Woodworth Planing Machine.--Important Decision.

The Pittsburg Gazette, of the 16th Dec., contains the following account of an application for injunction, and the charge of Judge Grier. It contains a great deal of information with which every patentee should be acquainted :—

In the Circuit Court of the United States, the Western District of Pennsylvania, before Hon. Robert C. Grier and Thomas Irwin.

The case was one of several bills of Chancery, filed against owners of Planing Machines in the city of Pittsburg. The causes were conducted on part of Complainant by Messrs. Stanton and Shaler, and for Defendants by Dunlop and Loomis.

On a motion by complainant, for interlocutory injunctions in this and other cases, and by Defendants for issues to be tried by a jury, the Court delivered the following opinion :

Opinion of the Court—Grier, J.—There is no material difference in the several cases which have been argued together on the present motions.

The Complainant, Bloomer, claims as assignee of the patent granted to William Woodworth in Dec., 1828, under the extension of the same to his administrator by the act of Congress of the 26th of February, 1848. It is alleged in the Bills, and admitted in the answer, that the machines used by Defendants (the use of which is now sought to be enjoined) were made under licenses duly derived from the patentee or his assignees, previous to December, 1848. But it is contended that the purchasers of these machines, under the original patent, have no right to use them during the extension of the term of the patent since December 1849.

The Defendants have filed their answer denying the rights of the complainant, and averring that W. Woodworth was not the original inventor of the machine patented to him in 1828; and also that the patent of 1828 which was extended by the Act of 1845, has been surrendered and cancelled, and that the renewed patent taken out by the administrator of Woodworth is not for the same invention. In support of these allegations they have produced the deposition of a witness, who swears that he invented and put into operation the same machine, previous to the patent and invention of Woodworth; and have shown the record of a suit lately tried in the Circuit Court of the United States, for Maryland, before the Chief Justice, in which the Jury found "that the patent issued to the said Wm. Woodworth's Administrator, on the 8th day of July, 1845, is not for the same invention as the patent above mentioned, issued to W. Woodworth in 1828."

As a general rule, when equity of the Bill and the title of Complainant is denied unequivocally in the answer, an interlocutory injunction will not be granted, or affidavits heard to contradiet the answer, unless in cases of waste, or where some irreparable damage might be inflicted before the final hearing.

I have said, on a former occasion, and still think, that it is time that the question as to the originality of this patent to Woodworth should be considered as settled, after 21 years of possession and successful litigation in almost every State of the Union. It is exceedingly vexatious, both to the patentee and the court, to be compelled to repeat a process which costs so much time, labor, and expense. Experience has shown that few patents have ever been issued in the United States for any invention, which witnesses of foreign or domestic origin cannot be found to impeach; but it has also shown that, however the discovery of such witnesses may fortify a defendant in swearing to the fact in his answer and denying the title of the patentee, they are usually found to be but broken reeds by those who lean upon them, in a contest before a jury, where their testimony is fully sifted and weighed.

If the present application for an injunction were resisted on this ground alone, under the special circumstances attending this patent, I should feel much disposed to grant it, notwithstanding the denial of the answer, and the affidavit supporting it.

2d. But (besides a doubtful question of law, which I shall presently notice,) there is another question of fact, affecting the title of complainant in these cases, which has arisen lately and peculiarly affects the validity of this patent, as extended by the act of 1845. That act extended the patent granted to Woodworth in 1828, seven years from December 1849. This patent, thus extended, was afterwards surrendered by the Administrator of Woodworth, and a new patent taken out. The defendants swear, in their answer, that this renewed patent (on which the bill is founded) is not for the same invention which was contained in the original of 1828, and contend that complainant cannot claim under a surrendered and cancelled patent—nor upon the new one unless it be for the same invention, which, after a full and fair trial, it has lately been decided not to be. In answer to this objection, it is stated that the Supreme Court have decided this question in the case of Wilson vs. Rosseau, (4 Howard, 688.) But this appears to be a mistake; the Court in that case decided only that the renewed patent was not void for uncertainty, ambiguity, or multiplicity of claim, as question of law on the face of the patent. Whether it was for the same invention is a question of fact, which could not be and was not submitted to them, by the certificate of division of opinion from the Circuit Court.

3d. There is a question of law, also, with regard to the complainants' right to these injunctions, the decision of which I am not prepared to anticipate, before the final hearing of the case. Notwithstanding the authority produced, my mind is not yet clear from doubt as to the construction of this Act of Congress of 1845, extending the patent of Woodworth. If an inventor, in the enjoyment of his monopoly, sells to me his machine, it is mine absolutely in full property, with a right to use and enjoy it for all future time, at least such is the supposition and belief of every person who buys an article from its owner, whether it be patented or not. I can well believe that Congress might extend the term of his patent, to a meritorious inventor, that he may continue to have the profits of the monopoly of making and vending the patented articles, without intending to destroy those he has already sold. The former may be a just and proper exercise of the power of Congress; the latter a tyrannical abuse of it, such as should never be imputed to the legislature, unless expressed in positive and express language. and so far as this question has been passed upon by the Supreme Court such appears to be their opinion also.

In this case of Rosseau vs. Wilson, already cited, Mr. Justice Nelson (who delivered the opinion of the Court), in speaking of the 8th Section of the Act of 1836, which authorized the extension of a patent for seven years, says: 'By the report of the Commissioner of patents, it appears that 500 patents, issued in the year 1844, for the fourteen last years, the average issue, yearly, exceeded this number, and embraced articles to be found in use in every department of labor or art, on the farm, in the workshop and factory. These articles have been purchased from the patentee and gone into common use. But if the construction against which we contend should prevail, the moment the patent of either article is renewed, the common use is arrested by the exclusive grant to the patentee. A construction, leading to such consequences, and fraught with such unmixed evil, we must be satisfied was never contemplated by Congress, and should not be adopted unless completed by the most express and positive language of the statute."

That Congress intended, in the present case, to confer on the patentee any greater favor than was conferred by the extension under the act of 1836, does not directly appear. If the construction contended for by Complainant be correct, he can call upon this Court to send the Marshal and break the machines to pieces, which have been purchased from the patentee or his assigns. To injoin the use of them amounts to much the same thing. There is certainly "no express and positive language in the statute," conferring a right of such doubtful justice on the patentee.

In such a case, I am not disposed, (on a mere interlocutory motion and before the parties have had a full and final hearing,) to exercise the high and dangerous power (if exercised indiscreetly) of issuing an injunction, which will put the defendants and their business entirely at the mercy of Plaintiff, without the chance of a fair and full trial.

They do not stand before the Court in the attitudes of pirates of complainant's invention, but rather as resisting what they believe to be an oppressive construction of an act of Congress, and one never contemplated by it.—They are amply able to pay any damages which may be assessed, in case of a recovery against them—and the Complainants may have an order on them to keep an account,—but the injunctions are refused.

As to ordering the issues requested by the defendants, we would remark that the fact that these machines were purchased from the patentee by the defendants, works no estople, either in law or equity, to their denial of the originality of the invention, under the circumstances of the case. They have a right to be heard, on the defence set up and sworn to in their answers. Whether it should be tried by the court, or an issue sent to a jury, depends on the nature of the case. The questions of originality and identity are questions of fact, and the testimony will, as usual, be conflicting and contradictory.

Such questions are best tried by a jury, with the witnesses before them in person. Issues are therefore ordered to be tried at the next May Term.

The record of the case of Wilson, *et al*, vs. Brown, in the Circuit Court of the United States for Maryland, affords an excellent precedent for the form in which the order should be made, and which the clerk (with the assistance of the counsel,) is directed to follow.

Irwin, J.—Without assenting, at this time, to the reasons and inferences contained in the points marked 2 and 3, in the above opinion, I concur in refusing the injunctions, and directing the issues.

To Make Textile Fabrics Water-Proof.

PHILADELPHIA, Dec. 30, 1850.

MESSRS. EDITORS.—In No. 15, Vol. 6, of your paper appears a paragraph headed "New Water-Proof Discovery," descriptive of a discovery made by a Mr. Martin, of Cockermouth, England, which certainly is one of the greatest of the age. The purport of this epistle is to inform you that the procees of rendering cotton, silken, and woollen cloths perfectly impervious to moisture (yet at the same time allowing perspiration, or the breath, to pass freely through any fabric so acted upon), was practiced by me in Yorkshire, England, several years ago, and also by those to whom the composition, *en masse*, was sold, and it is very likely that said Mr. Martin has got at some portion of the receipt through one of the workmen then employed, who migrated to Cockermouth—part of the said receipt being known to the foreman.

I left England in April last, for this city, where I intended establishing the water-proofing business—but on my arrival here I met with an opportunity of employing my time and capital in another direction, consequently, it has not been made known to the public.

On reading your announcement I at once set about preparing some cloth, and I took a lady's thin woollen scarf, of fine quality, having all variety of colors on it—such as scarlet, blue, black, green, and white—and having undergone the operation, which took half an hour, I took the kettle containing boiling water, heated to 200° Fahr, from off the fire, and in the presence of witnesses, poured one pint therefrom upon the scarf, which was held by two individuals, which, to their surprise, had not the least effect upon the fabric—the hot water rolling to and fro as so much quicksilver, or as water on a duck's back, or cabbage leaf. The water remained sixteen hours in the hollow of the scarf, placed over two chair backs; but being wanted by the lady, she poured off the once hot water, enveloped herself in her water-proof scarf—thanking me for my kindness.

I could exhibit samples or patterns, if necessary, which would convince the most skeptical. W. W. BRIGG.

[Mr. Brigg is ready to sell his process of rendering goods water-proof.

Whirlpools and Whirlwinds.

If, in the bottom of a pond or other reservoir of water, there be an aperture through which the fluid is allowed to flow, there will be formed, immediately above the outlet, a whirling vortex, which is called a "whirlpool." It is formed by the currents from opposite directions meeting each other at the aperture; the meeting of these currents gives rise to a circular motion, which extends to some distance; this motion imparts to the water a centrifugal force, by which it is thrown from the centre, leaving a funnel-shaped hole from the surface to the outlet. The Mælstrom, a large whirlpool in the ocean off the coast of Norway, has a vortex sufficient to swallow up the largest ships.

Precisely analogous to the whirlpool is the "whirlwind;" the heated air at any portion of the earth's surface being caused to rise by the pressure of the surrounding colder and heavier air, the meeting currents produce a whirlwind. Whirlwinds are also frequently produced by contrary winds. The partial vacuum, caused by the ascending whirl, is commonly filled with dust, leaves, straws, and other light bodies, which it takes up in its course; it is sometimes sufficiently powerful to uproot trees and unroof houses. If the current of air from any particular quarter be of greater force than the other, the whirlwind then acquires a progressive as well as rotary motion.

H. W. H.

Medical Gleanings in Naples.

The Neapolitans entertain an opinion that bloodletting is inculcated in many diseases in which, among us, it would be thought fatal. Bleeding is a distinct profession, and in narrow lanes it is quite common to find painted signs, representing a nude man, tapped at several points—a stream of blood flowing from the arm, the neck, and foot, all at the same moment. In the spring, every body is supposed to require bleeding, just as, in some parts of New England, whole neighborhoods at that season take physic. Horses, too, are here bled unmercifully. A few days since, a poor, over-worked creature was standing in the middle of the street, his blood flowing out with frightful rapidity. He required food, instead of such cruel depletion. Consumption is considered infectious; consequently, on the death of a person from pulmonary disease, his cloths are burned, and the apartment at once thoroughly purified. An instance was related by a high public functionary, the other day, of a family being warned to vacate their hired premises forthwith, because a member of the family gave indications of approaching pulmonary consumption. Nowhere are the dead more magnificently exhibited at a funeral, or more quickly disposed of when the ceremonies are finished. One coffin answers for thousands, to all appearance. It is of rough, white boards—lodged temporarily, while in church, in a rich sarcophagus, covered by a rich wrought pall, made heavy by gold lace and fringes. When the candles are extinguished the friends retire, and the coffin being taken out, is carried on the heads of rough-looking fellows to a closet. Afterwards, if conveyed to the Santo Campe, the corpse is taken out of the coffin, and laid on a shelf in a tomb and the empty box brought back for another. Some of the funeral processions in Naples, Rome, and Florence, are very extraordinary performances—the persons following are all masked, having eye holes to see through while bystanders are prevented from recognising any of them. At Florence the burials are by night.—[Boston Medical Journal.

Marion County, Virginia, is so healthy that the Fairmont Banner cannot obtain a single death to publish. A man whom the editor thought to be dead, appeared to him on horseback as he was writing his obituary.

The cleansing of the streets of New York cost $160,000 last year. A fine sum indeed for such dirty streets.