. 87; *contra*, *Keene v. Kimball*, 82 Mass. 545; S. C. 23 Law Rep. 339.

A performance of a play at a theatre is a general publication. *Keene v. Wheatley*, 4 Phila. 157; S. C. 5 A. L. Reg. 331.

If a general publication of a play does not enable others to represent it through a retention of the words in their memory, the author's proprietorship continues. *Keene v. Wheatley*, 4 Phila. 157; S. C. 9 A. L. Reg. 331; *Boucicault v. Wood*, 2 Biss. 34; S. C. 16 A. L. Reg. 539; *Roberts v. Myers*, 23 Law Rep. 396; S. C. 17 Leg Int. 405; *Keene v. Clarke*, 5 Robt. 38; *Crowe v. Aiken*, 2 Biss. 215; S. C. 4 A. L. Rev. 450; *vide* *Keene v. Kimball*, 82 Mass. 545; S. C. 23 Law Rep. 339.

If a play is represented in public, and a spectator retains it by memory alone and publishes it, the exclusive right is gone. *Palmer v. De Witt*, 5 Abb. Pr. (N. S.) 130; S. C. 36 How. Pr. 222; 40 How. Pr. 293; 5 Abb. Pr. (N. S.) 13; 2 Sweeny, 530.

The evidence must clearly establish the fact that the copy of the play was produced from memory, and negative any other conclusion. *Crowe v. Aiken*, 2 Biss. 215; S. C. 4 A. L. Rev. 450.

A spectator of a play has no right to cause its reproduction by phonographic or other *verbatim* reports, independent of memory. *Keene v. Clarke*, 5 Robt. 38; *Crowe v. Aiken*, 2 Biss. 215; S. C. 4 A. L. Rev. 450.

An intent to abandon a dramatic composition to the public, is inferable from frequent and continued representations for a long time and at different places. *Keene v. Clarke*, 5 Robt. 38; *Keene v. Kimball*, 82 Mass. 545; S. C. 23 Law Rep. 339.

A play once published by its author may be represented on the stage by any person without infringement upon the author's right. *Keene v. Kimball*, 82 Mass. 545; S. C. 23 Law Rep. 339.

Letters.

The author of any letter, whether it is a literary composition, or a familiar letter, or a letter of business, possesses the sole and exclusive copyright therein. *Folsom v. Marsh*, 2 Story, 100; *Woolsey v. Judd*, 4 Duer. 379; *Grigsby v. Breckenridge*, 2 Bush, 480; *Denis v. Leclerc*, 1 Orleans T. R. 297; *contra*, *Wetmore v. Scovill*, 3 Edw. Ch. 515; *Hoyt v. Mackenzie*, 3 Barb. Ch. 314.

By sending a letter the author parts with his right to the possession, control, or reclamation thereof, without the consent of the receiver, and gives the latter the exclusive right to read and keep it. *Grigsby v. Breckenridge*, 2 Bush, 480.

The author has a right to publish the letter, if he keeps or can procure a copy; but the recipient is not bound to keep the original for his transcription, inspection, or other use. *Grigsby v. Breckenridge*, 2 Bush, 480.

The possession of a letter addressed to the christian name of the possessor is *prima facie* evidence of title and ownership. *Tefft v. Marsh*, 1 W. Va. 38.

The recipient of a letter has a right to keep it, or destroy it, or dispose of

it in any other way than by publication. *Grigsby v. Breckenridge*, 2 Bush, 480.

The recipient may read a letter to a friend, or deposit it for safe-keeping, without violating the author's right of publication. *Grigsby v. Breckenridge*, 2 Bush, 480.

A person to whom a letter is addressed has no right to publish it, except to protect or vindicate himself. *Folsom v. Marsh*, 2 Story, 100.

The government has the right to give publicity to letters addressed to any of the departments by a public officer, even against the will of the writer. *Folsom v. Marsh*, 2 Story, 100.

A *feme covert* has the right, as between herself and her husband, to keep and dispose of a confidential letter addressed to her, and not affecting his rights, regardless of his will, whether received before or after marriage. *Grigsby v. Breckenridge*, 2 Bush, 480.

A *feme covert*, when she is about to die, may give and deliver a letter addressed to her to another, and after such alienation the letter will not constitute any portion of her estate which can pass to her executor or administrator. *Grigsby v. Breckenridge*, 2 Bush, 480.

Although letters pass to an executor or administrator, yet they are not assets in his hands which may be sold to pay debts, but come to his possession solely for the purpose of being transferred to the widow or next of kin. *Eyre v. Higbee*, 22 How. Pr. 198; S. C. 35 Barb. 502.

SEC. 4968. No action shall be maintained in any case of forfeiture or penalty under the copyright laws, unless the same is commenced within two years after the cause of action has arisen.

Statute Revised—July 8, 1870, ch. 230, § 104, 16 Stat. 215.

Prior Statutes—May 31, 1790, ch. 15, § 2, 1 Stat. 124.—April 29, 1802, ch. 36, § 4, 2 Stat. 172.—February 3, 1831, ch. 16, § 13, 4 Stat. 439.

Although the plates were engraved more than two years before the institution of the suit, yet every printing for sale is a new infringement of the right, and if such printing was within two years before the suit was brought, the defendant is liable. *Reed v. Carusi*, Taney, 72.

SEC. 4969. In all actions arising under the laws respecting copyrights, the defendant may plead the general issue, and give the special matter in evidence.

Statute Revised—July 8, 1870, ch. 230, § 105, 16 Stat. 215.

Prior Statutes—May 31, 1790, ch. 15, § 6, 1 Stat. 126.—February 3, 1831, ch. 16, § 10, 4 Stat. 438.

SEC. 4970. The circuit courts, and district courts having the jurisdiction of circuit courts, shall have power, upon bill in equity, filed by any party aggrieved, to grant in-

junctions to prevent the violation of any right secured by the laws respecting copyrights, according to the course and principles of courts of equity, on such terms as the court may deem reasonable.

Statute Revised—July 8, 1870, ch. 230, § 160, 16 Stat. 215.

Prior Statutes—February 15, 1819, ch. 19, § 1, 3 Stat. 481.—February 3, 1831, ch. 16, § 9, 4 Stat. 438.

Parties.

A party who has an equitable title to a copyright may maintain a bill. *Little v. Gould*, 2 Blatch. 165; *Folsom v. Marsh*, 2 Story, 100; *Little v. Gould*, 2 Blatch. 362.

The assignee of the right to act and represent a drama within certain territory and for a limited time may maintain an action in his own name, without joining the assignor. *Roberts v. Myers*, 23 Law Rep. 396; s. C. 17 Leg. Int. 405.

A party who surreptitiously obtained a copy of a play, can not enjoin another who fraudulently obtains a transcript of his copy. *Martinetti v. Maguire*, 1 Deady, 216; s. C. 1 Abb. C. C. 356.

A vendor is liable for the sale of a book which invades the copyright of another. *Greene v. Bishop*, 1 Cliff. 186.

Pleading.

Instances of similarity or identity should be brought before the court by affidavit, and not by allegations in the bill. *Farmer v. Calvert Publishing Co.* 5 A. L. T. 168; s. C. 5 C. L. N. 1.

Inconsistent pleading is matter of form, and can be taken advantage of only by special demurrer. *Atwill v. Ferrett*, 2 Blatch. 39.

A special demurrer which does not point out precisely the parts of the bill intended to be embraced by it is insufficient. *Atwill v. Ferrett*, 2 Blatch. 39.

A general demurrer to the whole bill will be overruled if any independent part of the bill is sufficient. *Atwill v. Ferrett*, 2 Blatch. 39.

An answer may consist in part of a demurrer and in part of a reply. *Pierpont v. Fowle*, 2 W. & M. 23.

One defendant can not object on the ground that his co-defendants are required to answer matters involved in a suit at law against him, especially when they reside out of the district. *Atwill v. Ferrett*, 2 Blatch. 39.

If an averment in the bill that the complainant is a citizen of the United States is not denied in the answer, it will be considered as admitted. *Webb v. Powers*, 2 W. & M. 497.

Where the answer is responsive to the bill, it is conclusive, unless it is overcome by the testimony of two witnesses, or of one witness and equivalent circumstances. *Emerson v. Davies*, 3 Story, 768.

If the complainant sets the cause down for hearing on bill and answer, everything well pleaded in the answer is thereby admitted to be true. *Parton v. Prang*, 2 O. G. 619; s. C. 6 A. L. T. 105.

Discovery and Account.

The court may compel a party to disclose the sums received for sales of the work, and account for the same. *Pierpont v. Fowle*, 2 W. & M. 23.

A defendant can not be compelled to make discoveries in answer to a bill which seeks to enforce penalties and forfeitures against him by means of such discoveries. *Atwill v. Ferrett*, 2 Blatch. 39.

A discovery will not be decreed in aid of an action of trespass, for the complainant can not maintain such action. *Atwill v. Ferrett*, 2 Blatch. 39.

If the defendant answers, it is too late to raise the objection that the discovery may render him liable to a penalty or forfeiture. *Farmer v. Calvert Publishing Co.* 5 A. L. T. 168; s. c. 5 C. L. N. 1.

An injunction and an account of the profits may be awarded, although the complainant did not expressly waive the forfeiture and penalty in the bill. *Farmer v. Calvert Publishing Co.* 5 A. L. T. 168; s. c. 5 C. L. N. 1.

The right to an account is an incident of a right to an injunction, and an account may be ordered under a prayer for general relief. *Stevens v. Gladding*, 17 How. 447; s. c. 8 N. Y. Leg. Obs. 297; *Stevens v. Cady*, 2 Curt. 200.

If there is no prayer for an account or for general relief, no decree can be made for profits. *Stevens v. Cady*, 2 Curt. 200.

If the infringer sold on commission, he must account for the commissions so received as profits. *Stevens v. Gladding*, 2 Curt. 608.

Issues.

When the rights of the parties depend on the construction of a written instrument, the court will decide the controversy, without directing an issue to be tried at law. *Pierpont v. Fowle*, 2 W. & M. 23.

On an issue to a jury the bill and answer can not be read in evidence by the defendant, unless it is so ordered by the court at the time of directing the issue. *King v. Force*, 2 Cranch C. C. 208.

Preliminary Injunction.

A motion for a preliminary injunction will be disposed of on the affidavits filed by the parties, and will not be referred to a master. *Smith v. Johnson*, 4 Blatch. 252.

On a motion for a preliminary injunction, affidavits taken to be used in the cause may be so used, although they are not entitled in the case. *Shook v. Rankin*, 6 Biss. 477.

A preliminary injunction may be granted although the questions involved have never been settled by any prior adjudication. *Little v. Gould*, 2 Blatch. 165.

Where an infringement is palpable and a provisional injunction will not be attended with serious injury, it is not ordinarily refused as to so much of the work as is a plain infringement of the prior publication. *Banks v. McDivett*, 13 Blatch. 163; s. c. 8 O. G. 860.

If the questions involved are grave, they will not be determined on a mo-

tion for a preliminary injunction, but will be postponed till the final hearing. *Miller v. McElroy*, 2 Penn. L. J. 305; S. C. 1 A. L. Reg. 198.

Where a question is doubtful, a decision on a motion for an injunction may be suspended and an issue sent to be tried at law. *Jollie v. Jaques*, 1 Blatch. 618.

The doubt which will justify a refusal to grant a preliminary injunction must be a serious doubt remaining after a faithful investigation of the law and the facts. *Little v. Gould*, 2 Blatch. 165.

If there is nothing to identify or distinguish the parts in which the complainant claims a copyright, and the defendant's affidavits deny the equities of the bill, a preliminary injunction will not be granted. *Flint v. Jones*, 1 W. N. 334.

On a motion to dissolve an injunction, the complainant can not read affidavits for the purpose of rebutting averments in the answer as to his title, but must depend on the affidavits filed with his bill. *Farmer v. Calvert Publishing Co.* 5 A. L. T. 168; S. C. 5 C. L. N. 1.

A denial of the complainant's title on information and belief, not supported by the affidavit of any person having personal knowledge, is not sufficient to entitle the defendant to a dissolution of an injunction. *Farmer v. Calvert Publishing Co.* 5 A. L. T. 168; S. C. 5 C. L. N. 1.

Injunction.

If the alleged infringement does not prejudice the complainant, he is not entitled to an account or an injunction. *Chase v. Sanborn*, 6 O. G. 932.

If a book infringes a copyright of another book in some parts and in other parts is no infringement, the remedy will not be extended beyond the injury. *Story v. Holcombe*, 4 McLean, 306; *Emerson v. Davies*, 3 Story, 768.

If the motive was not culpable and the part copied can not be separated from the rest of the work, an injunction will not be awarded. *Webb v. Powers*, 2 W. & M. 497.

If the complainant aided the defendant in the publication of the work without asserting any claim under his copyright, he can not restrain the sale thereof. *Heine v. Appleton*, 4 Blatch. 125.

A defendant may be restrained from using the name of a play in advertisements with the intent to lead the public to believe that the genuine play will be performed. *Shook v. Wood*, 32 Leg. Int. 264.

A party who is attached for contempt in violating a perpetual injunction can not contest the validity of the copyright. *Drury v. Ewing*, 1 Bond, 540.

Practice.

The complainant must show that he is the author of the work, or that his title is derived from one sustaining that relation to the publication. *Greene v. Bishop*, 1 Cliff. 186.

The burden of proof is on the complainant to establish his right to copyright as well as the infringement. *Chase v. Sanborn*, 6 O. G. 932.

The copyright is *prima facie* evidence that the party is the author, and

the burden of proof is on the defendant to show the contrary. *Reed v. Carusi, Tancy, 72.*

Master.

The usual course is to send the case to a master before determining the merits. *Chase v. Sanborn, 6 O. G. 932; Story v. Derby, 4 McLean, 160.*

A master is required to report conclusions, and in general it is irregular for him to incorporate the details of the evidence into his report without the direction of the court. *Greene v. Bishop, 1 Cliff. 186.*

Whenever it is requested by either party, a master should specify and identify the evidence, and refer to it in such a manner as to inform the court on what state of facts his conclusions are based. *Greene v. Bishop, 1 Cliff. 186.*

Exceptions to a master's report are written enumerations of the errors alleged by the complaining party, and of the corrections he requests to have made, and they should be so framed as not merely to allege error in general terms, but should be sufficiently definite and explicit to enable the court understandingly to decide on each point in dispute. General allegations of error without pointing to any particulars are insufficient. *Greene v. Bishop, 1 Cliff. 186.*

An exception which, without any suggestion or imputation of fraud or undue influence, merely alleges that the master has arrived at a wrong conclusion on the evidence, without pointing out any specific portion of the testimony to support the allegation, can not in general be regarded as sufficient to put the finding of the master in issue, or to require the court to review and revise the same in a matter of fact dependent entirely upon the weight and effect of the evidence submitted to his consideration. *Greene v. Bishop, 1 Cliff. 186.*

Although an exception is insufficient, yet if the court is satisfied that any error has been committed by the master in the finding referred to, it may recommit the report in order that the error may be corrected. *Greene v. Bishop, 1 Cliff. 186.*

The finding of the master in a matter of fact depending on the weight and effect of the evidence will not be interfered with unless it is clearly shown that there is manifest error. *Greene v. Bishop, 1 Cliff. 186.*

If the exceptions to the master's report are overruled, all matters found by the master and embraced in the order of reference must be taken to be true. All other matters depend on the evidence, and must be heard and determined by the court as in other cases on final hearing. *Greene v. Bishop, 1 Cliff. 186.*

SEC. 4971. Nothing in this chapter shall be construed to prohibit the printing, publishing, importation, or sale of any book, map, chart, dramatic or musical composition, print, cut, engraving, or photograph, written, composed, or made by any person not a citizen of the United States nor resident therein.

Statute Revised—July 8, 1870, ch. 230, § 103, 16 Stat. 215.

Prior Statutes—May 31, 1790, ch. 15, § 5, 1 Stat. 125.—February 3, 1831, ch. 16, § 8, 4 Stat. 438.

RULES OF PRACTICE
IN THE
UNITED STATES PATENT OFFICE.

APPENDIX OF FORMS.

RULES OF PRACTICE
IN THE
UNITED STATES PATENT OFFICE.

UNITED STATES PATENT OFFICE,

November 1, 1876.

The following information and regulations, designed to be in strict accordance with the revised, consolidated, and amended law relating to patents for inventions and designs, and to trade-marks and labels, are published for gratuitous distribution.

Copious forms, to which inventors and attorneys are recommended to conform as nearly as possible, will be found in an appendix.

Printed copies of the revised and amended law may also be obtained by applying to the patent office.

Who may Obtain a Patent.

1. Any person, whether citizen or alien, being the original and first inventor or discoverer of any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent for his invention or discovery, subject to the conditions hereinafter named.

2. In case of the death of the inventor, the patent may be applied for by, and will issue to, his executor, or administrator. In case of an assignment of the whole interest in the invention, or of the whole interest in the patent if granted, the patent will issue to the assignee, upon the request of the latter, or his assignor; and so, if the assignee holds an undivided part interest, the patent will, upon a similar request, issue jointly to him and the inventor; but the assignment must first have been entered of record, and at a day not later than the date of the payment of the final fee. The application and oath must be made by the actual inventor, if alive, even if the patent is to issue to an assignee; but where the inventor is dead, the application and oath must be made by his executor or administrator.

3. Joint inventors are entitled to a joint patent; neither can claim one separately; but the independent inventors of separate and independent improvements in the same machine can not

obtain a joint patent for their separate inventions, nor does the fact that one man furnishes the capital and the other makes the invention entitle them to make application as joint inventors.

4. A patent will not be granted to an applicant if what he claims as new has been, before his invention, patented or described in any printed publication in this or any foreign country, or been invented or discovered in this country, nor if he has once abandoned his invention; nor if it has been in public use or on sale more than two years previous to his application.

5. If it appears that the inventor, at the time of making his application, believes himself to be the first inventor or discoverer, a patent will not be refused on account of the invention or discovery, or any part thereof, having been known or used in any foreign country before his invention or discovery thereof, it not appearing that the same, or any substantial part thereof, had before been patented or described in any printed publication.

6. Merely conceiving the idea of an improvement or machine is not an "invention" or "discovery." The invention must have been reduced to a practical form, either by the construction of the machine itself, or by such disclosure of its exact character, that a mechanic, or one skilled in the art to which it relates, can and does construct the improvement, before it will prevent a subsequent inventor from obtaining a patent.

Mode of Proceeding to Obtain a Patent.

APPLICATION.

7. No application for a patent will be regarded as completed or be placed upon the files for examination until the fee is paid, the specification, the petition, and the oath, properly signed, are filed, and the drawings and a model or specimens (when required) are furnished. The application must be completed and prepared for examination within two years after the filing of the petition: and in default thereof, or upon failure of the applicant to prosecute the same within two years after any action thereon, of which notice shall have been mailed to him or his agent, it shall be regarded as abandoned, unless it be shown, to the satisfaction of the commissioner, that such delay was unavoidable.

It is desirable that everything necessary to make the application complete should be deposited in the office at the same time. If otherwise, a letter should accompany each part, stating to what application it belongs, and giving the date thereof.

8. During the pendency of an application, either the drawing or model (but not both at the same time) may be withdrawn for correction, but the specification will not be permitted to be withdrawn for any purpose whatever.

9. The application must be in writing, in the English language, and addressed to the commissioner of patents. The petition and

specification must be separately signed by the applicant. The specification, claims, and all amendments must be written in a fair, legible hand; otherwise the office may require them to be printed; and all interlineations or erasures should be clearly marked in a marginal or foot note written on the same sheet of paper. Legal-cap paper is deemed preferable, and a wide margin should always be left upon the left-hand side of the page, both of the specification and amendments. All the papers constituting the application should be attached together.

10. The applicant, if the inventor, must take oath or affirmation 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, and of what a resident. If the application be made by an executor or administrator, the form of the oath will be correspondingly changed. The oath or affirmation 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, the oath being attested in all cases, in this and other countries, by the proper official seal of such notary.

11. In case the applicant by amendment seeks to introduce any claim or claims, not substantially embraced in the original affidavit, he will be required to file a supplemental oath relative to the invention as covered by such new or enlarged claim or claims; and such supplemental oath must be upon the same paper which contains the proposed amendment.

SPECIFICATIONS.

12. The specification is a written description of the invention or discovery, and of the manner and process of making, constructing, compounding, and using the same, and is required to be in such full, clear, concise, and exact terms, avoiding unnecessary prolixity, 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. It must be followed by a specific and well defined claim of the part, improvement, or combination which the applicant regards as his invention or discovery.

13. Where there are drawings, the specification should refer by letters and figures to the different parts; and it must set forth the precise invention for which a patent is claimed, explaining the principle thereof and the best mode in which the applicant has contemplated applying that principle, so as to distinguish it from other inventions.

14. In all applications for patents upon mere improvements, the specification must particularly point out the part or parts to which the improvement relates, and must by explicit language distinguish between what is old and what is claimed as the improvement, so that the office and the public may understand exactly for what the patent is granted; and in such cases the description and the drawings, as well as the claims, should be confined to the specific improvement and such parts as necessarily co-operate with it.

15. Two or more separate and independent inventions can not be claimed in one application; but where several distinct inventions are dependent upon each other, and mutually contribute to produce the new result, they may be so claimed.

16. If more than one invention is claimed in a single application, and they are found to be of such a nature that a single patent may not be issued to cover the whole, the office will require the inventor to confine the description and claim of the pending application to whichever invention he may elect; the other inventions may be made the subject of separate applications. The same prerequisites as to form are necessary in such applications as in original ones.

17. The specification must be signed by the inventor, or by his executor or administrator, and must be attested by two witnesses. Full names must be given, *and all names, whether of applicants or witnesses, must be legibly written.*

DRAWINGS.

18. The applicant for a patent is required by law to furnish a drawing of his invention, where the nature of the case admits of it.

19. Three several editions of patent drawings are printed and published: one for office use, certified copies, &c., of the size and character of those attached to patents, the work being about 6 by 9½ inches; one reduced to half that scale, or one-fourth the surface, of which four will be printed on a page to illustrate the volumes distributed to the courts, &c.; and one reduction—to about the same scale—of a selected portion of each drawing, to illustrate the Official Gazette.

This work will all be done by the photolithographic or other analogous process, and therefore the character of each original drawing must be brought as nearly as possible to a uniform standard of excellence, suited to the requirements of the process, and calculated to give the best results, in the interests of inventors, of the office, and of the public generally. The following rules will therefore be rigidly enforced, and any departure from them will be certain to cause delay in the examination of an application for letters patent:

- a. Drawings should be made upon paper stiff enough to stand in the portfolios, the surface of which must be calendered

and smooth. Owen Company's three-sheet bristol-board, used by the patent office, is recommended. Indian ink of good quality, to the exclusion of all other kinds of ink or color, must be employed, to secure perfectly black and solid work.

- b. The size of a sheet on which a drawing is made should be exactly 10 by 15 inches. One inch from its edges a single marginal line is to be drawn, leaving the "sight" precisely 8 by 13 inches. Within this margin all work and signatures must be included. One of the smaller sides of the sheet is regarded as its top, and, measuring downward from the marginal line, a space of not less than $1\frac{1}{4}$ inches is to be left blank for the insertion of title, name, number, and date.
- c. All drawings must be made with the pen only, using the blackest Indian ink. Every line and letter (signatures included) must be *absolutely black*. This direction applies to all lines, however fine, to shading, and to lines representing cut surfaces in sectional views. All lines must be clean, sharp, and solid, and they must not be too fine or crowded. Surface shading, when used, should be left very open. Sectional shading should be by oblique parallel lines, which may be about one-twentieth of an inch apart.
- d. Drawings should be made with the fewest lines possible consistent with clearness. By observing this rule the effectiveness of the work after reduction will be much increased. Shading (except on sectional views) should be used only on convex and concave surfaces, where it should be used sparingly, and may even there be dispensed with if the drawing is otherwise well executed. The plane upon which a sectional view is taken should be indicated on the general view by a broken or dotted line. Heavy lines on the shade sides of objects should be used, except where they tend to thicken the work and obscure letters of reference. The light is always supposed to come from the upper left-hand corner, at an angle of forty-five degrees. Imitations of wood or surface-graining should not be attempted.
- e. The scale to which a drawing is made ought to be large enough to show the mechanism without crowding, and two or more sheets should be used if one does not give sufficient room to accomplish this end; but the number of sheets must never be increased unless it is absolutely necessary. It often happens that an invention, although constituting but a small part of a machine, has yet to be represented in connection with other and much larger parts. In such cases a general view on a small scale is recommended, with one or more of the invention itself on a much larger scale.
- f. Letters of reference must be well and carefully formed; they are of the first importance. When at all possible, no letter

of reference should measure less than one-eighth of an inch in height, that it may bear reduction to one-twenty-fourth of an inch, and they may be much larger when there is sufficient room. Reference letters must be so placed in the close and complex parts of drawings as not to interfere with a thorough comprehension of the same, and to this end should rarely cross or mingle with the lines. When necessarily grouped around a certain part, they should be placed at a little distance, where there is available space, and connected by short broken lines with the parts to which they refer. They must never appear upon shaded surfaces, and, when it is difficult to avoid this, a blank space must be left in the shading where the letter occurs, so that it shall appear perfectly distinct and separate from the work. If the same part of an invention appears in more than one figure, it should always be represented by the same letter.

- g. The signature of the inventor is to be placed at the lower right-hand corner of the sheet, and the signatures of the witnesses at the lower left-hand corner, all within the marginal line. (See specimen drawing.) The title should be written with pencil on the back of the sheet. The permanent names and title will be supplied subsequently by the office in uniform style.

When figures are larger than the width of the sheet, the latter is turned on its side, and the space for heading will be left at the right, and that for the signatures at the left, occupying the same space and position as in the upright subject, so that the heading and names will read right when the drawing is held in an upright position.

- h. As a rule, one view only of each invention can be shown in the Gazette illustrations. The selection of that portion of a drawing best calculated to explain the nature of the specific improvement would be facilitated, and the final result improved, by the judicious execution of a figure with express reference to the Gazette, but which might, at the same time, act as one of the figures referred to in the specification. For this purpose, the figure may be a plan, elevation, section, or perspective view, according to the judgment of the draftsman. It must not cover a space exceeding sixteen square inches. All its parts should be especially open and distinct, with very little or no shading, and it must illustrate the invention claimed only, to the exclusion of all other details. (See Fig. 3, specimen drawing.) When well executed, it will be used without curtailment or change; but any attempt at excessive fineness, crowding, or unnecessary elaborateness of detail, will insure its rejection for Gazette purposes.
- i. Drawings should be rolled for transmission to the office, not folded. No agent's or attorney's stamp, or advertisement,

or any written address, will be permitted upon the face of a drawing within or without the marginal line.

20. These rules do not always apply to drawings for designs and trade-marks. (See Rules for Designs and Trade-marks.)

21. The foregoing rules relating to drawings will be rigidly enforced, and all drawings not artistically executed in conformity therewith will be returned to the respective applicants, or, at the applicant's option and cost, the office will make the necessary corrections.

22. All reissue applications must be accompanied by new drawings, as in original applications, and the inventor's name must appear in all cases upon the same.

23. Applicants are advised to employ competent artists to make their drawings, or, if desired, the office will furnish the drawings on payment of the cost of making the same.

24. In all cases which admit of representation by model, the applicant, if required, shall furnish a model to exhibit advantageously the several parts of his invention or discovery. As a rule, a model will not be dispensed with, except by recommendation of the examiner. The model must clearly exhibit every feature of the machine which forms the subject of a claim of invention, but should not include other matter than that covered by the actual invention or improvement, unless it is necessary to the exhibition of a working model.

25. The model must be neatly and substantially made of durable material, metal being deemed preferable; and should not in any case be more than one foot in length, width, or height. If made of pine or other soft wood, it should be painted, stained, or varnished. Glue must not be used, but the parts should be so connected as to resist the action of heat or moisture. Where practicable, to prevent loss, the model or specimen should have the name of the inventor permanently fixed thereon. In cases where models are not made strong and substantial, as here directed, the application will not be considered until a proper model is furnished.

26. A working model is always desirable, in order to enable the office fully and readily to understand the precise operation of the machine.

27. The model, unless it is deemed necessary that it be preserved in the office, or unless it be otherwise disposed of, may be returned to the applicant upon demand, and at his expense, in all cases where an application has been rejected more than two years; and the model, in any pending case of less than two years' standing, may be returned to the applicant upon the filing of a formal abandonment of the application, signed by applicant in person. Models belonging to patented cases will not be allowed to be taken from the office, except by some employee thereof, when authorized by the commissioner, and in whose custody it will remain until returned.

28. Models filed as exhibits, in interference and other cases, may be returned to the applicant or otherwise disposed of at the discretion of the commissioner.

Models in patented cases will, when necessary, be repaired by the office at the cost of the proper owner, on request by such owner.

When the invention or discovery is 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. In all cases where the production is not perishable, a specimen put up in form, so as to be preserved by the office, should be filed. Ordinary, well-known ingredients need not be furnished, unless the office disputes their operation in the manner as stated by applicant.

The Examination.

29. All cases in the patent office are classified and taken up for examination in regular order; those in the same class being examined and disposed of, as far as practicable, in the order in which the respective applications are completed. When, however, the invention is deemed of peculiar importance to some branch of the public service, and when, for that reason, the head of some department of the government specially requests immediate action, the case will be taken up out of its order. These, with applications for extensions, for reissue, for letters patent for inventions for which a foreign patent has already been obtained, and for designs, which cases have precedence over all others, are the only exceptions to the above rule in relation to the order of examination. If an application is found to conflict with a caveat, its examination will be suspended, as hereinafter provided.

The first step in the examination of any application will be to determine whether it is, in all respects, in proper form. If, however, an objection as to form is not vital, the examiner may proceed to the consideration of the application on its merits; but in such case he must, in his first letter to applicant, state all his objections, whether formal or otherwise.

30. The personal attendance of the applicant at the patent office is unnecessary. The business can be done by correspondence or by attorney; and if there has been an assignment of the whole or of an undivided part of the invention, the assignee, or, in the latter case, the assignee and the inventor jointly, will be recognized as the proper party to prosecute the application.

31. The applicant has a right to amend after the first rejection; and he may amend as often as the examiner presents any new references. After a second rejection, and at any time before the issue of a patent, special amendments may be received for examination by the approval of the commissioner. But such amendments must first be submitted to the tribunal last acting on the case, for

recommendation or objection, and will be subject to revision and restriction the same as original amendments. Affidavits in support of applications will not be received at any stage of the examination, unless the office denies that the invention is operative or useful.

32. All amendments of the model, drawings, or specification, in the case of original applications which are capable of illustration by drawing or model, must conform to at least one of them as they were at the time of the filing of the application; further changes than this, involving a departure from the original invention, can only be made by filing a new application. If the invention does not admit of illustration by drawing, amendment of the specification may be made upon proof satisfactory to the commissioner that the proposed amendment is a part of the original invention.

All amendments of specifications or claims must be made on separate sheets of paper from the original, and must be filed in the manner above directed. Even when the amendment consists in striking out a portion of the specification or other paper, the same course should be observed. No erasure must be made by the applicant. In every case of amendment the exact word or words to be stricken out or inserted should be clearly specified, and the precise point indicated where the erasure or insertion is to be made.

33. Whenever, on examination, any claim for a patent is rejected for any reason whatever, the applicant will be notified thereof, and the reasons for such rejection will be given, together with such information and references as may be useful in judging of the propriety of prosecuting his application or of altering his specification; and if, after receiving such notice, he shall persist in his claim for a patent, with or without altering his specification, the case will be re-examined.

34. Upon the rejection of an application for want of novelty, the examiner must cite the best references at his command, and the applicant will, if he demands it, be entitled to a specific reference (by name, date, and class, or the equivalent thereof) to the article or articles by which it is anticipated. If he desires a copy of the cases so referred to, or of the plates or drawings connected with them, they will be forwarded to him, if in the possession of the office, on payment of the cost of making such copies.

35. Pending applications must not be cited as references, except for the purposes of an interference.

36. The specification, especially if the claim be amended, must be amended and revised, when required, for the purpose of correcting inaccuracies of description or unnecessary prolixity, and of securing correspondence between the statement and description of the invention and the claim. Mere errors of orthography or of grammatical construction may be corrected by the examiner in charge.

37. The office will not return specifications for amendment. If applicants have not preserved copies of such papers as they wish to amend, the office will furnish them on the usual terms.

Date of Patent.

38. Every patent will bear date as of a day not later than six months from the time at which the application was passed and allowed, and notice thereof was mailed to the applicant or his agent, and if the final fee (or, in case the fee has been paid to the treasurer or any of the assistant treasurers, or any of the designated depositaries of the United States, the certificate of deposit) be not received at the office within that period, the patent will be withheld. The party may, however, obtain a patent upon a new application, as hereinafter provided.

A patent will not be antedated.

Abandoned Applications.

39. When an application for a patent has been rejected, and the applicant fails to renew the same, or to file a new one within two years after the date when notice of the last official action was mailed to him or to his agent, his application will be held to have been abandoned.

Any act which calls such rejected application up for further consideration, within the time mentioned, will be regarded as constituting a renewal.

40. When a new application is filed in place of an old one, a new specification, oath, drawing, and fee will be required, but the old model, if suitable, may be used.

41. Upon the hearing of applications attempted to be renewed after the expiration of the two years after any action thereon, it must be shown to the satisfaction of the commissioner that such delay was unavoidable.

In those cases above mentioned where the patent has been withheld by reason of non-payment of the final fee, any person, whether inventor or assignee, who has an interest in the invention for which such patent was ordered to issue, may renew the former application by filing a second one for the same invention; but such second application must be made within two years after the allowance of the original one. Upon the hearing of the renewed applications abandonment shall be considered as a question of fact.

Appeals.

42. Every applicant for a patent or the reissue of a patent, any of the claims of which have twice been rejected upon the merits of the invention, may appeal from the decision of the primary examiner in such case to the board of examiners in chief, having once paid a fee of ten dollars. For this purpose a petition in writing must be filed, signed by the party, or his authorized agent or attorney, praying an appeal, and setting forth the reasons upon which the appeal is taken.

This statement of the reasons of appeal should point out distinctly and specifically the supposed errors of the examiner's action, and should constitute a brief of the argument upon which

the applicant will rely in support of his appeal. The mere allegation that the examiner has erred will not be received as a proper reason for appeal. Before the appeal is entertained by the board, this statement will be submitted to the primary examiner, who will make answer in writing touching all the points involved therein.

Both the reasons of appeal and the examiner's answer should set forth the invention, the claims rejected, the references cited, and other objections going to the merits of the case generally. It will not be sufficient compliance with this rule to refer to letters as containing the examiner's answer and references.

If the appellant desires to be heard orally before the board, he should so indicate when he files his appeal; a day of hearing will then be fixed, and due notice of the same be given him.

In contested cases the appellant shall have the right to make the opening and closing arguments.

43. The examiners in chief will consider the case as it was when last passed upon by the primary examiner, merely revising his decisions so far as they were adverse to the appellant. If, however, they discover any reason not given by the examiner why a patent should not issue, they should make a statement to that effect to the commissioner.

If affidavits are received under Rule 31, after the case has been appealed, the application will be remanded to the examiner for reconsideration.

44. There must be two rejections upon the claims as originally filed, or, if amended in a matter of substance, upon the amended claims; and all the claims must be passed upon, and all preliminary and intermediate questions relating to matters not affecting the merits of the invention must be settled before the case is appealed to the board.

All cases must be thoroughly examined and all references exhausted before final rejection.

Decisions of examiners upon preliminary or intermediate questions, or refusals to act, once repeated, will be re-examined by the commissioner in person, upon written application setting forth the grounds of the appeal, and answer thereto by the examiner as in other appeals. For appeals of this class no fee is required.

45. Cases which have been heard and decided on appeal will not be reopened by the examiner without the written authority of the commissioner, and cases which have been decided by the examiners in chief will not be reheard by them, when no longer pending before them, except upon the same authority.

Cases will be regarded as pending before a tribunal until appeal has been taken from its decision, or until the limit of appeal has expired.

Cases which have been deliberately decided by one commissioner will not be reconsidered by his successor upon the same state of facts. They may, however, be reopened in accordance

with the general principles which govern the granting of new trials.

46. All cases which have been acted on by the board of examiners in chief may be brought before the commissioner in person, upon a written request to that effect, and upon the payment of the fee of twenty dollars required by law.

47. From the adverse decision of the commissioner upon the claims of an application, an appeal may be taken to the Supreme Court of the District of Columbia, sitting *in banc*. In taking such appeals the applicant is required, under the rules of the court, to pay to the clerk of the court a docket fee of ten dollars, and he is also required by law to lay before the court certified copies of all the original papers and evidence in the case. The petition should be filed and the fee paid at least ten days before the commencement of the term of court at which the appeal is to be heard.

Immediately upon taking an appeal the appellant must give notice thereof to the commissioner of patents, and file in the patent office his reasons of appeal, specifically set forth in writing.

The docket for the trial of cases appealed from the decision of the commissioner of patents will be called on the first day of each session of the Supreme Court of the District of Columbia in general term. These sessions are held three in each year, and begin respectively on the first Monday in January, the third Monday in April, and the fourth Monday in September.

48. In cases of interference parties have the same remedy by appeal to the examiners in chief, and to the commissioner, as in *ex parte* cases; but no appeal lies in such cases from the decision of the commissioner. Appeals in interference cases should be accompanied with a brief statement of the reasons therefor; and both parties will be required to file briefs of their arguments at least five days before the day of hearing. Printed briefs are in all cases preferred.

Hearings.

49. All cases pending before the commissioner, the board of examiners in chief, or the examiner in charge of interferences, will stand for argument at 12 o'clock on the day of hearing, unless some other hour be specially designated. If either party in a contested case, or the appellant in an *ex parte* case, appears at that time, he will be heard, but a contested case will not be taken up for oral argument after the day of hearing, except by consent of both parties. If the engagements of the tribunal before whom the case is pending are such as to prevent it from being taken up on the day of hearing, a new assignment will be made, or the case will be continued from day to day until heard. Unless otherwise ordered before the hearing begins, oral arguments will be limited to one hour for each counsel. After any case has been argued, nothing further relating thereto will be heard unless requested by

the tribunal having the decision of the case; and all interviews for this purpose, with parties in interest or their attorneys, will be invariably denied.

Motions.

50. In contested cases reasonable notice of all motions, and copies of the motion, papers, and affidavits, must be served upon the opposite party or his attorney. Proof of such service must be made before the motion will be entertained by the office, and motions will not be heard in the absence of either party except upon default after due notice. Motions will be heard in the first instance by the officer or tribunal before whom the particular case may be pending; but an appeal from the decision rendered may be taken to the commissioner in person.

Interferences.

51. An "interference" is a proceeding instituted for the purpose of determining the question of *priority of invention* between two or more parties claiming the same patentable subject-matter.

Before the declaration of an interference it is desirable that all preliminary questions shall be settled by the primary examiner, and the issue must be clearly defined; the invention which is to form the subject of the controversy must be decided to be patentable, and the claims of the respective parties should be put in such condition that they will not require alteration after the interference has been finally decided, unless the testimony adduced upon the trial should necessitate such change.

Where a party who is required to put his case in proper shape for the purposes of an interference delays doing so beyond a reasonable time specified, the interference will at once proceed. After final judgment of priority the application of such party will be held for revision and restriction, subject to interferences with other applications or new references.

An interference will be declared in the following cases:

First. When two or more parties have applications pending before the office at the same time, and their respective claims conflict in whole or in part.

Second. When two or more applications are pending at the same time, in each of which a like patentable invention is shown or described, and claimed in one though not specifically claimed in all of them.

Third. When an applicant, having been rejected upon any unexpired patent, claims to have made the invention before the patentee.

Applications for reissue of patents are included in the above classification, and will be put in interference with subsequent as well as prior patents when in conflict therewith.

Where a preliminary interference is declared on matter shown

but not claimed in the application last filed, the applicant must, in order to avoid the continuance of the interference, disclaim the invention of the particular matter so shown.

52. The fact that one of the parties has already obtained a patent will not prevent an interference; for, although the commissioner has no power to cancel a patent already issued, he may, if he finds that another person was the prior inventor, give him a patent also, and thus place both parties on an equal footing before the courts and the public.

When a patent is involved in an interference the assignees, as well as the inventor, will be notified.

53. Before the declaration of an interference proper a preliminary interference will be declared, in which the primary examiner will briefly and concisely define the interfering subject-matter, and specify the claims embracing the same, and also notify the respective parties when the applications of the other parties were filed, together with their names and residences. Each party to the interference will be required to file a brief statement under oath, showing the date of the original conception, the date that the invention was reduced to drawings or model, the date of its completion, and the extent of use. The parties will be strictly held in their proof to the dates set up in their preliminary statements. This statement must be sealed up before filing (to be opened only by the examiner of interferences), and the name of the party filing it and the subject of the invention indicated on the envelope.

These statements shall not be open to the inspection of the opposing parties until both have been filed, or until the time for filing both has expired; nor then, until they have been examined by the proper officer and found to be satisfactory. At the time of the examination of the preliminary statements the examiner of interferences will also make an examination of the preliminary declaration (instituted by the primary examiner), in order to ascertain whether or not the issue between the parties has been clearly defined. If it be found, upon such examination, that the preliminary declaration is ambiguous in this particular, the interference will be suspended and the case returned to the primary examiner for amendment.

If the party upon whom rests the burden of proof fails to file a preliminary statement, or if his statement fails to overcome the *prima facie* case made by the respective dates of application, the other party will be entitled to an immediate adjudication of the case upon the record.

If the earlier applicant fails to file a preliminary statement, no testimony will subsequently be received from him going to prove that he made the invention at a date prior to his application. The preliminary statement can in no case be used as evidence in behalf of the party making it. Its use is to determine whether the interference shall be proceeded with, and to serve as a basis of cross-examination for the other party.

If either party requires a postponement of the time for filing the preliminary statements, he must present his reasons therefor, in the form of an affidavit, prior to the day previously fixed upon.

54. Where no testimony is taken by the applicant upon whom rests the burden of proof, or where testimony has been taken by such applicant, but not by the other party during the time assigned to the latter, the case will be considered closed; upon motion duly made at the expiration of the time assigned to such parties, respectively, the case may be set for hearing at any time not less than ten days thereafter.

55. In cases of interference, appeals may be taken to the examiners in chief and to the commissioner, in the manner provided in Rule 48.

56. When an interference is declared, notice will be given to both parties or to their attorneys. When one of the parties has received a patent, duplicate notices will be sent to the patentee and to his attorney of record. Where one of the parties resides abroad and has no known agent in the United States, in addition to the notice sent by mail, notice may be given by publication in a newspaper of general circulation in the city of Washington, once in a week for three successive weeks.

57. In cases of interference the party who first filed so much of his application for a patent as is required by Rule 7, will be deemed the first inventor in the absence of all proof to the contrary. A time will be assigned in which the other party shall complete his direct testimony; and a further time in which the adverse party shall complete the testimony on his side; and a further time in which the party who first took testimony may take rebutting testimony, but shall take no other. If there are more than two parties, the times for taking testimony will be so arranged that each shall have a like opportunity in his turn, each being held to go forward and prove his case against those who filed their application before him.

58. If it becomes necessary for either party to have the time for taking his testimony, or for the hearing, postponed, he must make application for such postponement, and must show sufficient reason for it by affidavit, as provided in Rule 113, filed before the time previously appointed has elapsed, if practicable, and must also furnish his opponent with copies of his affidavits and with reasonable notice of the time of hearing his motion.

59. After the declaration of the interference and before the time for filing the preliminary statements has expired, motions to dissolve the same on the ground of lack of novelty, or that no interference in fact exists, or that there has been such other irregularity in declaring the same as will preclude the proper determination of the question of right between the parties, must be made before the examiner by whom the interference was instituted. An appeal from his decision may be taken to the commissioner in per-

son; but if the examiner should decide that the subject-matter is not patentable in view of the state of the art, the interference will be dissolved, and the matter decided upon can be proceeded with *ex parte*.

After the declaration of the interference proper, it will not be determined without judgment of priority founded upon the testimony, or the written concession of one of the parties. In their decision of the question of priority, the examiner of interferences, or the examiners in chief, as the case may be, will direct the attention of the commissioner to any fact not relating to priority which may have come to their attention (by motion or otherwise), and which, in their opinion, amounts to a statutory bar to the grant of a patent to either or both parties. After final judgment the primary examiner will consider and determine any such matter not previously disposed of by the commissioner.

If at any time during the continuance of an interference the primary examiner discovers new references, he may request a suspension of the interference for their consideration: but after testimony has been taken new parties will not be admitted into the interference.

Where final judgment of priority has been rendered in favor of an applicant whose application has passed to issue, the final fee been paid, and nothing more remains to be done but to issue the patent, the patent will not be withheld for the purpose of putting such application in interference with any application filed subsequent to the rendition of such judgment and the payment of said final fee; but a new interference may be declared with the patent.

If judgment be based upon a concession of priority by either of the parties, such concession must be in writing, and under the signature of the inventor himself; and if there has been an assignment, the assignee must join in the concession.

60. No amendments to the specification will be received during the pendency of an interference, except as provided in § 61, nor will the reissue of a patent be allowed while the patent is in interference. A second interference will not be declared upon a new application on the same invention filed by either party during the pendency of an interference, or after judgment, nor a rehearing be granted, unless it be shown to the satisfaction of the commissioner that the party desiring a new interference or rehearing has new and material testimony which he could not have procured in time for the hearing, or unless other sufficient reasons be shown.

61. When an application is adjudged to interfere with a part only of another pending application, the interfering parties will be permitted to see or obtain copies of so much only of the specifications as refers to the interfering claims. And either party may, if he so elect, withdraw from his application the claims adjudged not to interfere, and file a new application therefor: *Provided*, that the claims so withdrawn cover inventions which do not in-

volve the devices in interference: *And provided also*, that the devices in interference are eliminated from the new application. In such case the latter will be examined without reference to the interference from which it was withdrawn.

Reissues.

62. A reissue is granted to the original patentee, his legal representatives, or the assignees of the entire interest, when, by reason of a defective or insufficient specification, or by reason of the patentee claiming as his invention or discovery more than he had a right to claim as new, the original patent is inoperative or invalid, provided the error has arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intention. In the cases of patents issued and assigned prior to July 8, 1870, the application for reissue may be made by the assignee; but, in the case of patents issued or assigned since that date, the application must be made and the specification sworn to by the inventor, if he be living.

63. The petition for a reissue must be accompanied with a certified copy of the abstract of title, giving the names of all assignees owning any undivided interest in the patent: and in case the application is made by the inventor, it must be accompanied with the written assent of such assignees.

64. The general rule is, that whatever is really embraced in the original invention, and so described or shown that it might have been embraced in the original patent, may be the subject of a reissue; but no new matter shall be introduced into the specification, nor shall the model or drawings be amended except each by the other; but, when there is neither model nor drawing, amendments may be made upon proof satisfactory to the commissioner that such new matter or amendment was a part of the original invention, and was omitted from the specification by inadvertence, accident, or mistake, as aforesaid.

65. Reissued patents expire at the end of the term for which the original patents were granted. For this reason applications for reissue will take precedence, in examination, of original applications.

66. A patentee in reissuing may, at his option, have a separate patent for each distinct and separate part of the invention comprehended in his original patent, by paying the required fee in each case, and complying with the other requirements of the law, as in original applications. Each division of a reissue constitutes the subject of a separate specification descriptive of the part or parts of the invention claimed in such division; and the drawing may represent only such part or parts. All the divisions of a reissue will issue simultaneously. If there be controversy as to one, the others will be withheld from issue until the controversy is ended.

67. In all cases of applications for reissues, the original claim,

if reproduced in the amended specification, is subject to re-examination, and may be revised and restricted in the same manner as in original applications. The application for a reissue must be accompanied by a surrender of the original patent, or, if lost, then by an affidavit to that effect and a certified copy of the patent; but if any reissue be refused, the original patent will, upon request, be returned to the applicant.

Where more than one patent to the same person shows or describes a device but does not claim it, a reissue to cover it must be of the patent first granted.

Disclaimers.

68. Whenever, by inadvertence, accident, or mistake, the claim of invention in any patent is too broad, embracing more than that of which the patentee was the original or first inventor, some material or substantial part of the thing patented being truly and justly his own, the patentee, his heirs or assigns, whether of a whole or of a sectional interest, may, upon payment of the duty required by law, make disclaimer of such parts of the thing patented as the disclaimant shall not choose to claim or to hold by virtue of the patent or assignment, stating therein the extent of his interest in such patent; which disclaimer shall be in writing, attested by one or more witnesses, shall be recorded in the patent office, and shall thereafter be considered as part of the original specification, to the extent of the interest possessed by the claimant and by those claiming under him after the record thereof.

This class of disclaimers must be distinguished from those which are embodied in original or reissue applications referring to matter shown or described, but to which the disclaimant does not choose to claim title. These require no fee.

Extensions.

69. No patent granted since March 2, 1861, can be extended except by act of Congress.

70. When a patent has been so extended, subject to the further decision of the commissioner, the subsequent proceedings will be conducted in accordance with the following rules:

71. Any person may oppose an application for extension, but must give notice of such intention to the applicant or his attorney of record within the time hereafter named, and furnish him with a statement of his reasons of opposition. After this he will be regarded as a party in the case, and will be entitled to notice of the time and place of taking testimony, to a list of the names and residences of the witnesses whose testimony may have been taken previous to his service of notice of opposition, and to a copy of the application and of any other papers on file, upon paying the cost of copying. He must also immediately file a copy of such

notice and reasons of opposition, with proof of service of the same, in the patent office.

If the extension is opposed on the ground of lack of novelty in the invention, the reasons of opposition should contain a specific statement of any and all matter relied upon for this purpose.

72. The application for an extension must furnish to the office a statement in writing, under oath, of the ascertained value of the invention, and of his receipts and expenditures on account thereof, both in this and foreign countries. This statement must be made particular and in detail, unless sufficient reason is set forth why such a statement can not be furnished. It must *in all cases* be filed with the petition. No exceptions will be made to this rule.

Such statement must also be accompanied with a *certified abstract of title* and a declaration, under oath, setting forth the extent of applicant's interest in the extension sought.

73. The questions which arise on each application for an extension are :

First. Was the invention *new and useful* when patented ?

Second. Is it *valuable and important to the public*, and to what extent ?

Third. Has the inventor been *reasonably remunerated* for the time, ingenuity, and expense bestowed upon it, and the introduction of it into use ? If not, has his failure to be so remunerated arisen from neglect or fault on his part ?

Fourth. What will be the effect of the proposed extension upon the public interests ?

No proof will be required from the applicant upon the first question unless the invention is assailed upon those points by opponents.

To enable the commissioner to come to a correct conclusion in regard to the second point of inquiry, the applicant must, if possible, procure the testimony of persons disinterested in the invention, which testimony should be taken under oath. *This testimony must distinguish carefully between the specific devices covered by the claims of the patent and the general machine in which those devices may be incorporated.*

In regard to the third point of inquiry, in addition to his own oath, showing his receipts and expenditures on account of the invention, the applicant must show, by testimony under oath, that he has taken all reasonable measures to introduce his invention into general use ; and that, without neglect or fault on his part, he has failed to obtain from the use and sale of the invention a reasonable remuneration for the time, ingenuity, and expense bestowed on the same, and the introduction of it into use.

74. In case of opposition to the extension of a patent by any person, both parties may take testimony, each giving reasonable notice to the other of the time and place of taking said testimony, which shall be taken according to the rules hereinafter prescribed.

75. Any person desiring to oppose an extension must serve his notice of opposition, and file his reasons therefor, at least ten days before the day fixed for the closing of testimony; but parties who have not entered formal opposition in time to put in testimony may, at the discretion of the commissioner, be permitted to appear on the day of hearing, and make argument upon the record in opposition to the grant of the extension. But in such case good cause for the neglect to make formal opposition must be shown.

76. In contested cases no testimony will be received, unless by consent, which has been taken within thirty days next after the filing of the petition for the extension.

77. Service of notice to take testimony may be made upon applicant, upon the opponent, upon the attorney of record of either, or, if there be no attorney of record, upon any attorney or agent who takes part in the service of notice, or in the examination of the witnesses of either party. Where notice to take testimony has already been given to an opponent, and a new opponent subsequently gives notice of his intention to oppose, the examination need not be postponed, but notice thereof may be given to such subsequent opponent by mail or by telegraph. This rule, however, does not apply to *ex parte* examinations, or those of which no notice has been given when notice of opposition is served.

78. In the notice of the application for an extension a day will be fixed for the closing of testimony, and the day of hearing will also be named. Application for a postponement of the day of hearing, or for further time for taking testimony, must be made and supported according to the same rules as are to be observed in other contested cases; but they will not be granted in such a manner as to cause a risk of preventing a decision prior to the expiration of the patent. Immediately upon the closing of the testimony the application will be referred to the examiner in charge of the class to which the invention belongs for the report required by law; and said report shall be made not less than five days before the day of hearing. As this report is intended for the information of the commissioner, neither the parties nor their attorneys will be permitted to make oral arguments before the examiner. In contested cases briefs are deemed desirable, and these should always be filed at least five days before the day of hearing.

Designs.

79. A patent for a design may be granted to any person, whether citizen or alien, who, by his own industry, genius, efforts, and expense, has invented or produced any new and original design for a manufacture, bust, statue, alto-relievo, or bas-relief; any new and original design for the printing of woolen, silk, cotton, or other fabrics; any new and original impression, ornament, pattern, print, or picture, to be printed, painted, cast, or otherwise

placed on or worked into any articles of manufacture; or any new, useful and original shape or configuration of any article of manufacture, the same not having been known or used by others before his invention or production thereof, or patented or described in any printed publication, upon payment of the duty required by law, and other due proceedings had the same as in cases of inventions or discoveries.

80. Patents for designs are granted for the term of three and one-half years, or for seven years, or for fourteen years, as the applicant may, in his application, elect.

81. The proceedings in applications for patents for designs are substantially the same as for other patents. The specification must distinctly point out the characteristic features of the design, and carefully distinguish between what is old and what is held to be new. The claims also should be as distinct and specific as in the case of patents for inventions or discoveries.

82. When the design can be sufficiently represented by drawings or photographs, a model will not be required.

83. Whenever a photograph or an engraving is employed to illustrate the design, it must be mounted upon bristol-board, ten by fifteen inches in size, and properly signed and witnessed; the applicant will be required to furnish ten extra copies of such photograph or engraving (not mounted), of a size not exceeding seven and a half inches by eleven. Negatives are not required.

Whenever the design is represented by a drawing made to conform to the rules laid down for drawings of mechanical inventions, but one copy need be furnished. Additional copies will be supplied by the photolithographic process, at the expense of the patent office.

Trade-Marks.

84. Any person or firm domiciled in the United States, and any corporation created by the authority of the United States, or of any State or Territory thereof, and any person, firm, or corporation resident of or located in any foreign country which, by treaty or convention, affords similar privileges to citizens of the United States, and who are entitled to the exclusive use of any lawful trade-mark, or who intend to adopt and use any trade-mark for exclusive use within the United States, may obtain protection for such lawful trade-mark by complying with the following requirements, to wit:

First. By causing to be recorded in the patent office the names of the parties, and their residences and place of business, who desire the protection of the trade-mark.

Second. The class of merchandise and the particular description of goods comprised in such class, by which the trade-mark has been or is intended to be appropriated.

Third. A description of the trade-mark itself, with fac-similes

thereof, and the mode in which it has been or is intended to be applied and used.

Fourth. The length of time, if any, during which the trade-mark has been used.

Fifth. The payment of a fee of twenty-five dollars, in the same manner and for the same purpose as the fee required for patents.

Sixth. The compliance with such regulations as may be prescribed by the commissioner of patents.

Seventh. The filing of a declaration, under the oath of the person, or of some member of the firm or officer of the corporation, to the effect that the party claiming protection for the trade-mark has a right to the use of the same, and that no other person, firm, or corporation has a right to such use, either in the identical form or having such near resemblance thereto as might be calculated to deceive, and that the description and fac-similes presented for record are true copies of the trade-mark sought to be protected. The oath must also state the domicile and citizenship of the person desiring registration.

The petition asking for registration should be accompanied with a distinct statement or specification, setting forth the domicile and residence of the applicant, the length of time the trade-mark has been used, the mode in which it is intended to apply it, and the particular description of goods comprised in the class by which it has been appropriated, and giving a full description of the design proposed, particularly distinguishing between the essential and the non-essential features thereof.

85. The protection for such trade-mark will remain in force for thirty years, and may, upon the payment of a second fee, be renewed for thirty years longer, except in cases where such trade-mark is claimed for, and applied to, articles not manufactured in this country, and in which it receives protection under the laws of any foreign country for a shorter period, in which case it shall cease to have force in this country, by virtue of the registration, at the same time that it becomes of no effect elsewhere.

86. No proposed trade-mark will be received or recorded which is not and can not become a lawful trade-mark, or which is merely the name of a person, firm, or corporation only, unaccompanied by a mark sufficient to distinguish it from the same name when used by other persons, or which is identical with a trade-mark appropriate to the same class of merchandise and belonging to a different owner, and already registered or received for registration, or which so nearly resembles such last-mentioned trade-mark as to be likely to deceive the public; but any lawful trade-mark rightfully used at the time of the passage of the act relating to trade-marks (July 8, 1870) may be registered.

All applications for registration are referred in the first instance to a trade-mark examiner. From adverse decision by such examiner upon the applicant's right to registration, an appeal directly to the commissioner will lie, no fee being charged therefor.

In case of conflicting applications for registration, the office reserves the right to declare an interference, in order that the parties may have opportunity to prove priority of adoption or right; and the proceedings on such interference will follow, as nearly as practicable, the practice in interferences upon applications for patents.

87. Where the trade-mark can be represented by a fac-simile which conforms to the rules for drawings of mechanical patents, such a drawing may be furnished by applicant, and the additional copies will be produced by the photolithographic process at the expense of the office. Or the applicant may furnish one fac-simile of the trade-mark, mounted on a card ten by fifteen inches in size, and ten additional copies not mounted, as in designs, but in all cases the mounted fac-simile or the drawing must be signed by the applicant or his authorized attorney, and the signature must be attested by two witnesses.

88. The right to the use of any trade-mark is assignable by any instrument of writing, and such assignment must be recorded in the patent office within sixty days after its execution, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice. The fees will be the same as are prescribed for recording assignments of patents.

Foreign Patents.

89. The taking out of a patent in a foreign country does not prejudice a patent previously obtained here; nor does it prevent obtaining a patent here subsequently, unless the invention shall have been introduced into public use in the United States for more than two years prior to the application; but when a patent is taken out in this country for an invention previously patented abroad, the American patent will 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; but in no case shall it be in force more than seventeen years.

90. When application is made for a patent for an invention which has been already patented abroad, the inventor will be required to make oath that, according to the best of his knowledge and belief, the same has not been in public use in the United States for more than two years prior to the application in this country.

91. An applicant whose invention has been patented abroad should state the fact that a foreign patent has actually been obtained, giving its date, and if there be more than one, the date of each.

Caveats.

92. Any citizen of the United States, or alien who has resided for one year last past in the United States, and has made oath of

his intention to become a citizen thereof, can file a caveat in the secret archives of the patent office on the payment of a fee of ten dollars therefor. And if, at any time within one year thereafter, another person applies for a patent with which such caveat would in any manner interfere, such application will be suspended, and notice thereof will be sent to the person filing the caveat, who, if he shall file a complete application within the prescribed time, will be entitled to an interference with the previous application, for the purpose of proving priority of invention, and obtaining the patent, if he be adjudged the prior inventor. The caveator, if he would avail himself of his caveat, must file his application within three months from the day on which the notice to him is deposited in the post office at Washington, adding the regular time for the transmission of the same to him; and the day when the time for filing expires will be mentioned in the notice or indorsed thereon.

93. The caveator will not be entitled to notice of any application pending at the time of filing his caveat, nor of any application filed after the expiration of one year from the date of filing the caveat; but he may renew his caveat at the end of one year by paying a second caveat fee of ten dollars, which will continue it in force for one year longer, and so on from year to year as long as he may desire. If a caveat is not renewed at the end of the year for which it was filed, it will still be preserved in the secret archives of the office.

94. No caveat can be filed in the secret archives of the office unless accompanied by an oath of the caveator that he is a citizen of the United States, or, if he is an alien, that he has resided for one year last past within the United States, and has made oath of his intention to become a citizen thereof; nor unless the applicant also states, under oath, that he believes himself the original and first inventor of the art, machine, or improvement set forth in his caveat.

95. A caveat need not contain as particular a description of the invention as is requisite in a specification; but still it must set forth the design of the invention and the distinguishing characteristics thereof, and the description should be sufficiently precise to enable the office to judge whether there is a probable interference when a subsequent application is filed. A caveat, equally with an application, must be limited to a single invention or improvement.

96. Caveat papers can not be withdrawn from the office, nor undergo alteration, after they have once been filed. Amendments which are necessary to secure a compliance with the above conditions may be received when required. The examination will only go to this extent.

97. When practicable, the caveat must be accompanied by full and accurate drawings, separate from the specifications, well executed on tracing muslin or paper that may be folded, and of the same size as demanded in drawings for patents.

Assignments.

98. A patent or trade-mark may be assigned, either as to the whole interest or any undivided part thereof, by an instrument of writing. No particular form of words is necessary to constitute a valid assignment, nor need the instrument necessarily be sealed, witnessed, or acknowledged.

99. Letters, copies of assignments, or *ex parte* statements in relation to assignments are not proper matters for record.

100. In every case where it is desired that the patent shall issue to an assignee, the assignment must be recorded in the patent office at a date not later than the day on which the final fee is paid.

101. When the patent is to issue in the name of the assignee, the entire correspondence will be with him or his authorized agent.

102. A patentee may not only assign the whole or an undivided interest in his patent, but he may grant and convey an exclusive right under his patent to the whole or any specified portion of the United States by an instrument in writing.

103. Every assignment or grant of an exclusive territorial right, as well as of an interest in a patent or trade-mark, must be recorded in the patent office; if a patent, within three months, if a trade-mark, within sixty days, from the execution thereof; otherwise it will be void as against any subsequent purchaser or mortgagee for a valuable consideration without notice.

104. The patentee may convey separate rights under his patent to make or to use or to sell his invention, or he may convey territorial or shop rights which are not exclusive. Such conveyances are mere licenses, and need not be recorded.

105. The receipt of assignments is not generally acknowledged by the office; they will be recorded in their turn within a few days after their reception, and then transmitted to the person entitled to them.

Office Fees, and How Payable.

106. Nearly all the fees payable to the patent office are positively required by law to be paid in advance; that is, upon making application for any action by the office for which a fee is payable. For the sake of uniformity and convenience, the remaining fees will be required to be paid in the same manner.

107. The following is the tariff of fees established by law:

On filing every application for a design patent for three years and six months	\$10 00
On filing every application for a design patent for seven years	15 00
On filing every application for a design patent for fourteen years	30 00
On filing every caveat	10 00

On filing every application for a patent for an invention or discovery.....	\$15 00
On issuing each original patent for an invention or discovery.....	20 00
On filing a disclaimer.....	10 00
On filing every application for a reissue.....	30 00
On filing every application for a division of a reissue....	30 00
On filing every application for an extension.....	50 00
On the grant of every extension.....	50 00
On filing the first appeal from a primary examiner to examiners in chief.....	10 00
On filing an appeal to the commissioner from examiners in chief.....	20 00
On depositing a trade-mark for registration.....	25 00
On depositing a label for registration.....	6 00
For every certified copy of a patent or other instrument, for every 100 words.....	10
For certified copies of drawings, the reasonable cost of making them.	
For recording every assignment of 300 words or under..	1 00
For recording every assignment, if over 300 and not over 1,000 words.....	2 00
For recording every assignment, if over 1,000 words....	3 00
For uncertified copies of the specifications and accompanying drawings of all patents which are in print—	
Single copies.....	25
Twenty copies or more, whether of one or several patents, per copy.....	10
For uncertified copies of the specifications and drawings of patents not in print, the reasonable cost of making the same.	

In ordering copies of any drawing or specification the name of the inventor and patentee, the title of the invention, and the date of the patent must be given. So, in ordering a copy of an assignment, the *liber* and page of the record, as well as the name of the inventor, must be given; otherwise an extra charge will be made for the time consumed in making any search that may become necessary.

108. No person will be allowed to make copies or tracings from the files or records of the office. Such copies will be furnished, when ordered, at the rates already specified.

109. The money for the payment of fees may be paid to the commissioner, or to the treasurer or any of the assistant treasurers of the United States, or to any of the designated depositaries, national banks, or receivers of public money, designated by the Secretary of the Treasury for that purpose, who shall give the depositor a receipt or certificate of deposit therefor, which shall be transmitted to the patent office. When this cannot be done without much inconvenience, the money may be remitted by mail, and

in every such case the letter should state the exact amount inclosed. Letters containing money may be registered. Post office money orders now afford a safe and convenient mode of transmitting fees. All such orders should be made payable to the "Commissioner of Patents."

The weekly issue will close on Friday at 2 o'clock. If the final fee in any application is not paid before this time, the patent will not go to issue until the following week.

When patents are to issue to assignees, the assignment must be on record before the closing of the issue, and the request to issue to an assignee must be made in writing at the time of paying the final fee.

110. All money sent by mail, either to or from the patent office, will be at the risk of the owner. In no case should money be sent inclosed with models. All payments to or by the office must be paid in specie, treasury notes, national bank notes, certificates of deposit, or post office money orders.

REPAYMENT OF MONEY.

111. Money paid by actual mistake, such as a payment in excess, or when not required by law, will be refunded, but a mere change of purpose after the payment of money, as when a party desiring to withdraw his application for a patent or for the registration of a trade-mark, will not entitle a party to demand such return.

POSTAGE.

112. The postage on all matter sent to the patent office by mail must be prepaid in full, otherwise it will not be received.

Taking and Transmitting Testimony.

113. In extension, interference, and other contested cases, the following rules have been established for taking and transmitting testimony:

First. Before the deposition of a witness or witnesses is taken by either party, due notice shall be given to the opposite party, as hereinafter provided, of the time and place when and where such deposition or depositions will be taken, with the names and residences of the witness or witnesses then and there to be examined, so that the opposite party, either in person or by attorney, shall have full opportunity to cross-examine the witness or witnesses: *Provided*, that if the opposite party, or his counsel, be actually present at the taking of testimony, witnesses not named in the notice may be examined, but not otherwise; and that neither party shall take testimony in more than one place at the same time, nor so nearly at the same time as not to allow reasonable time to travel from one place of examination to the other.

Second. The notice for taking testimony must be served by

delivering a copy to the adverse party, or his agent, or attorney of record, or counsel, as provided in rule 77, or by leaving a copy at the party's usual place of residence, with some member of the family who has arrived at the years of discretion, or by leaving the same at the office of the attorney; and such notice shall, with proof of service of the same, and a certificate, duly sworn to, giving the manner and time of making the service, be attached to the deposition or depositions, whether the party cross-examine or not.

Third. The magistrate before whom the deposition is taken must append thereto his certificate, stating the time and place at which it was taken, the name of the witness, the administration of the oath, at whose request the testimony was taken, the occasion upon which it is intended to be used, the names of the adverse party, (if any,) and whether they were present; and immediately upon the close of the examination, he shall securely seal up all the evidence, &c., and forward the same forthwith to the commissioner of patents, making upon the envelope a certificate, giving the title of the case and the date of sealing and addressing the package.

Fourth. In cases of extension, where no opposition is made, *ex parte* testimony will be received from the applicant; and such testimony as may have been taken by the applicant prior to notice of opposition will be received, unless taken within thirty days after filing the petition for the extension: *Provided*, That, immediately upon receiving notice of opposition, the applicant shall give notice to the opposing party or parties of the names and residences of the witnesses whose testimony has thus been taken.

Fifth. If either party shall be unable, for good and sufficient reasons, to procure the testimony of a witness or witnesses within the stipulated time, it shall be the duty of said party to give notice of the same to the commissioner of patents, accompanied by statements, under oath, of the cause of such inability, and of the names of such witnesses, and of the facts expected to be proved by them, and of the steps which have been taken to procure said testimony, and of the time or times when efforts have been made to procure it; which notice to the commissioner shall be received by him previous to the day of hearing aforesaid. Copies of the papers, and notice of any motion based upon them, must also be served upon the opposite party, as provided in rule 50.

Sixth. Whenever a party relies upon a caveat to establish the date of his invention, the caveat itself, or a certified copy thereof, must be filed in evidence, with due notice to the opposite party, as no notice can be taken by the office of a caveat filed in its secret archives.

The official records of the office, and books and documents contained in the library, and other books in general circulation, may be used at the hearing; but notice of any special matter con-

tained therein, upon which a party relies, should be given to the opposite party previous to the day set for closing testimony.

114. The folios of each deposition must be numbered consecutively, and the name of the witness be plainly and conspicuously written at the top of each folio. It is deemed desirable that the testimony be taken upon legal-cap paper, with a wide margin on the left-hand side of the page, and that only one side of the sheet be written upon.

115. The testimony may be taken in narrative form; but, if either party desires it, it must be taken in answer to interrogatories, having the questions and answers committed to writing in their regular order by the magistrate, or, unless by consent, by some person not interested in the case, either as a party thereto or as attorney. The deposition, when complete, must be signed by the witness.

116. No evidence touching the matter at issue will be considered upon the day of hearing which shall not have been taken and filed in compliance with these rules; but no notice will be taken of any merely formal or technical objection which shall not appear to have wrought a substantial injury to the party raising it; and in such case it should be made to appear that, as soon as the party became aware of the objection, he immediately gave notice thereof to the office, and also to the opposite party, informing him at the same time that, unless corrected, he shall urge his objection at the hearing; but this rule is not to be construed so as to modify well established rules of evidence, which will be applied strictly in all practice before the office.

117. The law requires the clerks of the various courts of the United States to issue subpoenas to secure the attendance of witnesses whose depositions are desired to be read in evidence in any contested cases in the patent office.

118. In contested cases, whether of interference or of extension, parties may have access to the testimony on file prior to the hearing, in presence of the officer in charge; and copies may be obtained by them at the usual rates.

As a general rule, printed copies of the testimony will be required; but this requirement may be dispensed with on special application to the commissioner, and showing satisfactory reasons therefor.

After the testimony is filed in the office, it will not be allowed to be withdrawn by the parties for the purpose of printing; but the testimony may be printed by some one specially designated by the office for that purpose, under proper restrictions.

Three printed copies should be furnished; two for the use of the office, and one for the use of the opposing party. These copies must be filed not less than one week previous to the day of hearing.

It is also desirable that all arguments should be submitted in printed form, and all arguments filed at least two days previous to the day of hearing.

Rules of Correspondence.

119. All correspondence must be in the name of the "commissioner of patents," and all letters and other communications intended for the office must be addressed to him, and postage must be prepaid in full. Communications will not be noticed if addressed to any of the other officers, unless it be seen that the mistake was owing to inadvertence. *A separate letter should in every case be written in relation to each distinct subject of inquiry or application*, the subject of the invention and the date of filing being always carefully noted.

120. When an agent has filed his power of attorney, duly executed, the correspondence will, in ordinary cases, be held with him only, as a double correspondence with an assignee and the inventor, or with an attorney and his principal, if generally allowed, would largely increase the labor of the office. The assignee of an entire interest in an invention is entitled to hold correspondence with the office to the exclusion of the inventor.

121. If the principal becomes dissatisfied, he must revoke his power of attorney and notify the office, which will then communicate directly with him.

122. After a second rejection none of the papers can be inspected, save in the presence of a sworn officer; nor will any of the papers be returned to the applicant or agent.

123. Whenever it shall be found that two or more parties whose interests are in conflict are represented by the same attorney, the examiner in charge will notify each of said principal parties, and also the attorney, of this fact.

124. Aside from the caveats, which are required by law to be kept secret, all pending applications are, as far as practicable, preserved in like secrecy. No information will therefore be given those inquiring whether any particular case is before the office, or whether any particular person has applied for a patent.

125. But information is given in relation to any case after a patent has issued.

126. The models, in patented cases, are so placed as to be subject to general inspection. The specifications and drawings in any patented case can be seen by any one having occasion to examine them, and copies thereof will be furnished as hereinbefore specified. Copies will be made on parchment, at the request of the applicant, on his paying the additional cost.

127. Even after a case is rejected, the application is regarded as pending, unless the applicant allows the matter to rest for two years without taking any further step therein, in which case it will be regarded as abandoned.

128. Information in relation to pending cases is given so far as it becomes necessary in conducting the business of the office, but no further. Thus, when an interference is declared between two pending applications, each of the contestants is entitled to a

knowledge of so much of his opponent's case as to enable him to conduct his own understandingly.

129. The office can not respond to inquiries as to the novelty of an alleged invention in advance of an application for a patent, nor to inquiries founded upon brief and imperfect descriptions, propounded with a view of ascertaining whether such alleged improvements have been patented, and if so, to whom; nor can it act as an expounder of the patent law, nor as counselor for individuals, except as to questions arising within the office. A copy of the rules, with this section marked, sent to the individual making an inquiry of the character referred to, is intended as a respectful answer by the office.

130. All business with the office should be transacted in writing. Unless by the consent of all parties, the action of the office will be based exclusively on the written record. No attention will be paid to any alleged verbal promise or understanding, in relation to which there is any disagreement or doubt.

Attorneys.

131. Any person of intelligence and good moral character may appear as the agent or the attorney in fact of an applicant, upon filing a proper power of attorney. As the value of patents depends largely upon the careful preparation of the specification and claims, the assistance of competent counsel will, in most cases, be of advantage to the applicant, but the value of their services will be proportioned to their skill and honesty. So many persons have entered this profession of late years without experience that too much care can not be exercised in the selection of a competent man. The office can not assume responsibility for the acts of attorneys, nor can it assist applicants in making a selection. It will, however, be a safe rule to distrust those who boast of the possession of special and peculiar facilities in the office for procuring patents in a shorter time or with more extended claims than others.

132. Powers of attorney to authorize the attorney to substitute for, or associate with, himself a second agent, must contain a clause of substitution; but such powers will not authorize the second agent to appoint a third.

133. A power of attorney must be filed in every case, both by original and associate attorneys, before such attorney will be allowed to inspect papers or take action of any kind. Parties or their attorneys will be permitted to examine their cases in the attorney's room, but not in the rooms of the examiners. Personal interviews with examiners will be discouraged. All intercourse in relation to pending cases ought to be in writing.

134. Attorneys will be expected to conduct their business with the office with decorum and courtesy. For gross misconduct the commissioner may refuse to recognize any person as a patent agent, either generally or in any particular case; and for less offenses

attorneys may be required the privilege of oral interviews, and be required to transact all business with the office in writing.

135. As members of Congress can not examine cases, or act in them without regular powers of attorney, and as cases can not be taken up out of their regular order upon their request, and as the delay in transmitting papers to and from the capitol involves a loss of time which would be avoided by communicating directly with the office, applicants are recommended not to add to the sufficiently arduous duties of their representatives by ordering copies or attempting to transact business with the office through them.

Library.

136. No persons are allowed to take books from the library except those employed in the office.

All books taken from the library must be entered in a register kept for the especial purpose, and returned on the call of the librarian.

Any book lost or defaced must be replaced by another.

Patentees and others doing business with the office can examine the books only in the library hall.

All translations will be made at the usual rates by the office.

Persons will be allowed to make notes or extracts, but not copies or tracings, from works in the library. Such copies will be furnished at the usual rates.

R. H. DUELL,
Commissioner.

Approved.

CHAS. T. GORHAM,
Acting Secretary.

APPENDIX.

REGISTRATION OF PRINTS AND LABELS.

By an act of Congress approved June 18, 1874, (to take effect on and after the 1st day of August, 1874,) it is provided that certain prints and labels may be registered in this office.

SEC. 3. That in the construction of this act the words "engraving," "cut," and "print," shall be applied only to pictorial illustrations of works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the patent office. And the commissioner of patents is hereby charged with the supervision and control of the entry or registry of such prints or labels, in conformity with the regulations provided by law as to copyright of prints, except that there shall be paid for recording the title of any print, or label, not a trade-mark, six dollars, which shall cover the expense of furnishing a copy of the record, under the seal of the commissioner of patents, to the party entering the same.

SEC. 4. That all laws and parts of laws inconsistent with the foregoing provisions be, and the same are hereby, repealed.

SEC. 5. That this act shall take effect on and after the first day of August, eighteen hundred and seventy-four.

Approved, June 18, 1874.

By the word "print," as used in the said act, is meant any device, picture, word or words, figure or figures (not a trade-mark) impressed or stamped directly upon the articles of manufacture, to denote the name of the manufacturer, or place of manufacture, style of goods, or other matter.

By the word "label," as therein used, is meant a slip or piece of paper, or other material, to be attached in any manner to manufactured articles, or to bottles, boxes, and packages containing them, and bearing an inscription, (not a trade-mark,) as, for example, the name of the manufacturer or the place of manufacture, the quality of goods, directions for use, &c.

By the words "articles of manufacture," to which such print or label is applicable by said act, are meant all vendible commodities produced by hand, machinery, or art.

But no such print or label can be registered unless it properly belong to an article of commerce, and be as above defined; nor

can the same be registered as such print or label when it amounts in law to a technical trade-mark.

To entitle the owner of any such print or label to register the same in this office, it is necessary that five copies of the same be filed, one of which copies shall be certified under the seal of the commissioner of patents, and returned to the registrant.

The certificate of such registration will continue in force for twenty-eight years.

The fee for registration of a print or label is six dollars, to be paid in the same manner as fees for patents.

The benefits of this act seem to be confined to citizens, or residents of the United States.

Forms for application for registration of labels are given in the appendix of forms.

APPENDIX OF FORMS.

PETITIONS.

1. BY A SOLE INVENTOR.

To the Commissioner of Patents :

Your petitioner, a resident of _____, _____, prays that letters patent be granted to him for the invention set forth in the annexed specification.

A. B.

2. BY JOINT INVENTORS.

To the Commissioner of Patents :

Your petitioners, residing respectively in _____, _____, and _____, _____, pray that letters patent may be granted to them, as joint inventors, for the invention set forth in the annexed specification.

A. B.
C. D.

3. BY AN INVENTOR FOR HIMSELF AND AN ASSIGNEE.

To the Commissioner of Patents :

Your petitioner, a resident of _____, _____, prays that letters patent may be granted to himself and C. D., of _____, _____, as his assignee, for the invention set forth in the annexed specification, the assignment to the said C. D. having been duly recorded in the patent office, in liber _____, page _____.

A. B.

4. BY AN ADMINISTRATOR.

To the Commissioner of Patents :

Your petitioner, A. B., of _____, _____, administrator of the estate of C. D., deceased, (as by reference to the duly certified copy of letters of administration, hereto annexed, will more fully appear,) prays that letters patent may be granted to him for the invention of the said C. D., set forth in the annexed specification.

A. B., *Administrator, &c.*

5. BY AN EXECUTOR.

To the Commissioner of Patents:

Your petitioner, A. B., of _____, executor of the last will and testament of C. D., deceased, (as by reference to the duly certified copy of letters testamentary, hereto annexed, will more fully appear,) prays that letters patent may be granted to him for the invention of the said C. D., set forth in the annexed specification.

A. B., *Executor, &c.*

6. FOR A REISSUE, (BY THE INVENTOR.)

To the Commissioner of Patents:

Your petitioner, of _____, prays that he may be allowed to surrender the letters patent for an improvement in coal scuttles, granted to him May 16, 1867, whereof he is now sole owner, [or "whereof C. D., on whose behalf and with whose assent this application is made, is now sole owner, by assignment,"] and that letters patent may be reissued to him [or "the said C. D."] for the same invention, upon the annexed amended specification. Accompanying this petition is an abstract of title, duly certified, as required in such cases.

A. B.

ASSENT OF ASSIGNEE TO REISSUE.

The undersigned, assignee of the entire [or an undivided] interest in the above mentioned letters patent, hereby assents to the accompanying application.

C. D.

7. FOR A REISSUE, (BY ASSIGNEE.)

(To be used only when the inventor is dead, or the original patent was issued and assigned prior to July 8, 1870.)

To the Commissioner of Patents:

Your petitioners, of the city of _____, State of _____, pray that they may be allowed to surrender the letters patent for an improvement in coal scuttles, granted May 16, 1867, to E. F., now deceased, whereof they are now owners, by assignment, of the entire interest, and the letters patent may be reissued to them for the same invention, upon the annexed amended specification. Accompanying this petition is an abstract of title, duly certified, as required in such cases.

A. B.
C. D.

8. FOR AN EXTENSION, (BY A PATENTEE.)

To the Commissioner of Patents :

Your petitioner, now residing at _____, _____, prays that letters patent No. 12841, for an improvement in steam engines, granted to him August 17, 1853, may be extended for seven years from and after the expiration of the original term.

A. B.

9. FOR AN EXTENSION, (BY AN ADMINISTRATOR.)

To the Commissioner of Patents :

Your petitioner, A. B., of _____, _____, administrator of the estate of C. D., deceased (as by reference to the duly certified copy of letters of administration, hereto annexed, will more fully appear), residing at _____, _____, prays that letters patent No. 12842, for an improvement in stoves, granted to said C. D., August 24, 1853, may be extended for seven years from and after the expiration of the original term.

A. B., *Administrator.*

10. FOR LETTERS PATENT FOR A DESIGN.

To the Commissioner of Patents :

Your petitioner, residing in _____, _____, prays that letters patent may be granted to him for the term of three and one-half years [or "seven years," or "fourteen years"] for the new and original design set forth in the annexed specification.

A. B.

11. FOR THE REGISTRATION OF A TRADE-MARK.

To the Commissioner of Patents :

Your petitioner [or petitioners, if a firm] respectfully represents that he [or it, if a corporation] is engaged in the manufacture of _____, at _____, and at _____, and that he is entitled to the exclusive use upon the class of goods which he manufactures, of the trade-mark described in the annexed statement or specification [and accompanying fac-simile].

He therefore prays that he may be permitted to obtain protection for such lawful trade-mark under the law in such cases made and provided.

A. B.

12. FOR THE RENEWAL OF AN APPLICATION.

To the Commissioner of Patents :

Your petitioner represents that on May 8, 1868, he filed an application for letters patent for an improvement in churns, which

application was allowed July 7, 1868, but that he failed to make payment of the final fee within the time allowed by law. [Or "which application has been rejected, but has not been abandoned."] He now makes renewed application for letters patent for said invention, and prays that the original specification, oath, drawings, and model may be used as a part of this application.

A. B.

13. PETITION WITH POWER OF ATTORNEY.

To the Commissioner of Patents:

Your petitioner, a resident of the city of _____, State of _____, prays that letters patent may be granted to him for the invention set forth in the annexed specification; and he hereby appoints C. D., of the city of _____, State of _____, his attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the patent office connected therewith.

A. B.

14. POWER OF ATTORNEY.

If the power of attorney be given at any time other than that of making application for patent, it will be in substantially the following form:

To the Commissioner of Patents:

The undersigned having, on or about the 20th day of July, 1859, made application for letters patent for an improvement in a horse power, hereby appoints C. D., of the city of _____, State of _____, his attorney, with full power of substitution and revocation, to prosecute said application, to make alterations and amendments therein, to receive the patent, and to transact all business in the patent office connected therewith.

A. B.

Signed at _____, and State of _____, this _____ day of _____, 18____.

15. REVOCATION OF POWER OF ATTORNEY.

The undersigned having, on or about the 26th day of December, 1867, appointed C. D., of the city of _____, and State of _____, his attorney to prosecute an application for letters patent, made on or about the 1st day of June, 1868, for an improvement in the running gear of wagons, hereby revokes the power of attorney then given.

Signed at _____, _____, this 21st day of July, 1869.

A. B.

SPECIFICATION.

16. FOR A MECHANICAL DEVICE.

(See Rule 19 for instructions for making drawings.)

To all whom it may concern :

Be it known that I, _____, of _____, in the county of _____, and State of _____, have invented a new and useful improvement in machine clutch, which improvement is fully set forth in the following specification and accompanying drawing, in which

Figure 1 is a perspective view of a sawing machine with my clutch attached; Figure 2 a front view of the clutch; and Figure 3 a longitudinal section of the same.

The object of my invention is to furnish a device by which to connect or disconnect a pulley with the shaft on which it is placed, so that the motion of the shaft may be communicated to the pulley or not, as desired.

In the drawings: A is the shaft; BB are pulleys, loose upon the shaft, and prevented from longitudinal movement by collars CC. D is a sleeve fitted to the shaft and made to revolve with it by means of a spline E, but having a free longitudinal movement on the shaft. Bars, I I, are connected to and carried by the sleeve, one at each end. These bars have T heads on the ends toward the pulleys, and the pulleys have annular slots of shape to receive these heads and permit them to travel round and round, but to prevent them from turning on their own centers. The bars have longitudinal movement in the sleeve parallel to the shaft A, but a tendency to a rotatory movement is given to the bars when the sleeve is moved lengthwise, by means of a spiral slot in the bars and a pin in the sleeve, as shown in Figures 2 and 3.

It will be seen from the foregoing that when the sleeve is in position midway between the two pulleys, both will be disconnected, and the T or bolt heads on bars I I will run round and round in the annular slots without driving the pulleys. When the sleeve is shifted to one side, however, the spiral groove and pin act like a screw thread, and clamp the pulley and sleeve firmly together, as between a bolt head and nut. The opposite pulley, of course, runs free at the time.

The operation of my device is not confined to a double pulley movement. It is obvious that a single pulley may be driven in the same way.

Having thus described my invention, what I claim as new and desire to secure by letters patent is:

1. The sleeve D, having bar I connected therewith by spiral groove and pin connection, substantially as shown and described.
2. The combination of the sleeve D, bar I, connected therewith

as shown, pulley B, and shaft A, all substantially as shown and described.

A. B.

Witnesses : C. D.
E. F.

17. FOR A PROCESS.

To all whom it may concern :

Be it known that I, [here insert the name of the inventor.] of _____, in the county of _____, and State of _____ have invented a new and useful process for separating smut and other impurities from wheat, which process is fully set forth in the following specification :

This invention relates to that class of processes employed for removing "smut" and other impurities mixed with and adhering to grain; and it consists in mixing "newly slaked" lime, while yet warm, with the grain before it is passed through the smut mill.

In carrying out our invention, take of lime newly slaked, and while yet warm, one and a half pounds to each one hundred pounds of wheat. Mix the lime well with the wheat, let it stand one hour, then pass it through a smut-mill in the usual way, and it will be found that all the lime, smut, dirt, and other impurities attached to the wheat, of every kind (and which no smut mill without my liming process will fully separate), will be entirely removed, and the flour will be as white and as sweet as though made from the best of wheat.

We are aware that lime has before been used for the purpose of cleaning wheat, being first mixed with the grain as above proposed, and the whole being then passed through a smut-mill; but in all previous processes, so far as we are aware, the lime has been used in a cold state, and for this reason they have proved ineffe- tual. We propose to take lime newly slacked and while yet warm.

We claim as our invention—

The process of cleaning wheat by mixing with it lime newly slacked and warm before passing it through a smut-mill, so as to cleanse the wheat from all impurities, substantially as described.

A. B.

C. D.

Witnesses : E. F.
G. H.

18. FOR A COMPOSITION OF MATTER.

To all whom it may concern :

Be it known that I, [here insert the name of the inventor.] of _____, in the county of _____, and State of _____, have invented

a new and useful compound, called "wool-oil," which compound is fully described in the following specification:

This invention relates to that class of compounds used to lubricate wool in the process of manufacture; and it consists of a composition formed by mixing any one or more of the oils ordinarily used in manufacturing wool, such as olive, lard, or rape-seed oil, with a solution of oil-soap.

To prepare the wool-oil, take a quantity of oil-soap of any kind, provided the quality be good, and dissolve the same in hot water, say about thirty pounds of oil-soap to thirty gallons of water, or a sufficient quantity of soap to saturate the water. Then take equal parts, by measure, of olive, lard, rape seed, or any other kind of oil which can be used on wool in the process of its manufacture, and mix with it the preparation aforesaid, to wit, the solution, which, after such mixture, is ready to be used on wool with as beneficial an effect as if pure oil only had been used. The wool-oil will not decompose by age, because the oil dissolves the stearine in the oil; hence there is no rancidness. And for the same reason spontaneous combustion is not produced.

I claim:

A compound consisting of an oil or oils, ordinarily used in the lubrication of wool, in combination with a solution of an oil-soap, substantially as and for the purpose specified.

C. D.

Witnesses: E. F.
G. H.

19. FOR A DESIGN.

To all whom it may concern:

Be it known that I, [here insert the name of the originator of the design,] of _____, in the county of _____, and State of _____, have originated and designed a pattern for carpets, or other fabrics, of which the following is a full, clear and exact description, reference being had to the accompanying photographic illustration, [or drawing,] making part of this specification:

A represents a portion of the body of the carpet and B a portion of the border. The body may be ornamented with any figures that may be selected; the border consists of three parallel stripes, the middle one wide, and the other two narrow. Along the middle stripe of the border run two angular bars, crossing each other and intertwining, as shown, while the narrow stripes are ornamented with rows of spots arranged in groups of three, so as to form triangles. Suitable colors should be employed to produce a harmonious effect.

What I claim as my invention is:

A design for a carpet in which the border is composed of stripes ornamented substantially in the manner above described.

20. FOR A TRADE-MARK.

[If the application is made by a corporation or a firm, this form should be modified to conform to the facts.]

To all whom it may concern :

Be it known that I, [here insert the name of the applicant,] domiciled in [the United States, or in the Dominion of Canada, or as the case may be], and residing at _____, and doing business at _____, in the county of _____, and State of _____, have adopted [or intend to adopt] for my use a trade-mark for _____, of which the following specification is a full, clear, and exact description :

My trade-mark consists of the letters and words, "S. N. & Co.'s Buckeye Sheetings." These generally have been arranged as shown in the accompanying fac-simile; above and below a figure of a man represented as ascending the side of a mountain and carrying a banner, upon which is inscribed the word "Buckeye;" and the whole has been inclosed within an ornamental border substantially like that shown in the fac-simile. But the figure of the man with the banner may be omitted, or some other device substituted for it, and the border may be changed at pleasure or omitted altogether without materially changing the character of my trade-mark, the essential features of which are the letters "S. N. & Co.'s" and the word symbol "Buckeye."

This trade-mark I have used in my business for ten years last past.

The class of merchandise to which the trade-mark is appropriated is _____; and the particular description of goods [comprised in said class] upon which I intend to use my said trade-mark are _____. I have been accustomed to print it in blue ink upon each piece of said goods, and also to have it printed on labels, which I afterwards paste upon said articles or on boxes and cases containing the same.

A. B.

Witnesses : C. D.
F. H.

21. AMENDMENT.

WASHINGTON, D. C., *July 20, 1869.*

To the Commissioner of Patents :

In the matter of my application for letters patent for an improvement in wagon brakes, I hereby amend my specification by striking out all between the ninth and twentieth lines, inclusive, on page 3; by inserting the words "*connected with*" after the word "*and*" in the first line of the second claim; and by striking out the third claim and substituting therefor the following :

3. The combination of the self-acting brake C, pin A, and slotted flanges D, substantially as described, and for the purposes set forth.

A. B.,
By C. D.,
His Attorney in Fact.

OATHS.

22. BY A SOLE INVENTOR.

(To follow specification.)

STATE OF _____, *County of* _____, ss.:

A. B., the above-named petitioner, being duly sworn, [or affirmed], deposes and says, that he verily believes himself to be the original and first inventor of the improvement in seed-drills described and claimed in the foregoing specification; that he does not know and does not believe that the same was ever before known or used; and that he is a citizen of _____, and a resident of _____.

A. B.

Sworn to and subscribed before me this 13th day of March, 1869.

C. D.,
Justice of the Peace.

[If the applicant be an alien, the sentence "and that he is a citizen of the United States" will be omitted, and in lieu thereof will be substituted "and that he is a citizen of the Republic of Mexico," or "and that he is a subject of the King of Italy," or "of the Queen of Great Britain," or as the case may be.

If the applicants claim to be *joint inventors*, the oath will read "that they verily believe themselves to be the original, first and joint inventors," &c.

If the inventor be dead, the oath will be taken by the administrator or executor, and will declare his belief that the party named as inventor was the original and first inventor.]

23. BY AN APPLICANT FOR A REISSUE (INVENTOR).

STATE OF _____, *City and County of* _____, ss.:

A. B., the above-named petitioner, being duly sworn [or affirmed], deposes and says, that he verily believes that, by reason of an insufficient or defective specification, his aforesaid letters patent are inoperative or invalid; that the said error has arisen from inadvertance, accident or mistake, and without any fraudulent or deceptive intention, to the best of his knowledge and belief; that he is the sole owner of said letters patent [or, "that E. F. is the sole owner of said letters patent, and that this application is made on the behalf and with the consent of said E. F."];

and that he verily believes himself to be the first and original inventor of the improvement set forth and claimed in this amended specification.

A. B.

Sworn to and subscribed before me this 26th day of July, 1869.

C. D.,
Notary Public.

[Notarial seal.]

24. BY AN APPLICANT FOR A REISSUE (ASSIGNEE).

(To be used only when the inventor is dead or when the patent was issued and assigned prior to July 8, 1870.)

STATE OF _____, *County of* _____, ss. :

A. B. and C. D., the above named petitioners, being duly sworn [or affirmed], depose and say, that they verily believe that, by reason of an insufficient specification, the aforesaid letters patent granted to E. F. are inoperative; that the said error has arisen from inadvertence, accident or mistake, and without any fraudulent or deceptive intention, to the best of their knowledge and belief; that the entire title to said letters patent is vested in them; and that they verily believe the said E. F. to be the first and original inventor of the invention set forth and claimed in the foregoing amended specification; and that the said E. F. is now deceased.

A. B.

C. D.

Sworn to and subscribed before me this 14th day of November, 1869.

A. B.,
Justice of the Peace.

25. BY AN APPLICANT FOR EXTENSION (PATENTEE).

STATE OF _____, *County of* _____, ss. :

A. B., the above-named applicant, being duly sworn [or affirmed], deposes and says, that the foregoing statement and account by him signed are correct and true in all respects and particulars, to the best of his knowledge and belief.

A. B.

Sworn to and subscribed before me this 1st day of November, A. D. 1868.

C. D.,
Justice of the Peace.

26. BY AN APPLICANT FOR AN EXTENSION (EXECUTOR).

STATE OF _____, *County of* _____, ss. :

A. B., executor of the last will and testament of Simon New

come, deceased, being duly sworn [or affirmed], deposes and says, that the foregoing statement and account by him subscribed are correct and true in all respects and particulars, to the best of his information, knowledge and belief.

A. B.
Executor, &c.

Sworn to and subscribed before me this 20th day of May, 1869.

C. D.,
Justice of the Peace.

27. SUPPLEMENTAL OATH TO ACCOMPANY A NEW OR AN ENLARGED CLAIM.

STATE OF _____, *County of* _____, ss. :

A. B., whose application for letters patent for an improvement in seed-drills was filed in the United States Patent Office on or about the 15th day of March, 1869, being duly sworn [or affirmed], deposes and says, that, in addition to the claims originally made, he verily believes himself to be the original and first inventor of the improvement as described and claimed in the foregoing amendment, and that he does not know, and does not believe, that the same was ever before known or used.

A. B.

Sworn to and subscribed before me this 11th day of July, 1870.

C. D.,
Justice of the Peace.

28. OATH AS TO THE LOSS OF LETTERS PATENT.

STATE OF _____, *County of* _____, ss. :

A. B., of said county, being duly sworn [or affirmed], doth depose and say, that the letters patent No. 12213, granted to him, and bearing date on the 9th day of January, A. D. 1855, have been either lost or destroyed; that he has made diligent search for the said letters patent in all places where the same would probably be found, if existing, and that he has not been able to find them.

A. B.

Subscribed and sworn to before me this 5th day of October, 1868.

C. D.,
Justice of the Peace.

29. OATH OF ADMINISTRATOR AS TO THE LOSS OF LETTERS PATENT.

STATE OF _____, *County of* _____, ss. :

A. B., of said county, being duly sworn, doth depose and say,

that he is administrator of the estate of E. F., deceased, late of Boston, in said county; that the letters patent No. 12219, granted to said E. F., and bearing date on the 9th day of January, A. D. 1855, have been lost or destroyed, as he verily believes; that he has made diligent search for the said letters patent in all places where the same would probably be found, if existing, and especially among the papers of the decedent, and that he has not been able to find said letters patent.

A. B.,
Administrator, &c.

Subscribed and sworn to before me this 5th day of October, 1868.

C. D.
Justice of the Peace.

30. OATH OF APPLICANT FOR REGISTRATION OF A TRADE-MARK.

[If the application is made by a corporation, or a firm, this form should be modified to conform to the facts.]

STATE OF _____, County of _____, ss. :

A. B., being duly sworn, deposes and says, that he is the applicant named in the accompanying petition; that he verily believes that the facts set forth in the foregoing specification are true; that he has a right to the use of the trade-mark described in said specification; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the description and fac-similes presented for record are true copies of the trade-mark sought to be protected, and that he is a citizen of the United States [or, a citizen of the Republic of France, or, as the case may be].

A. B.

Sworn to and subscribed before me this 15th day of _____, 187 .

E. F.,
Justice of the Peace.

APPEALS.

31. FROM THE EXAMINER TO THE EXAMINERS IN CHIEF.

To the Commissioner of Patents :

SIR: I hereby appeal to the examiners in chief from the decision of the principal examiner in the matter of my application for letters patent for an improvement in wagon-brakes, which, on the 20th day of July, 1869, was rejected the second time. The following are assigned for reasons of appeal: [Here follow the reasons].

A. B.

31a. FROM THE EXAMINER OF TRADE-MARKS TO THE COMMISSIONER.

To the Commissioner of Patents :

SIR: I hereby appeal to you in person from the decision of the examiner of trade-marks, dated November 15, 1872, in the matter of my application for the registration of a trade-mark for cigars. The following are the reasons assigned: [Here follow the reasons].

32. FROM THE EXAMINER IN CHARGE OF INTERFERENCES TO THE EXAMINERS IN CHIEF.

To the Commissioner of Patents :

SIR: I hereby appeal to the examiners in chief, from the decision of the principal examiner in charge, in the matter of the interference between my application for letters patent for improvement in sewing machines and the letters patent of A. B., in which priority of invention was awarded to said A. B. The following are assigned for reasons of appeal: [Here follow the reasons].

C. D.

33. FROM THE EXAMINERS IN CHIEF TO THE COMMISSIONER.

To the Commissioner of Patents :

SIR: We hereby appeal to the commissioner in person from the decision of the examiners in chief, in the matter of our application for the reissue of letters patent for an improvement in cotton presses, granted to A. B., May 18, 1865. The following are assigned for reasons of appeal: [Here follow the reasons].

C. D.

E. F.

34. FROM THE COMMISSIONER TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

WASHINGTON, D. C., July 20, 1871.

To the Supreme Court of the District of Columbia, in banc :

The petition of A. B., of _____, in the county of _____, and _____, respectfully sheweth: That he has heretofore invented a new and useful improvement in velocipedes; that on or about the 1st day of May, 1870, he applied to the patent office of the United States for a patent for the same [or for the reissue of a patent granted therefor under date of June 10, 1862], and complied with the requirements of the several acts of Congress, and with the rules of the patent office prescribed in such cases; that his said application was rejected by the commissioner of patents, on appeal to him on or about June 20, 1871; that he has filed in said office due notice to the commissioner of patents, of this his

appeal, accompanied with the reasons of appeal; and that the commissioner had furnished him with complete copies of all the original papers and evidence in the case, all of which, together with a copy of the reasons of appeal, accompany this petition, and are to be taken as a part hereof.

And the said A. B. prays that his said appeal may be heard and determined by your honorable court at such early time as may be appointed for that purpose; and that the commissioner of patents may be duly notified of the same, and directed in what manner to give notice thereof to the parties interested.

A. B.

To the Commissioner of Patents:

A. B. of _____, in the county of _____, and State of _____, hereby gives notice that he has appealed from your decision, rendered on or about the 20th day of June, 1871, rejecting his application for a patent [or, for a reissue of a patent granted to him June 10, 1862,] for an improvement in velocipedes; and of this you are respectfully requested to take notice.

And the said A. B. assigns the following reasons for appealing from the said decision of the commissioner of patents, viz.:

[Here follow reasons, which should be full and explicit, and constitute a brief of the appellant's argument.]

A. B.

35. RULES OF THE SUPREME COURT IN APPEALS FROM THE COMMISSIONER OF PATENTS, ADOPTED NOVEMBER 30, 1870.

1. The appellant's petition shall be addressed to the court, and shall be substantially as follows:

"To the Supreme Court of the District of Columbia, in banc,
, 187 .

"The petition of _____, a citizen of _____, in the [State, Territory, District] of _____, respectfully shows as follows:

"a. About the _____ day of _____, 18 _____, I invented [describe the subject of the desired patent in the identical words of the application to the patent office].

"b. On the _____ day of _____, 18 _____, in the manner prescribed by the law, I presented my application to the patent office, praying that a patent be issued to me for said invention.

"c. Such proceedings were had in said office, upon said application, that on the _____ day of _____, 18 _____, it was rejected by the commissioner of patents.

"d. I thereupon appealed to this court, and gave notice thereof to the commissioner, and filed in his office the following reasons for said appeal:

"e. The commissioner of patents has furnished me a com-

plete copy of all the proceedings in his office upon my said application, which copy has been filed herewith, and is to be taken as part hereof.

“*f.* And thereupon I pray that the court do revise and reverse said decision, to the end that justice may be done in the premises.

“ _____ ”

2. This petition shall be filed in the clerk's office of this court; and as soon as the petitioner has made the deposit required by law, at the commencement of suits in this court, or said deposit has been dispensed with, the clerk shall enter the case in a docket to be provided by him for the purpose, and in which a brief of said filing and of all subsequent proceedings in the case shall be entered as and when they successively occur, down to and including the final decision.

3. The clerk shall provide a minute-book of his office, in which he shall record every order, rule, judgment, or decree of the court in each case, in the order of time in which said proceedings occur; and of this book there shall be two alphabetical indexes, one showing the name of the party applying for the patent, and the other designating the invention by its subject-matter or name.

4. The cases in the docket of causes shall be successively numbered from No. 1 onward, and each case shall also be designated by the number assigned to it on the records of the patent office.

5. This docket shall be called for the trial of the cases thereon, on the first day of each session of this court in general term, provided the petition has been filed ten days before the commencement of the term.

6. The opinions of the court, when written, shall be kept by the clerk in the order of their delivery and in a temporary book-file, indexed; and when so many have been delivered as will make a volume of convenient size, he shall cause them to be bound.

7. The clerk shall furnish to any applicant a copy of any paper in any of said appeals on payment of the lawful fees.

8. Hearings of said appeals shall be subject to the rules of the court provided for other causes therein.

9. When the testimony of the commissioner, or of any examiner, touching the principles of invention in question, shall be deemed necessary, it shall be taken orally in open court, unless otherwise ordered by the court. And, in such case, the court may order it to be reduced to writing, or filed or entered on its minutes, if it think proper.

10. The final judgment or order of the court shall not recite any of the facts made to appear in the case, but shall be to the following effect:

“ This appeal having been heard upon the record from the patent office, [and upon the testimony of the commissioner of patents,] [of one of the examiners,] [touching the principles of the inven-

tion,) and having been argued by [counsel for] the petitioner and [for] the commissioner.

“It is thereupon ordered and adjudged that the [petition be dismissed,] [commissioner do issue to the petitioner a patent,] [as prayed,] [granting the petitioner (*so and so*)].

“And that the clerk of this court transmit to the commissioner of patents a copy of this decree duly authenticated.”

36. DISCLAIMER.

To the Commissioner of Patents :

Your petitioner, A. B., of _____, county of _____, and State of _____, represents that he has, by grants duly recorded in the United States patent office, liber _____, p. _____, become the owner of an exclusive right within and for the several States of [Maine, New Hampshire, and Vermont] to make, use, and vend to others to be used, a certain improved mechanical movement, for which letters patent of the United States were granted to C. D. of _____, in the county of _____, and State of _____, April 1, 1869; that he has reason to believe that, through inadvertence, accident, or mistake, the specification and claim of said letters patent are too broad, including that of which said patentee was not the first inventor. Your petitioner, therefore, hereby enters his disclaimer to that part of the claim in said specification which is in the following words, to wit :

“I also claim the sleeves A B, having each a friction cam C, and connected, respectively, by means of chains or cords K L and M N, with an oscillatory lever, to operate substantially as herein shown and described.”

A. B.

Witness :

C. D.

37. CAVEAT.

The petition of A. B., of _____, in the county of _____, and State of _____, respectfully represents :

That he has made certain improvements in velocipedes, and that he is now engaged in making experiments for the purpose of perfecting the same, preparatory to applying for letters patent therefor. He therefore prays that the subjoined description of his invention may be filed as a caveat in the confidential archives of the patent office.

A. B.

Specification.

The following is a description of my newly invented velocipede, which is as full, clear, and exact as I am able to give, reference being had to the drawing hereto annexed.

This invention relates to that class of velocipedes in which there are two wheels connected by a beam forming a saddle for the rider, the feet being applied to cranks that revolve the front wheel.

The object of my invention is to render it unnecessary to turn the front wheel so much as heretofore, and at the same time to facilitate the turning of sharp curves. This I accomplish by fitting the front and the hind wheels on vertical pivots, and connecting them by means of a diagonal bar, as shown in the drawing, so that the turning of the front wheel also turns the back wheel with a position at an angle with the beams, thereby enabling it easily to turn a curve.

In the drawing, A is the front wheel, B the hind wheel, and C the standards extending from the axle of the front wheel to the vertical pivot *a*, in the beam *b*, and D is the cross-bar upon the end of *a*, by which the steering is done. The hind wheel B is also fitted with jaws *c* and a vertical pivot *d*.

A. B.

Witnesses: C. D.
E. F.

[The form of oath will be substantially that provided for original applications, except that, as a caveat can only be filed by a citizen, or an alien who has resided for one year last past in the United States, and made oath of his intention to become a citizen, the oath should be modified accordingly.]

ASSIGNMENTS. .

88. OF AN ENTIRE INTEREST IN AN INVENTION BEFORE THE ISSUE OF LETTERS PATENT.

Whereas I, A. B., of _____, county of _____, State of _____, have invented a certain new and useful invention, or improvement in _____, [giving the title of the same], for which I am about to make application for letters patent of the United States; and whereas, G. D., of _____, county of _____, State of _____, is desirous of acquiring an interest in said invention, and in the letters patent to be obtained therefor:

Now, therefore, to all whom it may concern, be it known, that for and in consideration of the sum of _____ dollars, to me in hand paid, the receipt of which is hereby acknowledged, I, the said A. B., have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over unto the said G. D., the full and exclusive right to the said invention, as fully set forth and described in the specification prepared and executed by me preparatory to obtaining letters patent of the United States therefor, and I do hereby authorize and request the commissioner

of patents to issue the said letters patent to the said G. D., as the assignee of my entire right, title, and interest in and to the same, for the sole use and behoof of the said G. D. and his legal, representatives.

In testimony whereof I have hereunto set my hand and affixed my seal this day of , A. D. 187 .

A. B. [SEAL.]

In presence of :

O. P.

S. T.

39. OF THE ENTIRE INTEREST IN LETTERS PATENT.

Whereas I, C. D., of , county of , State of , did obtain letters patent of the United States for [mentioning the title of the invention], which letters patent are numbered and bear the date the day of , in the year one thousand eight hundred and , and whereas I am now the sole owner of said patent and of all rights under the same; and whereas E. F., of , county of , State of , is desirous of acquiring the entire interest in the same:

Now, therefore, to all whom it may concern, be it known, that for and in consideration of the sum of dollars, to me in hand paid, the receipt of which is hereby acknowledged, I, the said C. D., have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over unto said E. F., all the right, title, and interest whatsoever which I have in and to the said improvement in [title], and in and to the letters patent therefor aforesaid; the same to be held and enjoyed by the said E. F., for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted [thus including extension], as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof have hereunto set hand and affixed seal this day of , A. D. 187 .

C. D. [SEAL.]

In presence of :

N. P.

O. T.

40. OF AN UNDIVIDED INTEREST IN THE LETTERS PATENT.

Whereas I, L. M., of , county of , State of , did obtain letters patent of the United States for [giving title], which letters patent are numbered , and bear date the day of , in the year one thousand eight hundred and ; and whereas D. E., of , county of , State of , is desirous of acquiring an interest in the same:

Now, therefore, to all whom it may concern, be it known, that for and in consideration of the sum of _____ dollars, to me in hand paid, the receipt of which is hereby acknowledged, I, the said L. M., have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over, unto the said D. E., the undivided one-half part of all the right, title, and interest whatsoever which I have in and to the said invention, and in and to the letters patent therefor aforesaid; the said undivided one-half part to be held and enjoyed by the said D. E., for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted (thus including extension), as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof _____ have hereunto set _____ hand and
 affixed _____ seal, this _____ day of _____, A. D. 187 _____.
 _____ [SEAL.]

In the presence of:

41. TERRITORIAL INTEREST AFTER GRANT OF PATENT.

Whereas I, Q. X., of _____, county of _____, State of _____, did obtain letters patent of the United States for (giving title), which letters patent are numbered _____, and bear date the day of _____, in the year one thousand eight hundred and _____; and whereas I am now the sole owner of the said patent and of all rights under the same in the below recited territory; and whereas W. O., of _____, county of _____, State of _____, is desirous of acquiring an interest in the same:

Now, therefore, to all whom it may concern, be it known, that for and in consideration of the sum of _____ dollars, to me in hand paid, the receipt of which is hereby acknowledged, I, the said Q. X., have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over, unto the said W. O., all the right, title, and interest whatsoever which I have in and to the said invention (or improvement), as secured to me by said letters patent, for, to, and in the State of _____, and for, to, or in no other place or places; the same to be held and enjoyed by the said W. O. within and throughout the above specified territory, but not elsewhere, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted (thus including extension), as fully and entirely as the same would have been held and enjoyed by me therein had this assignment and sale not been made.

the party of the second part; but the party of the second part shall not thereby be discharged from any liability to the party of the first part for any license fees due at the time of the service of said notice.

In witness whereof the parties above named (the said Union-town Agricultural Works, by its president) have hereunto set their hands the day and year first above written.

A. B.
C. D. & CO.

44. TRANSFER OF A TRADE-MARK.

We, A. B. and C. D., of _____, partners under the firm name of B. & D., in consideration of five hundred dollars to us paid by E. F., of the same place, do hereby sell, assign and transfer to the said E. F., and his assigns, the exclusive right to use in the manufacture and sale of stoves a certain trade-mark for stoves, deposited by us in the United States Patent Office, and recorded therein July 15, 1870, the same to be held, enjoyed and used by the said E. F., as fully and entirely as the same would have been held and enjoyed by us if this grant had not been made.

Witness our hands this 20th day of July, 1870.

A. B.
C. D.

EXTENSIONS.

45. STATEMENT AND ACCOUNT.

In the matter of the application of A. B., of the city, county and State of New York, executrix of the last will and testament of C. D., deceased, for extension of Letters Patent No. 10817, granted to him January 9, 1855, for improvements in mowing machines.

To the Commissioner of Patents:

The applicant respectfully represents that, prior to obtaining the letters patent now sought to be extended, the said C. D. was a farmer; that his attention was called to the subject of mowing machines by the difficulty of cutting grass by the machines then in use; that, after numerous patient and costly experiments, he succeeded in perfecting his invention and in obtaining his patent. He immediately made arrangements to manufacture the improvement, and for this purpose sold three-fourths of his farm. He then, with others, built a factory and commenced operations; but, two years afterward, the establishment was destroyed by fire, without insurance. In the exposure at the fire C. D. contracted a disease which confined him to the house for three years, when he died, leaving applicant, his executrix and widow, with a large family and small means. Nevertheless, applicant made every

effort to induce manufacturers to use the improvement, and at last succeeded in inducing the firm of E. T. & Co., of _____, to recommence the manufacture of the machines. But after four years the firm failed, being largely in debt to applicant for royalties. After this it became impossible for applicant to do anything with the invention. She wrote to various manufacturers, and made personal application to others, but found them unwilling to make arrangements to pay royalties, or to use the invention in any way, unless she would sell the patent, including the extension, for a nominal sum. She states, however, that she has at length succeeded in perfecting an agreement with G. H. & Co., of _____, conditioned upon the extension, whereby the said firm agreed to manufacture the patented machines, and to pay her a royalty of three dollars upon each one made. Aside from the interest so vested in G. H. & Co., the entire interest in the extension remains vested in her, and she has made no assignment, contract or agreement of any kind for the sale or assignment of the extended term to any person whatsoever.

The following is believed to be a correct statement of receipts and expenditures, and is as full as it is possible to make it :

Receipts.

From profits from business (for particulars for which see Schedule A).....	\$1,236 00
From royalties from E. T. & Co. (for details of which see Schedule B).....	2,341 50
From sale of shop right to L. M.....	250 00
	\$3,827 50

Expenditures.

Expense of procuring patent.....	\$250 00
	\$3,577 50

The invention is exceedingly useful, as will be abundantly proved. The testimony will show that it has been introduced upon 20,000 mowing machines, and has increased the value of said machines not less than three dollars each. It is evident, therefore, that the public have been greatly benefited by the use of this invention, while the fact that C. D. invested his entire time and means, and finally lost his life in the prosecution of his invention, is respectfully offered as proof that he has not been adequately remunerated for his time, ingenuity and expense bestowed upon this invention, and the introduction thereof into use.

Respectfully submitted,

A. B., *Executrix.*

[Here follows oath. See Form 25.]

46. REASONS OF OPPOSITION TO AN EXTENSION (BY INDIVIDUALS).

In the matter of the application of A. B. for an extension of letters patent for improvements in sewing machines, No. 12213, dated May 15, 1855.

To the Commissioner of Patents:

We wish to oppose the application above referred to, for the following reasons, viz.:

First. Applicant was not the original and first inventor of the improvement claimed by him in said letters patent, the same having been fully described in the English patent No. 27, of the year 1853.

Second. If said alleged invention was ever made by applicant, which we deny, it is not *useful*.

Third. Said invention is not *valuable* and *important* to the public.

Fourth. Applicant has been *adequately remunerated* for his time, ingenuity and expense in originating and perfecting his alleged invention.

Fifth. Applicant has not used due diligence in introducing his alleged invention into general use.

Sixth. Applicant has assigned to other parties all interest in the extension; and the extension, if granted, would not be for his benefit.

(See assignment to C. D., dated April 1, 1864; recorded June 2, 1864, in liber J^o, page 217.)

Seventh. The statement and account filed by applicant do not present a true statement of his receipts and expenditures.

E. F.
G. H.
I. K.

DEPOSITIONS.

47. NOTICE OF TAKING TESTIMONY.

BOSTON, MASSACHUSETTS, *March 29, 1869.*

In the matter of the interference between the application of A. B., for a paper collar machine, and the patent No. 85038, granted December 15, 1868, to C. D., now pending before the Commissioner of Patents.

SIR: You are hereby notified that on Wednesday, March 31, 1869, at the office of E. F., Esq., No. 30 Court street, Boston, Massachusetts, at nine o'clock in the forenoon, I shall proceed to take testimony of G. H., J. K. and L. M., all of Boston, as witnesses in my behalf.

The examination will continue from day to day until completed. You are invited to attend and cross-examine.

A. B.,

By R. Q., *his Attorney.*

_____, *Providence, Rhode Island.*

Proof of Service.

STATE OF _____, *County of* _____, ss.:

Personally appeared before me, a justice of the peace, the above-named A. B., who, being duly sworn, deposes and says that he served the above notice upon O. P., the attorney of the said C. D., at one o'clock, p. m., of the 30th day of March, 1869, by leaving a copy at his office in Providence, Rhode Island, in charge of his partner, R. S. A. B.

Sworn to and subscribed before me, this 31st day of March, 1869. E. F.

(Service may be acknowledged by the party upon whom it is made as follows:

Service of the above notice acknowledged.

C. D.,

By E. F., *his Attorney.*]

48. FORM OF DEPOSITION.

Before the Commissioner of Patents, in the matter of the interference between the application of A. B., for a paper collar machine, and the Letters Patent No. 58038, granted December 15, 1868, to C. D.

Depositions of witnesses examined on behalf of A. B., pursuant to the annexed notice, at the office of E. F., No. 30 Court street, Boston, Massachusetts, on Wednesday, March 31, 1869. Present, S. T., Esq., on behalf of A. B., and V. W., Esq., on behalf of C. D.

G. H.

(1.)

G. H., being duly sworn [or affirmed], doth depose and say, in answer to interrogatories proposed to him by S. T., Esq., counsel for A. B., as follows, to wit:

Question 1. What is your name, age, residence and occupation?

Answer 1. My name is G. H.; I am forty-three years of age; I am a manufacturer of paper collars, and reside in Chelsea, Massachusetts.

Question 2, &c. * * * * *

And in answer to cross interrogatories proposed to him by V. W., Esq., counsel for C. D., he saith:

Cross-question 1. How long have you known A. B.?

Answer 1. * * * * *

G. H.

49. CERTIFICATE OF OFFICER.

[To follow deposition.]

STATE OF _____, *County of* _____, ss.:

At Boston, in said county, on the 31st day of March, A. D. 1869, before me personally appeared the above-named G. H., and made oath that the foregoing deposition, by him subscribed, contains the truth, the whole truth, and nothing but the truth. The said deposition is taken at the request of A. B., at the time and place named in the notice hereto attached, to be used upon the hearing of an interference between the claims of the said A. B. and those of C. D., before the Commissioner of Patents, on the 3d day of May, A. D. 1869.

The said C. D. was duly notified, as appears by the original notice hereto annexed, and attended by V. W., Esq., his counsel.

E. F.,
Justice of the Peace.

The magistrate shall then append to the deposition the notice under which it was taken, shall seal up the testimony and direct it to the Commissioner of Patents, placing upon the envelope a certificate, in substance as follows:

I hereby certify that the within deposition of G. H. [if the package contains more than one deposition, give all the names], relating to the matter of interference between A. B. and C. D., was taken, sealed up, and addressed to the Commissioner of Patents by me this 26th day of April, A. D. 1869.

E. F.,
Justice of the Peace.

50. APPLICATION FOR REGISTRATION OF A LABEL.

[FOR AN INDIVIDUAL.]

To the Commissioner of Patents:

The undersigned, John Fisher, of the city of Brooklyn, county of Kings, and State of New York, and a citizen of the United States [or resident therein, as the case may be], hereby furnishes five copies of a print [or "label," as the case may be], of which he is the sole proprietor.

The said print [or "label"] consists of the words and figures as follows, to wit: [Description and statement of articles on which used.]

And he hereby requests that the said print be registered in the patent office, in accordance with the acts of Congress to that effect.

BROOKLYN, N. Y., August 1, 1874.

Proprietor.

51.

[FOR A CORPORATION.]

The applicant, a corporation created by authority of the laws of the State of New York [or other authority, as the case may be], and doing business in said State, hereby furnishes five copies of a label [or "print," *as the case may be*], of which it is the sole proprietor.

The said label consists of the words and figures as follows, to wit: [Description.]

And it is hereby requested that the said label be registered in the patent office, in accordance with the acts of Congress to that effect.

Witness the seal of the said corporation at _____, _____, 1874.

[SEAL.]

President [or other officer].

52. ASSIGNMENT OF COPYRIGHT.

This indenture, made this _____ day of _____, 187____, between _____, of _____, in the State of _____, of the first part, and _____, of _____, in the State of _____, of the second part.

Whereas the said _____ has written and compiled a book entitled _____; for which he obtained a copyright on the _____ day of _____, 187____.

Now, this indenture witnesseth that the said _____, for and in consideration of the sum of _____ dollars, to him in hand paid by the said _____, the receipt whereof is hereby acknowledged, has bargained, sold, and assigned, and by these presents doth bargain, sell, and assign unto the said _____, all the said book, and all copyright, title, interest, property, claim and demand of, in and to the same, to have and to hold the said book, copyright, and all the profit, benefit and advantage that shall or may arise by and from printing, reprinting, publishing and vending the same, unto the said _____, his heirs, executors, administrators and assigns, forever.

In witness whereof, the said party of the first part hath hereunto set his hand and seal, the day and year first above written.

Signed, sealed and delivered }
in the presence of _____ }

[SEAL.]

53. DECLARATION IN CASE FOR THE INFRINGEMENT OF A PATENT.

To answer to A. of B., in the county of S., in the district of _____, manufacturer, in a plea of trespass on the case, for that the plaintiff was the original and first inventor [or discoverer] of a certain new and useful art [machine, manufacture, composition of matter, or improvement on any art, machine, &c., taking the words of the statute most applicable to the subject of the invention] in the letters patent hereinafter mentioned and fully described, the same being a new and useful [here insert the title or description

given in the letters patent], which was not known or used before his said invention [or discovery], and which was not, at the time of his application for a patent as hereinafter mentioned, in public use or on sale with his consent or allowance; and the plaintiff being so, as aforesaid, the inventor [or discoverer] thereof, and being also a citizen of the United States [if the fact is so], on the day of [here insert the date of the patent], upon due application therefor, did obtain certain letters patent therefor in due form of law under the seal of the patent office of the United States, signed by the Secretary of State and countersigned by the Commissioner of Patents of the United States, bearing date the day and year aforesaid, whereby there was secured to him, his heirs, administrators, executors or assigns, for the term of fourteen years from and after the date of the patent, the full and exclusive right and liberty of making, using and vending to others to be used, the said invention [machine, improvement or discovery] as by the said letters patent, in court to be produced, will fully appear. And the plaintiff further says, that from the time of the granting to him of the said letters patent; hitherto he has made, used and vended to others to be used [or he has made, *or*, has used, *or*, has vended to others to be used, as the case may be] the said invention [machine, improvement or discovery] to his great advantage and profit [or if he has not made, used or vended, then, instead of the above averments, may be substituted after the word "hitherto," "the said exclusive right has been and now is of great value to him, to wit, of the value of \$]."

Yet the said D., well knowing the premises, but continuing to injure the plaintiff, did, on the [some day after the date of the patent], and at divers times before and afterwards, during the said term of fourteen years mentioned in said letters patent, and before the purchase of this writ, at C., in the county of M., in said district of , unlawfully and wrongfully, and without the consent or allowance, and against the will of the plaintiff, make [use and vend to others to be used, or did make, or did use, or did vend to others to be used, as the case may be] the said invention [machine, improvement or discovery] in violation and infringement of the exclusive right so secured to the plaintiff by said letters patent as aforesaid, and contrary to the form of the statute of the United States, in such case made and provided, whereby the plaintiff has been greatly injured and deprived of great profits and advantages which he might and otherwise would have derived from said invention, and has sustained actual damage to the amount of \$, and by force of the statute aforesaid, an action has accrued to him to recover the said actual damage, and such additional amount, not exceeding in the whole three times the amount of such actual damages, as the court may see fit to order and adjudge, yet the said D., though requested, has never paid the same or any part thereof to the plaintiff, but hath refused, and yet refuses so to do.

54. DECLARATION WHERE THERE IS AN ASSIGNMENT.

To answer unto H. L., a citizen of the same State, in a plea of trespass on the case, &c. And thereupon the said H. L., plaintiff in this action, by W. S., his attorney, complains, for that whereas, heretofore, to wit, on the day of , in the year , at the district of aforesaid, a certain J. N., of , in the State of , a citizen of the United States, being the original and first inventor of a new and useful improvement in dredging machines not known or used before his said invention or discovery, and not at the time of his application hereinafter mentioned for a patent, in public use or on sale with his consent and allowance, did duly apply for and there was duly granted to the said J. N., letters patent of the said United States, bearing date the day and year aforesaid, signed by C. B. S., then the Secretary of the Interior of the said United States, and countersigned by D. P. H., then the Commissioner of Patents of the said United States, and sealed with the seal of the patent office of the said United States, granting according to law: to the said J. N., his heirs, administrators, or assigns, for the term of seventeen years from the said day of , in the year aforesaid, the full and exclusive liberty of making, constructing, using, and vending to others to be used, the said new and useful improvement in dredging machines, to wit, at the district aforesaid, as by the said letters patent, reference thereto being had, will, among other things, more fully and at large appear, and which said letters patent the said plaintiff now brings here into court, and which said letters patent are duly recorded in the patent office aforesaid, and whereas also the said J. N. afterwards, to wit, day of , in the year , and while the said letters patent were still in force and unexpired, to wit, at the district aforesaid, by a certain power of attorney in that behalf, under his hand and seal, having date the day and year last aforesaid, did make, constitute and appoint T. S. of , in the State of , his lawful agent in his behalf, to sell to any person whomsoever in the said United States, the right to manufacture, construct, sell or use the said new and useful improvement in dredging machines, which said power of attorney, afterwards, to wit, on the day of , in the year , was duly recorded in the said patent office, to wit, at the district aforesaid, and which the said plaintiff now brings here into court, and whereas, also, afterwards to wit, on the day of , in the year , and while the said letters patent were still in force and unexpired, and the said power of attorney was still in force and unrevoked, to wit, at the district aforesaid, the said J. N., by his sealed assignment in due form of law, by and through the said T. S., his agent as aforesaid, bearing date the day and year last aforesaid, and which the said plaintiff now brings here into court, for the consideration therein mentioned, did, among other things, assign, transfer and set over unto the said plaintiff H. L., his executors, administrators and

assigns, all the right, title, interest, property, claim and demand which he the said J. N. had in the invention and improvement as secured to him by the said letters patent, for, to and in the State of Virginia and the District of Columbia, with full, entire and complete right to manufacture, construct, sell and use the said improvement in dredging machines in and for the said State of Virginia and the District of Columbia, the same to be held and enjoyed by the said plaintiff for his own use and behoof, and for the use and behoof of his legal representatives, for and to the full end of the term for which said letters patent were or might be granted, as fully and entirely as the same would have been held and enjoyed by the said J. N., had the said assignment and sale not been made, which said assignment, afterwards, to wit, on the day of , in the year , was duly recorded in the said patent office, to wit, at the district aforesaid. And the said plaintiff in fact saith, that the said assignment in and for the said State of Virginia, was, at the time of said assignment, and from thence hitherto has been, and still is, at the commencement of this suit, of great value to him the said plaintiff, to wit, of the value of \$, to wit, at the district aforesaid. Yet the defendant well knowing the premises, but contriving and wrongfully and injuriously intending to injure the said plaintiff, and to deprive him of the benefit, profits and advantages which he might and otherwise would have derived from manufacturing, making, using and selling the said new and useful improvement and invention in the State of Virginia aforesaid, after the making of said letters patent, and of the said power of attorney, and of the assignment aforesaid, to wit, on the day of , in the year , and on divers other days and times between that day and the day of the commencement of this suit, to wit, at the district aforesaid, within the term of years in the said letters patent mentioned, and while the said letters patent and the said assignment to the said plaintiff were both in force and unexpired, unlawfully, unjustly, without the leave or license and against the will of the said plaintiff, did within the State of Virginia aforesaid, use the said new and useful improvement in dredging machines, in divers, to wit, five other dredging machines, in violation of the said letters patent and of the rights of the said plaintiff as such assignee as aforesaid, and thereby the said plaintiff has been greatly injured and deprived of great part, of great value, to wit, \$, of the benefits, profits and advantages which he might and otherwise would have acquired and had as such assignee as aforesaid, to wit, at the district aforesaid, to the damage of the said plaintiff \$, and therefore he brings his suit, &c.

55. PLEA OF GENERAL ISSUE WITH NOTICE.

The said defendant, by , his attorney, comes and defends the force and injury, &c., and says he is not guilty of the trespass

specified in the said plaintiff's declaration in manner and form as the said plaintiff hath above thereof complained, &c., and of this the said defendant puts himself on the country.

And the said defendant files herewith, in compliance with the exigency of the statute in such case made and provided, the following notice in writing of special matters of defense intended to be relied on by the defendant at the trial of this cause.

To _____, *Attorney for the plaintiff in the above cause:*

Take notice, that the defendant, under the general issue, will give in evidence at the trial of this cause, the following matter, to wit:

1. That the patentee was not the original and first inventor or discoverer of the thing patented to him by the United States, and described in the patent in the declaration mentioned, but that the said alleged invention of said plaintiff was described anterior to the supposed discovery thereof by the said plaintiff in the specification of the following English patents, viz.: [Here insert name of patentee and number and date of patent.]

Also, that the thing patented, or a substantial part thereof, claimed as new, was described anterior to the supposed discovery thereof by the plaintiff in the following public works, viz.: [Here insert the title of the work and give the number of the volume and the page.]

2. And the said defendant will offer in evidence various facts tending to prove that the said plaintiff surreptitiously and unjustly obtained said patent for that which was in fact invented or discovered by _____, of the town of _____, in the State of _____, who was then using reasonable diligence in adapting and perfecting his said invention or discovery.

56. SUPPLEMENTAL NOTICE.

SIR: In addition to the public works specified in a notice of special matter intended to be relied on at the trial of the above cause, and served on you on the _____ day of _____, 18____, you are hereby notified that the following public works, viz.: [Here insert as in original notice] will also be relied on for the purpose of proving that the said plaintiff was not the original and first inventor of that for which he obtained the patent mentioned in the declaration, and that the thing so patented, or a material and substantial part thereof claimed as new, was described anterior to the supposed discovery thereof by the said plaintiff in the said public work, and which was published in the year 18____.

_____,
Atty. for Defendant.

To _____,
Atty. for Plaintiff.

57. BILL TO RESTRAIN INFRINGEMENT OF PATENT.

To the Honorable the Justices of the Circuit Court of the United States for the Circuit within and for the District of .

IN EQUITY.

M. M., Executrix of the last will and testament of J. M. and R. G. E., of the and county of , State of , citizen of the United States, bring this their bill against , of the of , county of , State of .

And thereupon your orators complain and say, that heretofore, and before the 23d of May, 1854, the said J. M. and R. G. E., being then citizens of the United States, were the true, original and first inventors or discoverers of a certain new and useful invention, to wit, an improved machine for sawing thin boards, &c., and that the said invention was not known or used by others before their invention or discovery thereof, and was not at the time of the application for letters patent therefor, in public use or on sale with the consent or allowance of the said J. M. and said R. G. E., as the inventors or discoverers thereof, contrary to the provisions of the statutes of the United States in such case made and provided.

That, being such inventors, the said J. M. and said R. G. E. made application in writing to the Commissioner of Patents of the United States, for the granting of letters patent for said invention, and accompanied the same with a written description of the said invention or discovery, and the manner and process of making and using the same, in such full, clear and exact terms as to enable any person skilled in the art or science to which the said invention or discovery appertains, or with which it is most nearly connected, to make and use the same, and with a specification of the parts and improvements and combination which they claimed as their invention, and with drawings and models and written references explaining the said invention or discovery, and explaining the principle and the mode in which they contemplated the application of the principle by which it might be distinguished from other inventions; which said description was signed by the said J. M. and said R. G. E., and attested by two witnesses, and filed in the patent office.

That the said J. M. and said R. G. E. made oath that they verily believed that they then were the original and first inventors or discoverers of the invention or discovery for which they then solicited a patent, and that they did not know or believe that the same was ever before known or used; and also, that they then were citizens of the United States.

And the said J. M. and said R. G. E., at the same time paid into the treasury of the United States the sum of thirty dollars, and received a receipt therefor, and then and there also duly com-

plied in all other respects with all the necessary conditions and requirements of the statutes of the United States in such case made and provided, prior to the granting of the letters patent hereinafter mentioned.

That on the 23d day of May, 1854, letters patent of the United States, bearing date on that day, were issued to the said J. M. and said R. G. E., according to law, whereby there was granted to them, their heirs, executors, administrators or assigns, for the term of fourteen years, from the 23d day of May, 1854, the full and exclusive right and liberty of making, constructing, using and vending to others to be used, the invention or discovery aforesaid, a description whereof was given in the words of the said J. M. and said R. G. E. in the said schedule annexed to the said letters patent, and was made part of the same.

And the said letters patent were issued in the name of the United States of America, and were sealed with the seal of the patent office of the United States, and were signed by the Secretary of the Interior, and were countersigned by the Commissioner of Patents, and were numbered 10965, and were issued and delivered to the said J. M. and R. G. E.

That thereupon, after the issuing of the said letters patent as aforesaid, the said J. M. and said R. G. E. put the said invention into use, by making, using and vending the same to others, and licensing large numbers of such machines.

And your orators pray, that said letters patent, and the schedule annexed thereto, as aforesaid, may be deemed and taken as part of their bill, and to the originals of which, or a duly authenticated copy thereof, now in your orators' possession and ready to be produced, they crave leave to refer.

And your orators further show, that on the 13th day of May, 1868, on the application of the said J. M. and said R. G. E., they having then and there duly complied in all respects with the provisions of the statutes in such case made and provided, and paid the fees required by law, the said letters patent were extended for the term of seven years from the 23d day of May, 1868, pursuant to the statute in such case made and provided.

And your orators further show, that since the obtaining of said extension of said letters patent, the said J. M. has died, leaving a will, whereby he appointed the said M. M., who is the widow of said J. M., deceased, his sole executrix, and the said M. M. has duly qualified as said executrix.

And your orators further show, that prior to the commencement of this present suit, your orators duly filed in the patent office of the United States a disclaimer of part of the first claim of said letters patent, to which said disclaimer your orators crave leave to refer.

And your orators further show, that said letters patent have been in controversy before the Circuit Court of the United States for the Southern District of New York, in various actions and

suits at law and in equity founded thereon, viz.: 1st. One action at law, wherein Eben Peck and Gilbert J. Bogert were plaintiffs, and John Frame, John M. Nichols and William O. Robbins were defendants. 2d. One suit in equity, wherein Eugene S. Eunson and Margaret Myers, executrix, were complainants, and John Dunbar and Jeremiah Hopper were defendants. 3d. One suit in equity, wherein Eugene S. Eunson and Margaret Myers, executrix, were complainants, and Joseph Swift was defendant. 4th. One suit in equity, wherein Eugene S. Eunson, Margaret Myers, executrix, Eben Peck and Gilbert J. Bogert were complainants, and John Frame, John M. Nichols and William O. Robbins were defendants. 5th. One suit in equity, wherein Eugene S. Eunson and Jacob Lagowitz were complainants, and Thomas B. Peddie was defendant. That said first mentioned action at law came on for trial before the Honorable Lewis B. Woodruff and a jury, at the April term of said Circuit Court, in the year 1870. Said defendants were represented by counsel, and vigorously contested said action, denied infringement of said letters patent, and denied the novelty of the invention therein described, and attempted to prove that the said invention had been previously known to be used by John Frame, Isaac Smith, John N. Lyman and Charles Turner.

That nevertheless the said jury rendered a verdict in favor of the said plaintiffs upon all the issues in said action, and sustained the validity of said letters patent, and the charge of the infringement thereof, and assessed the plaintiffs' damages at the sum of five thousand dollars.

That each and all of said suits in equity came on for hearing before the Honorable Samuel Blatchford, at the February term of said Circuit Court, in the year 1871, the said defendants respectively denying infringement of said letters patent, and also denying the novelty of the inventions therein described, and setting up various and separate defenses thereto, contending that the same had been previously known to and used by C. T. at Troy, Batestown and Cohoes, New York, I. S. at New York, J. L. N. at Yonkers and New York, D. D. at Albany, J. H., H. McC. and J. M. at Cohoes, C. M. W. at Franklin, Mass., G. W. C. at Franklin, Mass., A. M. at Franklin, Mass., W. R. at Franklin, Mass., E. W. R. at New York, A. B. at Hillsborough, New Hampshire, G. H. at Brooklyn, New York, J. B. G. at the city of New York, R. D. at the city of New York, and H. J. N. at the city of New York, and had been described in a certain printed publication called _____, published in London, 1847, at vol. 2, pages 804 to 816, and in letters patent of the United States, to P. C., dated November 3, 1841, and April 8, 1851, and in letters patent of the Kingdom of Great Britain, to A. E. L. B., dated May 2, 1853, sealed November 2, 1853, and in letters patent of the United States to M. A. and J. S., dated December 31, 1839.

That said suits were argued by counsel at said term; and

thereupon, upon consideration thereof, decisions were rendered in said several suits, decreeing that said letters patent were valid, and that the defendants had severally infringed the same, and directing perpetual injunctions and accounts of profits.

And your orators have, ever since the date of the said letters patent, been and now are entitled to all the rights, interests and privileges thereby secured unto them in and to the said invention or discovery, in the said letters patent, and assignments and extension particularly set forth, and are, and ever since the date thereof have been, entitled to the exclusive use of the said invention and improvement.

And your orators further show unto your honors, that the said invention or discovery so patented, aforesaid, unto the said J. M. and the said R. G. E., is of very great utility; and that the same has been extensively introduced into public use, and that the public have generally acquiesced in your orators' exclusive right to the same; and your orators would, but for the wrongful acts the said defendant and others acting in concert with him, have made large gains, profits and advantages, from the manufacture, use and sale of the said invention; and your orators would, but for the wrongful acts and doings of the said defendant and others acting in concert with him, now be enabled to use the said invention, to which they are entitled to the exclusive right as aforesaid, with profit and advantage, but that by the said wrongful acts and doings they are now prevented and hindered from so doing.

And your orators further show unto your honors, upon information and belief, that the said defendant, well knowing the premises, and the rights and privileges secured unto your orators, and in order to deprive them of the profits, benefits and advantages which might and otherwise would have accrued to them, at _____, and within the said _____ district of _____, and without license or permission of your orators, or either of them, _____ the said defendant has, ever since the _____ day of _____, 18 _____, unlawfully and wrongfully made or caused to be made, sold or caused to be sold, used or caused to be used.

_____ each and all containing the said invention, discovery, improvements and combinations, consisting as therein and in the schedule set forth, of the employment or use of the deflecting plate E E, both placed at the sides of the saw as therein shown, for the purpose therein described. 2d. The employment of the clamps I I, as therein shown, substantially as and for the purpose described, and also the employment of an adjustable bed, F, with clamps as described in combination with the saw, when the saw has a stiffening plate in line with said bed, as and for the purpose described, the exclusive right to which is secured to your orators, as hereinbefore set forth, and which said unlawful making, use and sale, by the defendant as aforesaid, is a violation and infringement of your orators' exclusive rights and privileges, and that the said defendant has derived and received, and is still de-

iving and receiving from such use great gain and profits, but to what amount your orators are ignorant and can not set forth, but your orators believe the same to be about the full sum of thousand dollars, and so charge the fact to be, and pray that the defendant may be required to make a disclosure of all such gains and profits.

And your orators in like manner aver that the defendant though requested to desist from such unlawful use, and to pay your orators such gains and profits as the defendant has actually made, refuse so to do, by means whereof your orators are and have been greatly injured, and are now prevented from putting the said invention or discovery into successful operation, and are deprived and prevented from receiving the gains and profits to which they are lawfully entitled, from the exclusive rights and privileges so granted and secured to them as aforesaid, and which they would have derived and acquired, and would now derive and acquire, but for the said wrongful acts of the said defendant.

And your orators pray that the said defendant may be compelled by a decree of this honorable court, to account for and pay over unto your orators all such gains and profits as have accrued or arisen to, or been earned or received by the said defendant, and all such gains and profits as your orators would have received, but for the said wrongful acts and doings of the said defendant.

And that the said defendant, his attorneys, solicitors, clerks, servants, agents and workmen may be perpetually enjoined and restrained by the decree of this court from directly or indirectly making, or causing to be made, using or causing to be used, or vending to others to be used in any manner, any machines containing or embodying the said invention granted by the said letters patent, as issued, and extended and assigned as aforesaid unto your orators, and from infringing upon or violating the said letters patent, by the use or sale of the said machines, in any way whatsoever. And that all such infringing machines may be forthwith destroyed, or delivered up to your orators, and that the said defendant may be decreed to pay the costs of this suit, and that your orators may have such other relief as the equity of the case may require, and as to your honors may seem meet.

To the end, therefore, that the said defendant may, if he can, show why your orators should not have the relief hereby prayed, and may full, true, direct and perfect answer make, according to the best of his or his clerks', agents', or workmen's knowledge, remembrance, information and belief, to the several matters hereinbefore averred and set forth, as fully and particularly as if the same were here repeated paragraph by paragraph, and he and they thereto severally and specifically interrogated, and especially that said defendant answer and set forth:

First. Whether the said J. M. and R. G. E. were not, prior

to the 23d day of May, 1854, the true, first and original inventors or discoverers of the said invention or discovery, described in said letters patent, and every material part thereof, and if not, who was or were the true, original or first inventor and inventors of the same, and if any other person or persons was or were the true, first and original inventor or inventors of the same, where he or they reside, and where and when he or they invented or discovered the same, and how the invention or discovery of such other person or persons, if any, differed, if at all, from the said invention or discovery of said J. M. and R. G. E.

Second. Whether the said defendant has at any time, and if so, where and when, made, sold, used, or caused to be made, sold or used, any circular saw or saws, having, employing or using deflecting plates, one or both placed at the sides of the saw, as and for the purpose described in said letters patent, or if the circular saw or deflecting plates differed from those described in said letters patent, in what particulars they differed therefrom, or in what respect they were differently applied or combined from those described in said letters patent, if at all.

Third. Whether said defendant has at any time, and if so, where and when, made, sold, used, or caused to be made, sold or used, in connection with a circular saw or saws, or with deflecting plates substantially as described in said letters patent, or both, any clamp or clamps substantially as and for the purpose described in said letters patent, and if said defendant has used a clamp or clamps in connection with a circular saw or deflecting plates, in what respect such clamp or clamps differed from the clamps described in said letters patent, and in what respect they were differently applied to or combined with such saw or deflecting plates, if at all.

Fourth. Whether the machine or machines now in use by the defendant, for the purpose of sawing or resawing thin boards, was and is not substantially similar to the machine described in said letters patent; and if not, how the same differs therefrom.

Fifth. Whether the defendant has not made large gains and profits from the use of such saw and deflecting plates and clamps, and if so, to what amount.

May it please your Honors to grant to your orators a writ of *subpœna ad respondendum*, issuing out of and under the seal of this honorable court, directed to the said defendant, commanding him to be and appear, and make answer to this bill of complaint, and to perform and abide by such order and decree herein, as to this court may seem required by the principles of equity and good conscience.

May it also please your Honors to grant to your orators a provisional or preliminary injunction issuing out of and under the seal of this honorable court, enjoining and restraining the defendant, and his attorneys, solicitors, clerks, servants, workmen and

agents to the same purport, tenor and effect hereinbefore prayed for, in regard to said perpetual injunction.

And your orators will ever pray, &c.

MARGARET MYERS, *Executrix.*
ROBERT G. EUNSON.

_____,
Complainants' Solicitors.

NOTE.—The defendant is required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5.

UNITED STATES OF AMERICA, } ss. :
District of

On this day of 187 , before me came R. G. E., to me personally known, who, being by me duly sworn, did depose and say, that he is one of the complainants in the foregoing bill of complaint named, and that he has read the said bill, subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on information and belief, and as to those matters, he believes it to be true.

BILL TO RESTRAIN THE INFRINGEMENT OF COPYRIGHTS.

To the *Judges of the Circuit Court of the United States for*
the

The bill of complaint of C. F., T. G. W., and L. T., printers and publishers, and copartners, doing business under the name and style of F., W. & T., and J. S., gentleman, all of C., in the county of M., in said , and all being citizens of the United States, shows that the said J. S. is and heretofore at the time of the infringement hereinafterwards mentioned, was proprietor of the copyright of a work of which the said J. S. is the author and compiler, entitled, "The Writings of George Washington, being his Correspondence, Addresses, Messages and other Papers, official and private, selected and published from the original Manuscripts, with a Life of the Author, Notes and Illustrations, by J. S.," consisting of twelve volumes, of all which volumes respectively the copyright was taken out by said J. S. previous to the publication thereof respectively, and secured according to law, the said J. S., at the time of taking out and securing said copyrights respectively, and still being a citizen of the United States, and the term of each and all of which copyrights has still more than eight years to run; and that said F. W., & T., before the infringement hereinafterwards complained of, had, by an agreement with said J. S., undertaken and become interested in and assumed a part of the risk and responsibility of the publication of said work, and have ever since continued, and still continue, to be thus interested, and that ever since the first publication of the several volumes of said work,

the public have been supplied with copies of the same by said J. S., and the publishers of the same, at reasonable prices; and that said J. S. and said F., W. & T., have incurred very large expenses upon said publication, and have been and are in the receipt of large amounts, the proceeds of the sale of said work to reimburse their expenses and remunerate their labor and care bestowed upon the same.

And your orators further show, that they, your orators, being in the receipt of large sums, the proceeds of the sale of said work as aforesaid, under said copyrights, B. M., N. C. and T. H. W., all of B., in the county of S., in said _____, and G. P. L., of C., in the county of M., in the district of N. H., booksellers, being copartners under the name, style and firm of M., C., L. & W., and also C. W. U., of S., in the county of E., in said district of _____, clerk, all of them well knowing that the said J. S. held such copyrights, and said F., W. and T. were interested in the said publication, and deliberately, after due notice, intending to infringe said copyrights at said B., on the fifth day of August, in the year of our Lord, eighteen hundred and forty, and at divers times before and since the said fifth day of August, without the allowance and consent of your orators, or either of them, published and exposed to sale and sold a work in two volumes, entitled "The Life of Washington," in the form of an autobiography, the narrative being, to a great extent, conducted by himself in extracts and selections from his own writing, with portraits and other engravings, consisting of _____ pages in the whole, which they still continue to expose to sale, having had due notice, and well knowing that the same is a copy from, and an infringement and piracy of, said "Writings of George Washington, &c., with a Life of the Author," so published by your orators as aforesaid. And your orators aver, that three hundred and eighty-eight pages of said piratical work were copied *verbatim et literatim* from the said work so edited and compiled by said J. S. as aforesaid, and so published by your orators as aforesaid, consisting of matter which was published originally by said J. S., under his said copyright, and which had never before been published or printed, and which he, the said J. S., and his assigns, had the exclusive right and privilege to print, publish and sell, and expose to sale; and that many other parts of said piratical work, published by said parties complained of, besides three hundred and eighty-eight pages, are infringements upon said J. S.'s copyrights, whereby your orators have sustained great damage, detriment and injury.

And your orators further show, that said M., C., L. and W. and U. still continue, and threaten hereafter to continue to print, publish and expose to sale and sell copies of the said piratical work, the protests, expostulations and warnings of your orators to them to the contrary notwithstanding.

All which actions, doings and pretenses are contrary to equity and good conscience, and tend to the wrong and injury of your

orators in the premises. In consideration whereof, and forasmuch as your orators are remediless in the premises at law, and can not have adequate relief save in a court of equity, where matters of this and the like nature are properly cognizable and relievable, and to the end that the said M., C. and W. and U. may appear and answer all and singular the matters and things hereinbefore set forth and complained of, particularly how many copies of said piratical work they have sold, and what number they have on hand; and that they be restrained by injunction issuing from this court, from selling or exposing to sale, or causing or being in any way concerned in the selling or exposing to sale, or otherwise disposing of any copies of said piratical work, and that they be ordered and decreed to render an account of the copies of the same that they have sold, and to pay over the profits of such sales to the plaintiffs, and that they be ordered to surrender and deliver up the copies on hand and the stereotype plates of said piratical work to an officer of this court, to be canceled and destroyed, and be ordered to pay the plaintiffs their costs; and that your orators may have such other and further relief as to this honorable court may seem meet, or as equity may require—may it please this honorable court to grant to your orators a writ of *subpoena* directed to the said M., C., L. & W. and U., commanding them, at a certain day, and under a certain penalty to be therein inserted, personally to be and appear before this honorable court, then and there to answer the premises, and to stand and abide such order and decree therein as to this honorable court shall seem agreeable to equity and good conscience.

P. & R.

By their solicitors.

**58. BILL FOR AN ACCOUNT AND AN INJUNCTION AGAINST THE
ILLEGAL USE OF A TRADE-MARK.**

Circuit Court of the United States for the District of

*To the Judges of the Circuit Court of the United States
for the District of*

A. B. and C. D., of , and citizens of the State of , bring this their bill against E. F., of , and a citizen of the State of . And thereupon your orators humbly complaining, show unto your honors, that they are the assignees and successors in business of & Co., a firm which was composed of and your orators, and which firm was formerly engaged in the manufacture and sale of sewing machines in ; and for the period of more than five years, your orators and their predecessors had been engaged in the manufacture and sale of sewing machines at the same place; and that during the whole period of time of such manufacture and sale by them, they had exclusively used, and your orators are now so using, and had, and still

have, the right so to use, a certain trade-mark for said sewing machines, which trade-mark was printed on paper of an ultramarine ground, on which is represented a view of the Princess Penelope weaving, and the name "Penelope," which is the essential part of said mark printed thereon; and that no person, firm or corporation, except the said and your orators, have had at any time heretofore, and none except your orators now have any right to use the said trade-mark or any trade-mark essentially the same.

They further show to your honors that on the said day of in the year , being entitled as aforesaid to the exclusive use of said trade-mark, and desiring to secure to themselves full and lawful protection for the same by due registration thereof in the United States patent office, according to law, your orators did deposit in said patent office of the United States, for registration, their trade-mark aforesaid for sewing machines; and having fully complied with all the requirements of the act of Congress, in such cases made and provided, the trade-mark aforesaid was on the day of , in the year , duly and lawfully registered and recorded in said United States patent office, with protection to remain in force for thirty years from said date, all of which, with an accurate copy and description of said trade-mark and the declaration of a member of the firm, on which it was registered, will more fully and at large appear from copies from the patent office, duly certified by , commissioner of patents, under his seal of office, and herewith filed as a part of this bill, marked ; and thereupon protection in the exclusive use of the trade-mark aforesaid previously held and enjoyed by your orators, was secured to them for the period of thirty years from said day of , in the year .

Your orators further respectfully show unto your honors, that since your orators have had the exclusive right to use the said trade-mark, to wit, from the day of , in the year , to the present time, the said , of , in the State of , has been manufacturing sewing machines in said city of , and has been unlawfully and without your orators' consent using, in the sale thereof, a trade-mark substantially like, and indeed almost identical with, that of your orators.

And your orators do further show that they hold and estimate their said trade-mark at the price and value of thousand dollars, but can not with certainty state the exact amount of their loss and injury, suffered by reason of said wrongful acts of the defendant, but believe the same to be the full sum of thousand dollars, and do so charge the fact.

To the end, therefore, that your orators may obtain relief in the premises in this honorable court, where alone adequate relief can be afforded, they pray:

1st. That the said E. F. may be made a defendant to this bill, and compelled to answer each and every allegation thereof on oath,

as fully and to the same extent as if he were directly and particularly interrogated as to each allegation.

2d. That he may be compelled to render, before a commissioner of this court, a full, true and perfect account of all profits of every description which he has made, or might have made, by the use of the simulated trade-mark aforesaid, or by the use of any other trade-mark for sewing machines having thereon as a constituent part thereof, the word "Penelope," or a representation of the Princess Penelope weaving, or any trade-mark having such near resemblance to that of your orators, as aforesaid, as might be calculated to deceive; and that he, the said E. F., be decreed to pay over to them all such profits.

3d. That the said commissioner be required to ascertain and report to this court, also, what loss and damage has been inflicted upon your orators by reason of the infringement of their rights, and the interference aforesaid with the right of exclusive use of the trade-mark first above mentioned, and that the said E. F. be also decreed to pay them such damages.

4th. And may it please your honors to grant unto your orators a restraining against the said defendant, enjoining and restraining him, his clerks, attorneys, agents and servants from using the simulated trade-mark aforesaid, or any other trade-mark containing the word "Penelope," or being substantially the same with that of your orators.

5th. And that your orators may obtain the relief prayed for, and all such further or other relief as the nature of their case may require, may it please your honors to grant to your orators the writ of subpoena against the said E. F., &c.

Solicitor for Complainant.

C. D. [for the firm.]

UNITED STATES OF AMERICA, } ss. :
District of _____,

At the city of _____, in the county of _____, and district aforesaid, this _____ day of _____, in the year _____, personally appeared before me _____, U. S. commissioner for said district, the above-named C. D., and made oath that the facts set forth in the foregoing bill, so far as they purport to be stated as of his own knowledge, are true, and so far as they purport to be stated on information and belief, he believes it to be true.

Given under my hand this _____ day of _____, in the year _____.

[L. s.]

U. S. Commissioner for District of _____.

59. ORDER OF REFERENCE TO A MASTER IN A COPYRIGHT CASE.

It is hereby ordered, this _____ day of _____, 18 _____, that this cause be referred to _____, a master of this court, to examine and report the coincidences and differences of the complainant's and

defendant's books; how far the defendant has used the complainant's book in compiling his own, and how far he has made use of the similar or the same materials, independently of any use or with how great a use of the complainant's book, and to report the evidence in the case as far as either party may request, and his conclusion thereupon, whether the whole or any part, and if any, what parts of the defendant's book is an infringement of the complainant's copyright.

60. ORDER TO SHOW CAUSE.

Upon reading the bill of complaint herein, with the affidavit of _____, and on motion of _____, solicitor for the complainant, it is hereby ordered, this _____ day _____, 18____, that the defendant show cause, if any he has, before the judge of said court, at _____, in the said _____, district of _____, on the _____ day of _____, 18____, at _____ o'clock A. M., or as soon thereafter as counsel can be heard, why an injunction should not issue pursuant to the prayer of said bill.

61. ORDER FOR PRELIMINARY INJUNCTION.

The bill of complaint and the affidavits filed by the respective parties having been read, and the arguments of the counsel for the respective parties having been heard and duly considered by the court, and it appearing that letters patent of the United States No. _____, were issued in due form of law on the _____ day of _____, 18____, to _____, for _____, and that the said defendant has infringed the rights secured by the aforesaid letters patent, by manufacturing, making and selling to _____, manufactured and made according to said letters patent, contrary to the form of the statute in such case made and provided:

Now, therefore, it is hereby ordered, adjudged and decreed this _____ day of _____, 18____, that an injunction be issued pursuant to the prayer of the bill herein, strictly commanding and enjoining the said defendant _____, his clerks, attorneys, agents, servants and workmen, that they forthwith and until the further order, judgment and decree of this court, desist from making, using and selling any _____ substantially as described and claimed in the said letters patent.

62. INTERLOCUTORY DECREE.

This cause came on to be finally heard at this _____ term, upon the pleadings and proofs, and was argued by the counsel for the respective parties, and the pleadings and proofs having been duly considered, it is hereby, this _____ day of _____, 18____, ORDERED, ADJUDGED AND DECREED as follows, viz., that the letters patent referred to in the complainant's bill, being letters patent of the

United States granted unto John Myers and Robert G. Emerson for a machine for sawing thin boards, &c., dated May 23, 18 , No. , is a good and valid patent, and that the said John Myers and Robert G. Emerson were the inventors of the improvements therein described and claimed therein, and that the said defendant has infringed the said patent, and upon the exclusive rights of the complainants under the same.

And it is further ORDERED, ADJUDGED AND DECREED that the defendants above named, and each of them, their servants, agents, operators and workmen, and each and every one of them be, and they are hereby perpetually enjoined and restrained from either directly or indirectly making, constructing, using or vending to others to be used, the machine known as the Myers & Emerson Resawing Machine, or any machine whether known by that name or any other, constructed and operated in the manner and upon the principles described in said letters patent of the United States, bearing date the day of , 18 , No. , and described in said letters patent as an improved machine for sawing thin boards, &c., which said letters patent are the foundation of these proceedings.

And it is further ORDERED, ADJUDGED AND DECREED that the complainants recover of the defendants the profits which they have received or made, or which have accrued to them from said infringement by the manufacture, use or sale of the improvement described and secured by said letters patent at any and all times since the day of , 18 , and also the damages which the complainants have sustained thereby.

And as it does not appear to the court what said profits and damages are, it is further ORDERED, ADJUDGED AND DECREED that this cause be referred to , a master of this court, to take and report to the court an account of the profits which the defendants have received or which have arisen or accrued to them from the manufacture, use or sale of said improvement, or from said infringement, and to ascertain and report the damages which the complainants have sustained thereby since the day of , 18 , from the papers and evidence in the cause, and from any evidence which either party may produce before him of the same, and when he shall have taken an account of said profits and assessed the damages therein, he shall return the same to this court for further action in the premises.

And it is further ORDERED, ADJUDGED AND DECREED that the complainants recover of defendants their costs of suit.

63. MASTER'S REPORT.

To the Honorable , Judges of said court :

In pursuance of a decretal order made and entered in this cause on the day of , A. D., 18 , by which it was referred to of , one of the masters of the court, to

take and state an account of the gains and profits made by the defendant in the manufacture, use and sale of _____, described in the complainant's bill of complaint :

I, _____, a master in said court, do respectfully report that I have proceeded to investigate the matters so referred to me, and that, pursuant to a notice duly given, I have been attended by the parties, complainant and defendant, and their respective counsel in the above case, and that after taking due proofs I find and report that

I do therefore respectfully report that the said defendant should be decreed to pay to the said complainant the sum of _____ dollars, besides costs to be taxed.

I respectfully refer to schedules A, B, C, hereto annexed, as making a part of this my report.

All of which is respectfully submitted.

Dated _____, 18 ____.

Master.

64. EXCEPTIONS TO MASTER'S REPORT.

Exceptions taken by the complainant [*or* defendant] to the report made herein by _____, one of the masters of the court to whom the cause was referred by an order of this court, made and entered on the _____ day of _____, 18 ____, which report bears date the _____ day of _____, 18 ____.

First exception. For that the said master in said report _____, whereas the said master should have _____.

Second exception. For that, &c.

65. FINAL DECREE.

This cause having come to be heard upon the report of _____, Esq., one of the masters of this court, to whom it was referred to ascertain and report _____, which report bears date the _____ day of _____, 18 ____, and also upon exceptions taken to the said report on the part of said complainant, and also on the part of said defendant :

It is ordered, adjudged and decreed, this _____ day of _____, 18 ____, that the said defendant pay to the said complainant the sum of _____ dollars.

And it is further ordered, adjudged and decreed that the said defendant pay to the said complainant his costs in this suit to be taxed, and that the complainant have execution for such costs and for the sums above decreed to be paid to said complainant as aforesaid.

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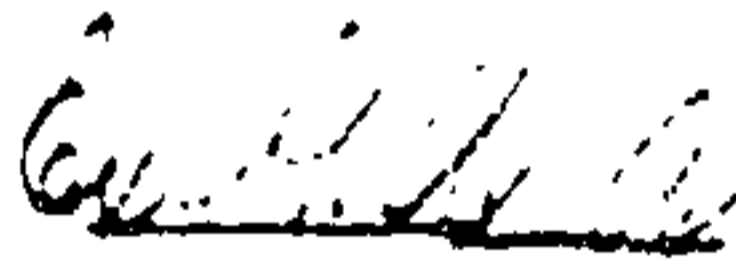
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