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No. 376,

For the Week ending March 17, 1883.

Price 10 cents. For sale by all newsdealers.

SALE OF PATENTED MACHINES BY SHERIFF.

Wilder, the owner of a couple of county rights for a patent graining machine, became bankrupt, and his wooden ware factory, its machinery and effects, were sold at auction by the sheriff, including two of the graining machines which were in use in the establishment. Davis, the purchaser, having put the patented machines into use, Wilder brought suit for infringement, claiming that although the sheriff had authority to levy on and sell the machines, such sale did not carry with it the right to use the machines, as that right pertained to the patent, and could not be sold by the sheriff.

The case was tried in the United States Court, Western District of Pennsylvania, before Judges McKennan and Acheson, who held as follows:

"The purchaser of a machine from the patentee acquires no right in the patent itself, and needs none to enable him to enjoy his acquisition. By implication he is invested with a license to use that particular machine, and in the absence of express provision to the contrary such license passes with the machine to successive owners as an incident of proprietorship. That such is the law in case of a voluntary sale of a patented machine by the patentee is incontrovertible. But wherefore should the rights of the sheriff's vendee under an execution against the patentee be less than those of a purchaser directly from the patentee? The rule is that the purchaser at a sheriff's sale succeeds to the beneficial rights of the defendant in the execution to the property sold. (*Chambers v. Smith.*) But why should an exception be made where the subject-matter of sale is a patented machine? To deny to the sheriff's vendee the right to use such machine would in effect prevent its sale upon an execution at law as an operative apparatus, and practically withdraw it from the reach of the owner's execution creditors. The mischievous consequences to such creditors to which the doctrine contended for would lead (now that patented machinery has come into almost universal use) can hardly be estimated. The plaintiff's position is untenable. It is very true that the patent right itself, being incorporeal and vesting exclusively upon statutory grant, cannot be levied on at law, and is available to creditors only by proceeding, in a court of equity. (*Ager vs. Murray*, 105 U. S., 126.) But a patented machine is susceptible of manual seizure, and the unrestricted sale thereof does not involve the transfer of any interest in the patent.

"The conclusion, therefore, is that whatever right to use the patented machine a defendant in an execution may have passes with the machine when sold by the sheriff to his vendee. Hence it follows that the plaintiff has no just cause of complaint against these defendants." Bill dismissed.

EXPERT TESTIMONY.

The domain of science is far from being as exclusive as formerly. It was once a cloistered place where the asperities of life were supposed never to penetrate. All this has been changed. Its boundaries have been thrown down. Every day sees its most abstruse questions brought before the courts for their decisions. On its dogmas depend practical interests, which continually come before the courts for adjudication.

Our reference is to patent cases. Among them every conceivable principle of science is encountered as applied with more or less success to the problems of every-day life. Such cases, for the most part, have to be disposed of by judges. These officials are lawyers, graduates of the bar, and may be assumed not to have any scientific training. Patent cases, such as they have to decide, have two elements. One is the legal status of the invention, the other is the invention itself, its limits, and extent. The first element is to be represented and explained to the court by the counsel; the other element comes outside of his sphere of thought. A specialist is required to explain it. His testimony is taken and placed before the court. Such specialist is called an expert.

It has been settled by experience that a lawsuit is best conducted by a lawyer. From this feeling arose the proverb that the man who is his own lawyer has a fool for a client. A lawsuit has to be conducted by a cool, dispassionate mind. The one in charge of it must be on his guard against all sorts of contingencies. A lawyer in conducting a suit will find ample work in guarding and promoting its legal interests. To study the patented device by itself, and in view of the state of the art, the expert is most available.

It is very rarely that the right or wrong of a question that reaches the courts can be decided on its face. Two views can always be taken, and different theories entertained. This is most true of patent cases. With the progress of invention, and increase in the number of patents, the number of these suits increases. Patents approach each other nearer, decisions multiply, and the difficulty of assigning the limits to each invention increases. The limits are to be settled by a consideration of the mechanical or scientific features of the structure. To present to the court their views upon these features experts are employed. The opposing sides retain opposing experts. They testify under oath, as witnesses called for the information of the court. After direct examination they are cross-examined, and the plausibility of their theories thus tested. Their examinations are often very long, the questions asked them and answered, often at great length, reaching into the hundreds.

Thus the court has presented to it two opposite theories of the mechanical or scientific limits and features of the invention. Each of these theories has been stated on direct examination by opposing experts, and then sifted by a rigorous cross-examination to ascertain its consistency and relevancy. The *prima facie* case is first made out, followed by the defendant's proofs, and then by the complainant's proofs in rebuttal. The experts' evidence is "boiled down" in the final briefs and oral arguments, and so presented to the court, and the case is closed. The opposite theories reach the court in the most assimilable form; his task of judging between them is a comparatively easy one.

The experts, it will be seen, perform a most useful and valuable office. They digest a mass of patents, couched often in very obscure language; they seize upon all the points which can benefit their client, and bring them strongly forward. They dismiss all irrelevant matter, only considering those parts of each patent which apply to the case. Finally, in giving their testimony they have to keep in mind the fact that they are to be subjected to a severe cross-examination, and that any stretching of facts will in the end tell to the disadvantage of the side they are espousing. This is outside of the obligations imposed on their conscience by their oath.

If a thoroughly bad and unjust case is presented to an expert, he should refuse to accept a retainer. But this happens less frequently than might be supposed. Every case has some right on its side, and this should be presented as strongly as possible. Very few cases arise which can be rejected as unjust on mere inspection.

THE RED SPOT ON JUPITER.

At the first regular meeting of the American Astronomical Society, held in the directors' room in the Brooklyn Academy of Music, on March 5, the topic for discussion was the "Physical Changes in Jupiter." A paper on the "Red Spot on Jupiter" was expected from Mr. S. V. White, the president of the society, and there was considerable disappointment over his inability to be present.

The remarks of the members were confined to the recent changes in Jupiter. Messrs. Parkhurst and Serviss described their observations of the great red spot which made its appearance on Jupiter's disk in the summer of 1878, and which within a few weeks has almost entirely disappeared. Others took part in the discussion.

The general opinion expressed was that Jupiter is a world which is yet in a very early stage of its geological history, and that in the great red spot, and in some other remarkable spots which have made their appearance upon its surface, evidences are seen that the planet either has already a solid or liquid surface, or that the formation of such a surface has begun. Several theories to account for the great red spot, which was upward of 30,000 miles long by 6,000 or 8,000 miles wide, were suggested.

One theory was that some volcanic action may have been taking place, which threw up into the atmosphere a mass of smoke and erupted materials which formed the red spot. Another theory was that the crust of the planet where the spot appeared may have been exceptionally heated, so that the atmosphere above it was kept free from clouds. A third theory regarded the red spot as possibly a solidified mass thrust up through its gaseous and liquid surroundings, and forming, perhaps, the nucleus of one of the future continents of the giant planet. The difference between rate of rotation of the red spot and the white spot in the southern belt was referred to. The red spot overtakes the white spot once in 34 days.

The society meets on the first Monday in April in the physical laboratory of the Packer Institute. At that time special papers will be read upon the connection between sun spots and terrestrial meteorology.

SAFETY AT SEA IN A FOG.

Mr. John F. Schultz, of this city, has conceived the idea of preventing collisions at sea in a fog, by means of balloons. He proposes that all vessels should be provided with balloons of sufficient capacity to take a person high enough above the fog to see balloons from other vessels that may be in the vicinity.

The relative positions of the different vessels are then communicated to the captain or other officer of the ship, and by signals between the lookout men in the balloons, the direction of the vessels is so controlled as to avoid collision.

The inventor does not state how the man in the balloon is to communicate with the officers of his ship, but it is presumed by an electric wire attached to the cable line by which the balloon is fastened to the ship's deck. Mr. Schultz does not confine himself to the idea of using balloons on ships alone for preventing collisions, but he thinks lighthouses, life saving stations, etc., should be provided with balloons properly manned to warn vessels of their approach to land. The inventor of the balloon collision preventing idea suggests that the present year, 1883, is a most appropriate time for introducing his system, as it marks an event in ballooning, it being just one hundred years ago that Montgolfier introduced his balloon to the world.

Patents in Congress.

Congress adjourned on the 4th of March, and all the schemes for the alteration of the patent laws, trespass upon inventors' rights, extension of defunct patents, all failed. Inventors may therefore breathe freely for a year at least, and go ahead with the development of new and wonderful discoveries.