### THE SELDEN PATENT SUIT.

In our issue of August 4, we commented editorially on the suits for patent infringement then about to be commenced by the Electrical Vehicle Company against the foremost manufacturers of gasoline carriages in this country. The case was recently heard in the United States Circuit Court for the Southern District of New York, on a demurrer filed by the Winton Motor Carriage Co., the principal defendants in the first suit. It will be remembered that the Electrical Vehicle Company purchased the patent which it now holds from George B. Selden, a patent attorney, who filed an application on May 8, 1879, for a "road engine," driven by a hydrocarbon motor, and who received his letters patent from the government on November 5, 1895. The long interval between the filing of the application and the granting of the patent was due primarily to skilful maneuvering on the part of Mr. Selden. As a patent attorney he knew that under the law which was in force up to 1897, an application for a patent could not be considered to have been abandoned if prosecuted within two years after the last official action. By complying with the letter of the law, Mr. Selden managed to delay the granting of his patent for sixteen and one-half years.

The record of the case in the Patent Office shows that the application was rejected May 31, 1879, and that an amendment was filed May 26, 1881, nearly two years later. A second rejection on June 17, 1881, was followed on May 15, 1883, by another amendment; and a third rejection on May 26, 1883, was met by an amendment filed on May 18, 1885. An official letter sent to Mr. Selden on June 15, 1885, was not acted upon until June 13, 1887, only two days before the expiration of the two years of grace allowed by the statute. Another rejection on June 21, 1887, was answered by a letter dated April 13, 1889, and by an amendment filed June 10, 1889. Mr. Selden was required on June 14, 1889, to furnish a "smooth copy" of the specification prior to issue; but although the application was otherwise ready for allowance, it was not until June 5, 1891, nine days before the statutory limit, that the substitute specification was filed. An official letter of July 1, 1891, demanded a new oath prior to issue; but it was not until June 28, 1892, that Mr. Selden obeyed the order. The case was then transferred to another examiner, by whom some of the claims previously allowed were rejected on July 29, 1893. The next amendment was filed on April 1, 1895. The patent was finally granted on November 5, 1895, just at about the time when the motor carriage began to make its appearance in the streets of our large cities. All of the nineteen original claims were canceled.

In every instance the tardiness seems to have been due to the action of the applicant rather than to any delay on the part of the Patent Office. In extenuation of the long interval between the application and final allowance, it may be urged that, had Selden received a patent in 1879, he could hardly have derived any benefit from the practical application of his invention, in view of the state of the automobile industry at the time. The scope of Selden's claims and the fact that he seemed to be a pioneer in his particular field of activity—indeed, the Commissioner of Patents has even stated such to be the case—induced the Columbia and Electrical Vehicle Company to purchase the patent.

The nature of Selden's invention may be seen from the accompanying drawings, reproduced from the letters patent. Fig. 1 is a side elevation of the carriage; Fig. 2 a front elevation, and Fig. 3 a vertical section through the engine employed.

The motor, *L*, is mounted on the front truck, with the cylinders arranged transversely to the driving-shaft and the air-reservoir, *O*. The carriage axle is driven from the motor by the gears, *M N*. "Any form of liquid-hydrocarbon engine of the compression type may be employed," says Mr. Selden in his specification. In the carriage shown, however, air is compressed into the reservoir, *O* (Fig. 3), by an air pump, *d*, and admitted to the working-chamber, *R*, by a valve, *f*, operated by a cam-shaft, *S*. Gearing, *M*, is employed to drive the cam-shaft. As air is admitted to the working-chamber a quantity of liquid hydrocarbon, taken from the tank, *U*, is injected into the combustion chamber, *T'*, by the pump, *g*. The products of combustion are ejected from the pipe, *X*, by the opening of the valve, *V*, through the medium of the cam-shaft, *S*.

A clutch, *Y*, might be interposed between the motor and the gearing, *M N*, in which case the cam-shaft, *S*, was to be positively driven. By means of this clutch Selden was enabled to throw the driving-axle in and out of gear, an arrangement now used on every gasoline carriage. Selden saw the inconvenience of extinguishing the ignition flame or of closing the exhaust valve in order to bring the carriage to a standstill. The necessity of starting up the motor by hand rendered the provision of a device whereby the carriage could be stopped, although the motor were still in operation, of no little importance. He, therefore, introduced the clutch, which, it may be safely said, constitutes one of the cardinal elements of his invention.

The traction wheels, *B*, of the carriage are attached to the axle by clutches, splined on the driving-shaft and held in mesh by springs in order to enable the wheels to rotate independently and to facilitate the turning of corners. The arrangement, though crude, is not a bad substitute for our modern differential

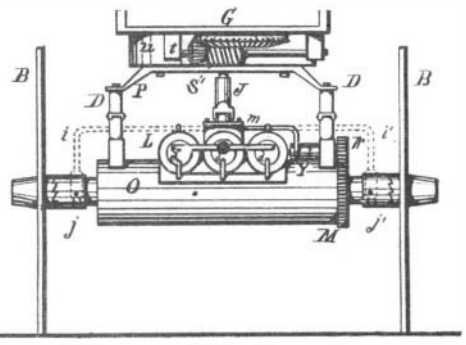


Fig. 2.—FRONT ELEVATION OF SELDEN CARRIAGE.

gear. The clutches are actuated by hand-wheels, *I*. The air inlet, *d'* (Fig. 3), is likewise controlled by one of the hand-wheels, through the medium of gears, *e'*. The inlet supply valves between the tank, *U*, and the pump, *g*, are opened and closed by a cord, *e'*, connected with a hand-wheel, *I*.

The steering apparatus consists merely of a worm-gearing driven from the hand-wheel, *A*.

In order to reverse the vehicle, Selden intended either to employ the system of reversing gears used in connection with the feed-screws of engine-lathes, or preferably to use a crane-neck, whereby the driving-

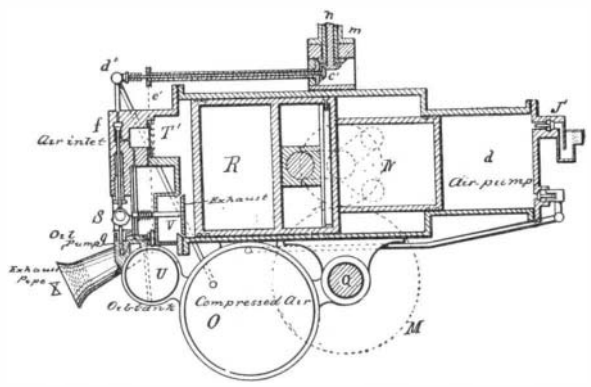


Fig. 3.—VERTICAL SECTION THROUGH MOTOR.

wheel could be turned completely around underneath the body.

From this brief description of Selden's "road engine," it is evident that almost every important feature of the modern petroleum automobile is included in the operative mechanism. The main points are covered in the first and broadest of the claims, which reads:

"The combination with a road locomotive, provided with suitable running gear, including a propelling wheel and steering mechanism, of a liquid hydrocarbon gas engine of the compression type, comprising one or more power cylinders, a suitable liquid-fuel re-

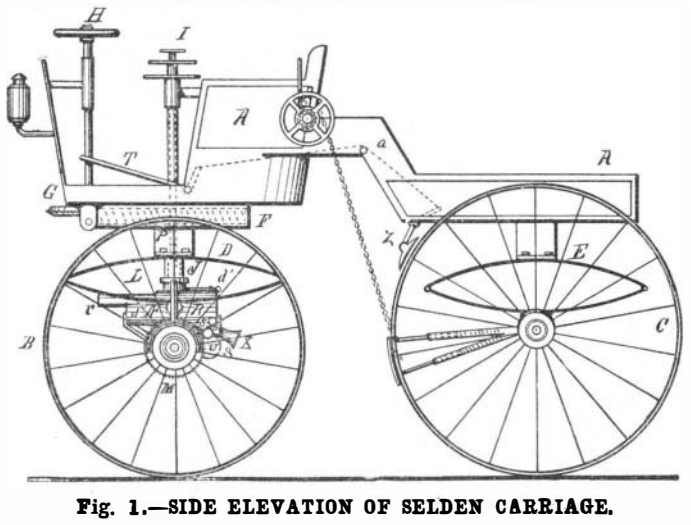


Fig. 1.—SIDE ELEVATION OF SELDEN CARRIAGE.

ceptacle, a power shaft connected with and arranged to run faster than the propelling wheel, an intermediate clutch or disconnecting device, and a suitable carriage body adapted to the conveyance of persons or goods."

Whether the Selden patent be valid or not is a question which can be definitely answered only by the courts. Certain it is, that if the charge of infringement be sustained, the shops of many an automobile maker will be closed. In the demurrer filed by Mr. A. S. Pattison for the Winton Motor Carriage Co. et al., it was urged that the patent on its face was void for lack of patentability; that the specification conceded that all the elements of the combinations of the claims were old; that steam-engines had been long employed to propel road wagons; that liquid-fuel had been used to generate steam; and that gas engines were old and their use, as well as that of other motors, had been proposed for tram cars and like vehicles. It was argued that the substitution of a gas engine for a steam engine to propel a vehicle did not require inventive faculty. In his decision Judge Coxe stated that the invention, if there was one, had been made very early in the history of motor carriages and that judicial notice would be taken of the fact that, prior to May, 1879, the art of propelling vehicles by motors was in its infancy. "If the thousands of steam and electric 'automobiles' which now are constantly perambulating the streets of every large city had been available as models, the task of constructing a successful 'gasmobile' would have been less difficult. In other words, the fact that Selden's work was done over twenty-one years ago should not be lost sight of in estimating the value of his achievement."

"Upon the present record he must be regarded as the first to construct a road locomotive provided with a liquid-hydrocarbon gas-engine of the compression type so arranged as to leave the platform of the carriage unobstructed." Continuing in his analysis of the case the learned judge proceeds to argue that "on demurrer it must be assumed that Selden has made a self-propelling vehicle which is capable of traveling on ordinary country roads, going up and down hill, and making long distances without replenishing its fuel receptacle. Surely, it required invention to construct such a machine." The judge furthermore questioned the fairness of the assertion that "in no circumstances could it involve invention to create the patented machine because similar machines had been propelled by electricity and steam, and machines, differing radically in structure and purpose had been propelled by gas." He thought that the complainants were entitled to a more liberal interpretation of the patent than that contended for by the defendants and was clearly of the opinion that the immense weight of authority sustained the proposition that the patent could not be held invalid on demurrer.

### Patent and Trade Mark Rights in Cuba.

The Military Governor of Cuba has recently issued an order which is of the highest importance to owners of United States patents or trade marks registered in Cuba, and to any person or concern now having a commercial or manufacturing establishment in Cuba, as well as to those who may contemplate an extension of their business to that island by local agencies.

The order prescribes that every owner of a Cuban commercial or industrial establishment, as well as every owner of Cuban patent or trade mark rights, shall have his name and other particulars entered in the Mercantile Register within eight days following the commencement of his business or the opening of his establishment. Presumably, as regards patents or trade marks, the period of eight days will run from the day on which the patent or trade mark right is secured in Cuba. For failure to register within the period named, the merchant or manufacturer will be fined twenty-five dollars United States money. So far as existing establishments, patent and trade mark rights are concerned, the month of November, 1900, is allowed for having the requisite entry made, but from December 1, 1900, the eight-day period above mentioned will obtain.

The order further provides that sales, assignments, transfers or leases shall not prejudice a third party as long as they are not recorded in the Mercantile Register. It also allows creditors whose names are entered upon the said register to record, under certain circumstances, the names of their debtors together with the amount of each debt, and on the other hand the courts may order attachments to be recorded in said register.

The purchaser of a commercial or industrial establishment or of a patent or trade mark right becomes jointly and severally liable with the party who made the transfer for all debts that shall have been registered or attachments that shall have been recorded until the time when the sale or transfer was recorded.

The reason given for the issue of the order (of which we have stated only the main provisions) is the inadequacy of the Cuban laws to protect creditors, since it appears that the purchaser of a business is not (unless bad faith or collusion can be proved) responsible for the debts contracted for the business by the party making the transfer. This state of affairs has, of course, materially interfered with the credit of retailers throughout the island, and the present order seeks to establish better conditions.

THE Spanish-American Congress opened November 8, at Madrid. About thirty South American delegates arrived, and all the South American republics, except Bolivia, have accepted the invitation, and Portugal will also be represented. The influence of Spain will not predominate, as each state is represented by only one vote.