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THE SCIENTIFIC AMERICAN SUPPLEMENT,

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ANOTHER CASE OF EXPANDED REISSUE.

Mr. Justice Bradley, of the Supreme Court of the United States, delivered, January 9, an opinion which fittingly supplements the decision of the same court in the case of Miller against the Bridgeport Brass Company, lately noticed in these columns.

In 1863 Marcus P. Norton patented an implement for stamping letters. The patent was surrendered and reissued in 1864, and again in 1869, and again in 1870.

On the basis of the last reissue suit for infringement was brought against Postmaster James, of this city, by Christopher C. Campbell, who claimed to be assignee of Norton, the patentee. Other parties claiming an interest in the patent were made parties to the suit. The Circuit Court of the United States for the Southern District of New York rendered a decree in favor of the complainant. The defendant appealed to the Supreme Court, whose decision has now reversed that of the lower court, on the ground that the reissue patent, on which suit was brought, was void for the reason that it was not for the invention specified in the original patent.

In determining the invalidity of the claims upon which the suit was brought, Mr. Justice Bradley minutely reviewed the historical and mechanical development of canceling and post-marking stamps, tracing the gradual expansion of the Norton patent in its successive reissues until it was made to cover not merely devices in common use at the date of the original patent, but also those particular devices which Norton in the original patent professed to improve upon and displace. And, still more, it was made to cover the general process of stamping letters with a post-mark and canceling stamp at the same time, a process which was not even suggested in the original patent.

"The truth is," the court remarked on summing up the evidence, which is recited at great length, "that when he [Mr. Norton] made his original application, and got his original patent, all the documents show demonstrably that he did not intend to embrace any such broad invention. That was not the invention he sought to secure. Having obtained a patent for his specific device and combination, if he wished to claim the general combination, and had not already abandoned it by taking a narrower patent, he was bound to make a new application for that purpose. Patentees avoid doing this when they can, and seek to embrace additional matter in a reissue, in order to supersede and get possession of the rights which the public by lapse of time or other cause have acquired in the meantime. It is for this very reason that the law does not allow them to take a reissue for anything but the same invention described and claimed in the original patent."

It is much to be regretted that the Patent Office (owing to deficiency of means or the inability of examiners to handle properly the increasing volume of work put upon them by our fertile inventors) has not always been able to keep reissued patents within their proper bounds. In the case in hand the broad claims of the reissued patent embraced inventions which had been patented both in England and in this country prior to the patentee's application for the original patent.

As neither of the devices used by the defendant was covered by the complainant's patent, construed as the court considered it must be to have any validity at all, the decree of the Circuit Court was reversed and the cause remanded, with directions to dismiss the bill of complaint.

The moral of this case is substantially that brought out by the case of Miller *vs.* the Bridgeport Brass Company, already referred to.

THE SCIENTIFIC RESULTS OF THE JEANNETTE EXPEDITION.

Lieutenant Danenhower has sent forward a statement of the scientific results of the ill-fated Jeannette expedition. Notwithstanding the ship was keeled over and heavily pressed by the ice most of the time, all possible observations were kept up. Unfortunately the photographic collections and Lieutenant's Chipp's 2,000 auroral observations were lost with the ship. The naturalist's notes were saved.

The Jeannette entered the ice near Herald Island. The result of the first five months' drift was forty-five miles, the ice having a cycloidal motion. During the last six months the drift was very rapid.

The soundings were pretty even. They were 18 fathoms near Wrangell Land, which was often visible 75 miles distant. The greatest depth found was 80 fathoms, and the average 35. The bottom was blue mud. Shrimps and plenty of algological specimens were brought up from the bottom. The surface water had a temperature of 20° above zero. The extremes of temperature of the air were—greatest cold, 58° below zero, and greatest heat, 44° above zero. The first winter the mean temperature was 33° below zero. The second winter it was 39° below zero. The first summer mean temperature was 40° above zero. The heaviest gale showed a velocity of about 50 miles an hour. Such gales were not frequent. Barometric and thermometric fluctuations were not great. There were disturbances of the needle coincident with the auroras. The winter's growth of ice was 8 feet. The heaviest ice seen was 23 feet.

Three islands were discovered: Jeannette Island, small and rocky; May 16, 1881; lat. 76° 47′ north, long. 158° 56′ east. Henrietta Island, May 24; lat. 77° 8′ north, long. 157° 32′ east; extensive; many glaciers; animals scarce. Bennett Island, lat. 76° 38′ north, long. 148° 20′ east. This island was large, and there were found on it many birds, old horns, driftwood, and coal, but no seal or walrus. Great tidal action was observed. The coast was bold and rocky. The cape on the south coast was named Cape Emma.

THE RELATION OF THE GOVERNMENT TO PATENTEES.

In the recent decision of the Supreme Court in the case of James *vs.* Campbell, two or three points are incidentally touched upon which very materially affect the interests of patentees in their relation to the government, especially when their inventions are such as to make them useful or necessary to the government. One is a positive ruling that the government has no right to use a patented invention without compensation to the owner of the patent; another is a query as to the propriety and probable success of a suit against the officer using the invention; and the third is a plainly expressed doubt as to whether the Court of Claims has jurisdiction when a claim is based on an unauthorized use of an invention by a government officer.

On these points the opinion of the court runs as follows: "That the government of the United States, when it grants letters patent for a new invention or discovery in the arts, confers upon the patentee an exclusive property in the patented invention, which cannot be appropriated or used by the government itself without just compensation any more than it can appropriate or use without compensation land which has been patented to a private purchaser, we have no doubt. The Constitution gives to Congress power 'to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries,' which could not be effected if the government had a reserved right to publish such writings or to use such inventions without the consent of the owner."

After mentioning certain classes of inventions useful only to the government, and the usual course of the government in dealing with their inventors, the court continues: "The United States has no such prerogative as that which is claimed by the sovereigns of England, by which it can reserve to itself, either expressly or by implication, a superior dominion and use in that which it grants by letters patent to those who entitle themselves to such grants. The government of the United States, as well as the citizen, is subject to the Constitution, and when it grants a patent the grantee is entitled to it as a matter of right, and does not receive it, as was originally supposed to be the case in England, as a matter of grace and favor."

But while the government, through its officers, has no right to use a patented invention without payment, there would appear to be no statute forbidding an infringement of an inventor's patent by an officer acting for the government, nor any statute to determine the mode by which a patentee may seek compensation for the use of his invention without his consent. The court said:

"The most proper forum for such a claim is the Court of Claims, if that court has the requisite jurisdiction. As its jurisdiction does not extend to torts, there might be some difficulty as the law now stands in prosecuting in that court a claim for the unauthorized use of a patented invention, although, where the tort is waived and the claim is placed on the footing of an implied contract, we understand that the court has in several instances entertained the jurisdiction."

The question of the jurisdiction of the Court of Claims has never been brought before the Supreme Court, and the court naturally declined to pass upon it until properly called upon.

If, however, the Court of Claims has no jurisdiction in such cases; and if, as the Supreme Court now intimates, the inventor is not likely to obtain redress by suit against the officer by whom the infringement is made (no statutory provisions having been made for such a suit), there would seem to be here an occasion for early Congressional action.

The country has need just now of inventions of use chiefly to the government, notably in the matter of coast defense; and it is not very encouraging to inventors to know that in case of an unauthorized use of their inventions by a public officer, there are no assured means whereby they can stop the wrong or secure redress.

COMET SEEKING.

The number of comet seekers is so few, compared with the amplitude of the tracts of sky to be explored nightly, that it is probable that many celestial visitors escape detection. Several observers may be simultaneously at work upon one region, while larger areas may be left entirely unexplored. To prevent such unintentional waste of time and labor the *Science Observer* suggests a mapping out of the heavens and an allotment of special tracts to particular observers, who shall agree to explore them nightly. This wise plan is accompanied by a condition which, it strikes us, is not so commendable; and that is, that each recipient of a tract of sky for comet hunting shall agree not to trespass on the preserves of the rest of the comet seekers. It is quite proper to pledge a man to work his own field thoroughly; but if he has time and inclination to do more, why shouldn't he? And what is more likely to spur on a comet seeker to the ample and thorough sweeping of his sky tract as the thought that if he misses a comet his neighbor may chance to find it, and so convict him of negligence or incapacity?