

RECENT DECISIONS RELATING TO PATENTS.
United States Circuit Court.—Eastern District of
Pennsylvania.

HATCH vs. ADAMS.

A sale of patented articles in the ordinary course of trade outside the territorial limits to which the right of sale is restricted by the patentee's grant is unwarranted.

McKenna, C. J.:

This case involves a single question, to wit: Has a purchaser of patented articles from a grantee of an exclusive right to manufacture and sell under the patent in a specified part of the United States the right to sell the articles, in the course of trade, outside the designated limits covered by the grant to his vendor?

In the absence of authority to the contrary, we would feel constrained to answer this question in the negative. While the patent act secures to an inventor the exclusive right to manufacture, use, and sell his invention, it authorizes him to divide up his monopoly into territorial parcels, and so to grant to others an exclusive right under the patent to the whole or a specified part of the United States. Undoubtedly the grantee would take and hold the right conveyed subject to the limitations of the grant, and hence he could not lawfully exercise it outside of the territorial limits to which he was restricted. It would be illogical, then, to assume that he could confer upon a vendee a privilege with which he was not invested, and which he could not exercise himself. It has been held, however, that an unrestricted sale of a patented article carries with it the right to its unlimited use; but the reason upon which this rule rests involves a plain distinction between the right to use and the right to manufacture and sell an invention, and is inapplicable to their definition.

In *Adams vs. Burke* (17 Wall., 455), Mr. Justice Miller thus explains the import and scope of the decisions on the subject:

"We have repeatedly held that where a person had purchased a patented machine of the patentee or his assignee this purchase carried with it the right to the use of that machine so long as it was capable of use, and that the expiration and renewal of the patent, whether in favor of the original patentee or his assignee, did not affect this right. The true ground on which these decisions rest is that the sale by a person who has the full right to make, sell, and use such a machine carries with it the right to the use of that machine to the full extent to which it can be used in point of time. The right to manufacture, the right to sell, and the right to use are each substantive rights, and may be granted or conferred separately by the patentee. But in the essential nature of things, when the patentee, or the person having his rights, sells a machine or instrument whose sole value is in its use, he receives the consideration for its use, and he parts with the right to restrict that use. The article, in the language of the court, passes without the limit of the monopoly; that is to say, the patentee, or his assignee, having in the act of sale received all the royalty or consideration which he claims for the use of his invention in that particular machine or instrument, it is open to the use of the purchaser without further restriction on account of the monopoly of the patentee."

The only question in this case, as shown by the pleadings, involves the right of the purchaser of coffin lids, bought within a radius of ten miles from Boston, the right to make, sell, and use which was restricted to that circle, to use them outside of it. The court sustained the right, saying—

"That so far as the use of it was concerned, the patentee had received his consideration, and it was no longer within the monopoly of the patent. It would be to engraft a limitation upon the right of use not contemplated by the statute, nor within the reason of the contract, to say that it could only be used within the ten mile circle. Whatever, therefore, may be the rule where patentees subdivide their patents, as the exclusive right to *make* or *sell*, within a limited territory, we hold that in the class of machines or implements which we have described, when they are once lawfully made and sold, there is no restriction upon their *use* to be implied for the benefit of the patentee or his assignees or licensees."

Even with this careful limitation of the judgment of the court, Justices Bradley, Swayne, and Strong dissented, insisting that the locality of the use, as well as of the manufacture and sale, of the patented article, was restricted by the grant, and that it ought accordingly to be enforced. It may be said, then, that while this case, with others which precede it, determine, for peculiar reasons, that the lawful sale of a patented article carries with it the right to the unrestricted use of such article as to time or locality, it is the fair import of them that no other "substantive right" conferred by the patent is thereby affected.

Our attention has been called to two cases decided by the circuit court which demand a brief notice.

The first of these was *Adams vs. Burke* (4 Fisher, 392). It was decided by Judge Shepley, and his statement of the law is certainly broad enough to cover the right to sell, as well as the right to use, a patented article outside of a restricted locality; but only the latter right was involved in the case. What was said then by the learned judge touching the right to sell was clearly *obiter*, and when the case reached the Supreme Court (*Adams vs. Burke*, 17 Wall., *supra*) that court expressly treated the right to manufacture and sell and the right to use a patented article as distinct substantive rights, and decided the law only as it related to the exercise of the latter right.

The remaining case (*McKay vs. Wooster*, 2 Sawyer, 373) was ruled upon the opinion of Judge Shepley in *Adams vs.*

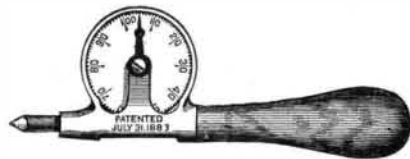
Burke, evidently upon the hypothesis that an extra-territorial sale of a patented article was a necessary subject of discussion.

But with this scrutiny of these cases we are unembarrassed by the rule of comity, which would lead us to conform our own judgment to that pronounced by the circuit court elsewhere, for the sake of uniformity of decision, and in view of the state of the law as it has been expounded by the Supreme Court we feel authorized to express our own judgment that a sale of patented articles in the ordinary course of trade outside the territorial limits to which the right to sell is restricted by the patentee's grant is unwarranted. There must, therefore, be a decree in favor of the complainant, with costs.

AN IMPROVED SPEED INDICATOR.

The accompanying cut represents a very convenient little instrument for registering the speed of any revolving piece of machinery. The advantage claimed for it over the ordinary indicator is that it will register up to 2,500 revolutions, those usually sold only counting up to 100. This is accomplished by having two dials, arranged back to back, one of which counts up to 100 and the other up to 2,500, the two being connected by suitable gearing. It is used by pressing the hardened steel point of the spindle of the instrument against the center of the revolving shaft of which it is desired to obtain the speed; one dial shows the number of revolutions up to 100, and the second shows the number of revolutions the first has made, or the number of hundreds.

This indicator has been patented by Mr. C. H. Fowler,



FOWLER'S IMPROVED SPEED INDICATOR.

and is now being introduced by Messrs. Goodnow & Wightman, of Boston, Mass., to whom communications should be addressed.

Subjects for Papers.

The Council of the Institution of Civil Engineers, London, invite original communications on any of the subjects included in the following list, as well as on other analogous questions. For these, if approved, they will award premiums, arising out of special funds bequeathed for the purpose, the particulars of which are as follows: 1. The Telford Fund, left "in trust, the interest to be expended in annual premiums under the direction of the Council." This bequest (with accumulation of dividends) produces 250 pounds annually. 2. The Manby Donation, of the value of about 10 pounds a year, given "to form a fund for an annual premium or premiums for papers read at the meeting." 3. The Miller Fund, bequeathed by the testator, "for the purpose of forming a fund for providing premiums or prizes for the students of the said Institution, upon the principle of the 'Telford Fund.'" This fund (with accumulations of dividends) realizes 160 pounds per annum.

Out of this fund the Council have established a scholarship—called "The Miller Scholarship of the Institution of Civil Engineers"—and are prepared to award one such scholarship, not exceeding 40 pounds in value, each year, and tenable for three years. 4. The Howard Bequest, directed by the testator to be applied "for the purpose of presenting periodically a prize or medal to the author of a treatise on any of the uses or properties of iron, or to the inventor of some new and valuable process relating thereto, such author or inventor being a member, graduate, or associate of the said Institution." The annual income amounts to rather more than 16 pounds. It has been arranged to award this prize every five years, commencing from 1877. The next award will therefore be made in 1887. The Council will not make any award unless a communication of adequate merit is received, but will give more than one premium if there are several deserving memoirs on the same subject. In the adjudication of the premiums, no distinction will be made between essays received from any one connected with the Institution (except in the cases of the Miller and the Howard bequests, which are limited by the donors) or from any other person, whether a native or a foreigner.

List.—1. Improved Instruments for Surveying and Leveling.

2. Machines and Measuring Apparatus for Testing Metals and the Equipment generally of Mechanical Laboratories.

3. The Mechanical Properties of Cold Rolled Metal as compared with Hot Rolled Metal, and on the Cold Rolling of Iron Shafting, as practiced in America.

4. The effect produced on Steel by Tempering in Oil and in Water.

5. The Manufacture, Strength, and other Properties of Castings of Malleable Cast Iron and Cast Steel.

6. The Thermic Properties of Metals commonly used in the Arts, especially with respect to Conductivity and Diathermancy at high temperatures.

7. The Manufacture of Steel-faced Armor Plates.

8. Iron Foundry Practice as regards Melting, with Results

obtained from various Forms of Cupola, Pressures of Blast, etc.

9. The various Systems of Brickmaking by Machinery.

10. Gaseous Fuel, and the Residual Products of Gas Making.

11. The Manufacture of Artificial Fuel from Small Coal.

12. Steam Boiler Furnaces, with Reference to Fuel Consumption and to the Prevention of Smoke.

13. The Principles to be observed in the Laying-out, Construction, and Equipment of Railways in New Countries.

14. The Theoretical and Practical Effect of Gradients and of Curves on the Speed of Railway Trains.

15. The Application of the Compound Principle to Locomotive Engines.

16. Locomotive Performances, with regard to Weight, Power, Fuel Consumption, and Dynamometer Returns.

17. The comparative merits of Straight Axles and of Crank Axles for Locomotive Engines.

18. The Design and Construction of Locomotive and Carriage Sheds on Railways.

19. Mechanical Power on Tramways, including Steam, Compressed Air, Electricity, Cables, etc.

20. The Principles involved in the Conservation Improvement of any Tidal River or Estuary.

21. Descriptions of recent Graving Docks, Gridirons, and Floats.

22. Promenade and other Piers; with reference to the effect of Sea Water on Wrought and Cast Iron Structures, and the best Means of Preserving the same.

23. The Modern Construction of Marine Engines.

24. On Built Crankshafts for Marine Engines, and on the Liability of Crank and Screwshafts to Fracture.

25. Vessels for Inland Navigation, with the mode of working them by Sternwheels, Screws, etc.

26. The Methods of Removing Rock under Water.

27. Cranes and other Lifting Machinery, employed either in the Construction of Large Works, or for other purposes.

28. Dredging Machinery for Small Harbors, and for Drainage and Irrigation Canals.

29. The Ventilation of Sewers, with Summary of Experiments as to the Motion, Pressure, etc., of Gas in Sewers.

30. Filter Presses for separating Fluids in Semi-fluids, particularly for the Treatment of Sewage Sludge.

31. Appliances for the rapid Shipment of Coal, with a comparison of different methods.

32. Winding Machinery, Expansion Gear, and Balancing Apparatus, and the cost per ton of winding under different conditions and varying depths.

33. Underground Haulage, especially on the application of Compressed Air and of Electrical Power.

34. The methods employed in securing large and irregular shaped Mineral Workings.

35. Gold Quartz Crushing and Amalgamating Appliances.

36. The Manufacture and Desilverization of Lead.

37. Electro Motors; their theory, practical construction, efficiency, and power.

38. On Gearing for Dynamo Machine Motors, and other high speed Machines.

39. The Transmission and Distribution of Electricity over large Areas for Lighting and for Motive Power, including Electric Railways, Hoists, etc.

40. Electrical Measuring Instruments.

41. Submarine Telegraph Cables, their manufacture, laying, and repair, including deep sea sounding.

42. Telferage, or the Automatic Electrical Transport of Goods and Passengers.

43. The Measurement of Work by Dynamometers, with descriptions of the apparatus.

Heart Beats.

Dr. N. B. Richardson, of London, says he was recently able to convey a considerable amount of conviction to an intelligent scholar by a simple experiment. The scholar was singing the praises of the "ruddy bumper," and saying he could not get through the day without it, when Dr. Richardson said to him: "Will you be good enough to feel my pulse as I stand here?" He did so. I said, 'Count it carefully; what does it say?' 'Your pulse says 74.' I then sat down in a chair, and asked him to count it again. He did so, and said, 'Your pulse has gone down to 70.' I then lay down on the lounge, and said, 'Will you take it again?' He replied: 'Why, it is only 64; what an extraordinary thing!' I then said: 'When you lie down at night, that is the way nature gives your heart rest. You know nothing about it, but that beating organ is resting to that extent; and if you reckon it up it is a great deal of rest, because in lying down the heart is doing ten strokes less a minute. Multiply that by sixty, and it is six hundred; multiply it by eight hours, and within a fraction it is five thousand strokes different; and as the heart is throwing six ounces of blood at every stroke, it makes a difference of thirty thousand ounces of lifting during the night. When I lie down at night without any alcohol, that is the rest my heart gets. But when you take your wine or grog you do not allow that rest, for the influence of alcohol is to increase the number of strokes, and instead of getting this rest, you put on something like fifteen thousand extra strokes, and the result is, you rise up very seedy and unfit for the next day's work till you have taken a little more of the 'ruddy bumper,' which you say is the soul of man below.'—*Gaillard's Journal*