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THE SCIENTIFIC AMERICAN SUPPLEMENT

No. 275,

For the Week ending April 9, 1881.

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RECENT INFRINGEMENT DECISIONS.

Attention was called some months ago by the SCIENTIFIC AMERICAN to the important question involved in the noted suit against Postmaster James—What remedy has an inventor when a government officer uses his invention and refuses to pay royalty? The decisions than narrated were to the effect that the postmaster was personally accountable for the profits realized in the city post office by the use he had made of the plaintiff's canceling stamp. Since then two further decisions have been rendered in the same litigation. Postmaster James applied to the court for a certificate that there was "probable cause" for his using the patented stamp. The courts are authorized to grant such a certificate when an officer of the revenue is sued for damages for an official act; and the effect is that the judgment for damages is paid out of the Treasury, and the officer goes free. The court said that such a certificate cannot be granted to a postmaster, because he is not an officer of the revenue. Mr. James will need a special act of Congress to authorize the Treasury to pay the damages in his behalf. The other of the two decisions was in his favor. The owner of the patent, not being satisfied with the damages awarded—they were, we believe, upwards of $60,000—applied to the court to order judgment for "increased damages." The judges are allowed, when they see it to be just to do so, to increase the damages rendered against an infringer, not exceeding three times the amount of the verdict. But the court said that this can only be done in an action for damages, and is not allowable where the suit is for an account of profits. Moreover, in this instance it had been greatly to the advantage of the owner of the patent that his invention had been used and his right established to recover the profits, which were quite sufficient.

It is a familiar general rule that a patent for a combination is not infringed by use of distinct parts; the essence of the invention being in the combination, unless a person uses all the parts, he does not use the invention. A recent decision recognizes an exception to this rule, and says that if one part of a patented combination, considered by itself, is novel and useful, and is an invention for which the inventor might have taken out a separate patent, then using that part is an infringement, although the entire combination is not used. The patent was for a double-acting pump. Several contrivances were combined in it, one of which was a new mode of taking out and replacing the valves. The infringer contrived a rival pump, using the same method of removing and returning the valves, but dispensing with any imitation of some other parts of the combination. He was enjoined.

The importance and difficulty of rendering the high explosives needed in modern engineering unexplosive while in transportation or in storage is well known. "Dynamite" or "safety powder" is the name of one article which has been patented and used as a safe explosive. It has been introduced and patented in England; and there it met with competition from a French article of the same general purpose named "lithofracteur." In a lawsuit in the English Court of Chancery, the lithofracteur has been adjudged to be an infringement of the dynamite patent.

Persons exporting manufactured goods to England may be interested in another decision. The inventor of an improved process for making salicylic acid—a useful but formerly very expensive medicine—took out letters patent in England for his process, and by means of it was able to manufacture the drug at about half former cost. A subsequent inventor of a rival process formed a firm and established a factory in Germany, and brought the acid manufactured there into England for sale. When he was sued his lawyers argued that the patent only forbade manufacturing in England; that he had a perfect right to manufacture in Germany; and that if his goods were lawfully manufactured, the patent did not forbid him from importing and selling them.

"A justice asked whether the sale in England of a product made abroad could be restrained because it was made according to a process which was the subject of an English patent, the patent being only for a new method of making a product previously well known.

"Counsel for the patentee cited two former decisions that it might be.

"Counsel for the infringer said that such a principle if carried out would lead to absurd consequences. Suppose a process to be patented for making flour by crushing wheat instead of grinding it, and suppose all the millers in France were to make flour according to that process, is the importation of flour from France to be prohibited?"

But the Court of Appeals decided in favor of the patentee. The opinion states that the judges were at first doubtful whether, if a process is patented in England and the patent is for the process only, and that process is imitated abroad, the importation of the product from abroad and the sale of it in England is an infringement. But they reached the conclusion that the exclusive right granted by an English patent, although for a process only, includes a monopoly of the sale in England of products made according to the patented process, whether made in the realm or elsewhere. These patents expressly forbid any person directly or *indirectly* to make, use, or put in practice the invention. Now a person who procures the product to be made abroad for sale in England, and imports and sells it there, is, surely, indirectly putting in practice the invention. Any other rule would render a patent for any really valuable process worthless. America it is familiar that if the patent is upon the article it forbids sales of it here, wherever made; but the same has not been generally understood as to a patent upon a process.

A singular controversy arose between two rival manufacturers of steam engines. Each had a patent for the kind of engine he made, and there was not, in truth, any infringement or legal interference between them. But one of them, rather inappropriately named Brotherhood, made it a practice to publish notices charging that the other engine was an infringement of his patent, and, whenever he could gain the names of persons who thought of purchasing the rival engines, he would make threats to them that if they bought them he would sue them for infringement. This course he continued for three or four years, with the effect, of course, to injure his competitor's business, yet he never in any instance brought such a suit as he threatened, and had no real ground for maintaining one. At last the competitor—Halsey by name—brought suit to enjoin him from giving any more such notices and threats. The Chancery judge decided that the suit would hold. An owner of a patent has a right, acting in good faith, to give notice of his claims as he believes them to exist, and to threaten an injunction suit against infringers. And if it should so happen that he overstates his rights, or that the infringers desist of their own accord, and so the suit threatened is never brought, he is not liable to any lawsuit. But the case stands very differently when he knows that he is, in his notices, exaggerating his rights, and has no real intention of bringing suits as threatened, but only hopes to break down his competitor's business by alarming the latter's customers. Such practices —or any unfounded or malicious assertions that a machine on sale is an infringement of a patent—are in the nature of a libel on the manufacturer of the rival machine aspersed.

SEA SICKNESS.

Much has been written about this troublesome malady and many remedies suggested, yet *mal de mer* remains the same bugbear it ever was. Thousands of people inhabiting the Old World are deterred from visiting our shores by thoughts of this, and among them many of the ablest scientists and literati. Our energetic race are less inclined to yield obedience to their fears, so that the annual tide of tourists abroad is scarcely affected by it. To many, however, the sufferings are a source of dread and leave behind unpleasant reminiscences. Each, however, seeks comfort in the assurance that it involves no risk of life, for no one ever died of sea sickness, on the contrary the after effects are usually favorable. Sea voyages are recommended to those in poor health, those exhausted by mental or physical labor, for the enforced rest brings relief unattainable on land. There is no daily mail, no newspaper, no market reports. The busy world is nothing to us there; it is comparable to the seclusion of a cloister, or the durance of a prison. Perhaps it is well that nature's claims absorb the entire personality of the victim for the first three days, else the sudden change from life to death, as it were, the terrible ennui, would drive reason from its seat.

Sea-sickness has been charged to first one organ, then another: the liver, the brain, the nervous system, the imagination, all have been attacked, but the poor stomach alone seems to be capable of expressing its dissatisfaction. Numerous remedies have been suggested by persons who discovered them just as they were about ready to recover, and hence attribute their recovery to the remedy instead of the remedy resulting from recovery. Others who have tried them at the beginning of the voyage fail to derive any benefit. One writer says that he timed his breathing to the motion of the vessel, inspiring as it went up and expiring as it went down. One tells you to keep a full stomach, another advises a fast, and we have been benefited, we think, by one on one voyage, by the opposite course on the next. One advises you to drink freely of brandy, another to be temperate; one attributes his sickness to a glass of beer, another to champagne. A cabin boy once told us that he had derived great benefit from a towel tightly bound around the waist, and that during several of his earlier voyages he could do no work except when tightly bandaged. This remedy has been more fully elaborated recently, and one writer, Dr. Jobart, of Brussels, states that the belt should be made with gores so as to accurately fit the body and stiffened with whalebone like a corset, and worn as tightly as it can be borne. Ladies, he says, find less inconvenience from its use than gentlemen. Not long since we met a gentleman who said that he felt satisfied that he had derived benefit from the use of a straight pair of ordinary corsets which he purchased at a ladies' furnishing store just before sailing. The inconvenience, however, that a man experiences in lacing his own corsets and of concealing them while on, caused him to abandon their use. Ladies, on the other hand, who are accustomed to lace tightly on shore, usually lay aside their corsets at the first feeling of sea sickness, saying that they feel worse with them than without. If, however, they would resist the first impulse to unloosen their dress, it might prove in the end as advantageous for females as Jobart says it is for males. It is well known that sailors wear a belt which is drawn much tighter than most ladies' belts are worn.

Sailors who have been at sea for years will often sicken when an unusually rough sea is encountered. Men who have just returned from a four years' whaling voyage are terribly sick on a Sound steamer.