SYNOPSIS OF LECTURES ON THE PATENT LAWS OF THE UNITED STATES.

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LECTURE I.

PATENTABILITY.

1. Primary Division of the Subject.

(*a*) The subjects of patents; (*b*) Invention; (*c*) Novelty; (*d*) Utility.

2. The Subjects of Patents.

(*a*) Arts; (*b*) Machines; (*c*) Manufactures; (*d*) Compositions of Matter; (*e*) Designs.

3. Arts.

(*a*) The patent law meaning of the word "art," coincident with a certain meaning of the word process; *Uhlman* v. *Brewing Co.* (53 Fed. Rep., 491); (*b*) Patent law processes purely mechanical; (*c*) Patent law processes not purely mechanical.

4. Machines.

(*a*) Definition of the word "machine"; (*b*) Development of machinery during the history of the United States; (*c*) Present and prospective development of machinery.

5. Manufactures.

(*a*) Patent law definition of the noun "manufacture"; (*b*) Great diversity of American manufactures.

6. Compositions of Matter.

(*a*) Patent law meaning of the phrase "compositions of matter"; (*b*) Minor importance of this matter.

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7. Designs.

(*a*) Designs shown in colors, on flat surfaces; (*b*) Designs shown in form.

8. Invention.

(*a*) Metaphysical tests untrue guides relevant to presence or absence of invention,— *McClain* v. *Ortmayer* (141 U. S., 427); (*b*) Invention present where no established rule shows it to be absent.

9. Mere Mechanical Skill is not Invention. *Atlantic Works* v. *Brady* (107 U. S., 199).

(*a*) Circumstances distinguishing invention from mechanical skill,— *Ross* v. *Montana Ry. Co.* (45 Fed. Rep., 427).

10. Excellence of Workmanship is not Invention.

(*a*) Where the improvement relates to operativeness,— *Pickering* v. *McCullough* (104 U. S., 319); (*b*) Where the improvement relates to attractiveness,— *Hatch* v. *Moffit* (15 Fed. Rep., 252.)

11. Substitution of Materials is not Invention. *Hotchkiss* v. *Greenwood* (11 Howard, 248).

(*a*) Exception where substitution involves a new mode of construction,— *Smith* v. *Dental Vulcanite Co.* (93 U. S., 496); (*b*) Exception where substitution involves a new mode of operation,—*Perkins* v. *Lumber Co.* (51 Fed. Rep., 291); (*c*) Exception where substitution resulted in the first success in the art, *Edison Electric Light Co.* v. *U. S. Electric Lighting Co.* (52 Fed. Rep., 308); (*d*) Exception where substitution changes both purpose and material,— *Potts* v. *Creager* (155 U. S.).

12. Change of Size or Degree is not Invention.

(*a*) In the case of a machine,—*Phillips* v. *Page* (24 Howard, 164); (*b*) In the case of a manufacture,—*Glue Co.* v. *Upton* (97 U. S., 6).

13. Aggregation is not Invention. *Pickering* v. *McCullough* (104 U. S., 318).

(*a*) Want of simultaneousness of action does not necessarily imply aggregation, or negative combination,—*Holmes Alarm Tel. Co.* v. *Domestic Tel. Co.* (42 Fed. Rep., 226).

14. Duplication is not Invention. *Dunbar* v. *Myers* (94 U. S., 197).

15. Omission is not Invention. *Stow* v. *Chicago* (3 Banning & Arden, 92); *Olin* v. *Timken* (155 U. S., 148).

(*a*) Exception where omission changes the mode of operation and turns a bad into a good result,—*Edison Electric Light Co.* v. *U. S. Electric Lighting Co.* (52 Fed. Rep., 308).

16. Substitution of Equivalents is not Invention. *Smith* v. *Nichols* (21 Wallace, 119).

17. New Combination, without New Mode of Operation, is not Invention. *Burt* v. *Evory* (133 U. S., 349); *Florsheim* v. *Schilling* (137 U. S., 77).

18. Using an Old Thing for a New Purpose is not Invention. *St. Germain* v. *Brunswick* (135 U. S., 230).

(*a*) Exception where new use is not nearly analogous to the old use,—*Potts* v. *Creager* (155 U. S.).

19. Doubts Relevant to Presence of Invention solved by Presence of Superior Utility. *Smith* v. *Dental Vulcanite Co.* (93 U. S., 495); or by necessity or non-necessity for experiment.

20. Novelty.

(*a*) Novelty distinguished from newness.

21. Novelty not Negatived.

(*a*) By knowledge or use in a foreign country,— Revised Statutes, Sections 4887 and 4923; (*b*) By abandoned application for United States patent,— *Corn Planter Case* (23 Wallace, 211); (*c*) By unpublished drawing, or prior model,—*Elithorp* v. *Robertson* (4 Blatch., 309); *Cahoon* v. *Ring* (1 Cliff., 593); (*d*) By anything substantially different; (*e*) By anything apparently similar but practically useless, — *Morey* v. *Lockwood* (8 Wallace, 230); (*f*) By antiquity of parts,— *Bates* v. *Coe* (98 U. S., 48); (*g*) By prior accidental, and not understood, production,— *Ransom* v. *New York* (1 Fisher, 265); (*h*) By anything which was neither designed, nor apparently adapted, nor actually used, to perform the function of the thing covered by the patent,— *Topliff* v. *Topliff* (145 U. S., 161).

22. Novelty is Negatived.

(*a*) By prior knowledge and use by even a single person,— *Coffin* v. *Ogden* (18 Wallace, 120); (*b*) By prior making, without using, of the thing patented,— *Corn Planter Case* (23 Wallace, 220).

23. Negation of Novelty is not Averted.

(*a*) By the fact that the inventor had no knowledge of the anticipating matter, — *Derby* v. *Thompson* (146 U. S., 481); (*b*) By the fact that the anticipating substance was derived from a different source from that which produced the patented substance,— *Cochrane* v. *Badische Anilin & Soda Fabrik* (111 U. S., 311).

24. Utility.

(*a*) Resides in instrumentality; (*b*) Resides in beauty,— *Magic Rubber Co.* v. *Douglass* (2 Fisher, 330); (*c*) Negatived by lack of function,— *Coupe* v. *Royer* (155 U. S., 574); (*d*) Negatived where function is evil,— *National Automatic Device Co.* v. *Lloyd* (40 Fed. Rep., 89.)

LECTURE II.

PATENTS.

1. Primary Division of the Subject.

(*a*) Letters patent; (*b*) Disclaimers; (*c*) Reissues.

2. The Right Secured by Letters Patent.

(*a*) Not under common law, — *Brown* v. *Duchesne* (19 Howard, 195); (*b*) Wholly under United States Constitution,—Article 1, Section 8; (*c*) Is a property right, — *Seymour* v. *Osborne* (11 Wallace, 533); (*d*) Is absolute, not qualified,— *Consolidated Roller Mill Co.* v. *Coombs* (39 Fed. Rep., 805); (*e*) Is beyond State interference,— *Castle* v. *Hutchinson* (25 Fed. Rep., 394); (*f*) Is exclusive of the government, as it is of any citizen,— *United States* v. *Burns* (12 Wallace, 252).

3. The Territorial Scope of United States Patents.

(*a*) The land of the United States,— Revised Statutes, Section 4884; (*b*) The tide waters of the United States,— *Colgate* v. *Ocean Telegraph Co.* (17 Blatch., 310); (*c*) The decks of United States ships,— *Gardiner* v. *Howe* (2 Cliff., 464).

4. The Duration of Patents.

(*a*) The regular duration,— Revised Statutes, Section 4884; (*b*) The duration of patents on inventions first patented abroad, — Revised Statutes, Section 4887.

5. Patentees.

(*a*) Inventors,— Revised Statutes, Section 4886; (*b*) Assignees,— Revised Statutes, Section 4895; (*c*) Legal Representatives,— Revised Statutes, Section 4896.

6. Letters Patent as Documents.

(*a*) The grant ; (*b*) The description,— Revised Statutes, Section 4888 ; (*c*) The claim or claims,— Revised Statutes, Section 4888 ; (*d*) The drawings.

7. The Construction of Patents.

(*a*) In the light of descriptions,— Telephone cases (126 U. S., 537) ; (*b*) In the light of the state of the art,— *McCormick* v. *Talcott* (20 Howard, 402) ; *Railway Co.* v. *Sayles* (97 U. S., 554); (*c*) Proper liberality of construction,— *Rubber Co.* v. *Goodyear* (9 Wallace, 788) ; (*d*) Proper strictness of construction,— *Burns* v. *Myer* (100 U. S., 672).

8. Letters Patents are Constructive Notice of their own Contents,— *Boyden* v. *Burke* (14 Howard, 575).

9. Disclaimers.

(*a*) Statutory provisions relevant to disclaimers,— Revised Statutes, Sections 4917 and 4922.

10. Errors which Justify Disclaimers.

(*a*) Inadvertence ; (*b*) Accident ; (*c*) Mistakes of fact ; (*d*) Mistakes of law,— *O'Reilly* v. *Morse* (15 Howard, 120).

11. Fraudulent or Deceptive Intention Fatal to Right to Disclaim.

12. Unreasonable Delay to Disclaim Fatal to Efficacy of Disclaimer.

13. Construction of Letters Patent after Disclaimer.

14. Disclaimers Filed Pending Litigation.

(*a*) Filed voluntarily; (*b*) Filed because required by the court,—*Myers* v. *Frame* (8 Blatch., 446); *Ballard* v. *McCluskey* (58 Fed. Rep., 884).

15. Reissues.

(*a*) The origin of reissues,—*Grant* v. *Raymond* (6 Peters, 243); (*b*) The reissue statute,—Revised Statutes, Section 4916.

16. Faults which Justify Reissues.

(*a*) Invalidity arising from defective description; (*b*) Invalidity arising from insufficient description; (*c*) Invalidity arising from defective claims; (*d*) Inoperativeness arising from insufficient claims.

17. Inadvertence, Accident, or Mistake.

18. Broadened Reissues.— *Miller* v. *Brass Co.* (104 U. S., 350).

(*a*) Definition of broadened reissue; (*b*) Delay to apply for broadened reissue.

19. The Same Invention,—Revised Statutes, Section 4916.

(*a*) Definition of the phrase "the same invention,"—*Parker & Whipple Co.* v. *Yale Clock Co.* (123 U. S., 99).

20. Reissues Partly Void and Partly Valid.— *Gage* v. *Herring* (107 U. S., 640).

LECTURE III.

TITLE, LICENSES, AND INFRINGEMENT.

1. Title

(*a*) By occupancy; (*b*) By assignment; (*c*) By grant; (*d*) By creditor's bill; (*e*) By bankruptcy; (*f*) By death.

2. Title by Occupancy.

(*a*) Inchoate,—*Hendrie* v. *Sayles* (98 U. S., 551); (*b*) Complete.

3. By Assignment.

(*a*) An assignment defined,—*Gayler* v. *Wilder* (10 Howard, 477); (*b*) Held upon special tenure,—*Littlefield* v. *Perry* (21 Wallace, 220); (*c*) Incomplete estates created by,—*Solomons* v. *United States* (21 Court of Claims, 481)

4. Warranty of Title,—*Brush Electric Co.* v. *Electric Light Co.* (52 Fed. Rep., 963).

5. No Implied Warranty of Validity,—*Hiatt* v. *Twomey* (1 Devereaux & Battle's Equity Cases, N. C., 315).

6. By Grant.

(*a*) A grant defined; (*b*) Extra-territorial rights,—*Hobbie* v. *Fennison* (149 U. S., 361).

7. Recording in the Patent Office,—Revised Statutes, Section 4898.

8. By Creditor's Bill,—*Ager* v. *Murray* (105 U. S., 126), *Pacific Bank* v. *Robinson* (57 California, 522).

9. By Bankruptcy. *Kittle* v. *Hall* (29 Fed. Rep., 510), *Sessions* v. *Romadka* (145 U. S., 37).

10. By Death,—Revised Statutes, Section 4896.

11. Licenses.

(*a*) Licenses defined and described.

12. Express Licenses.

(*a*) To make, with implied leave to use; (*b*) To make, with implied leave to sell; (*c*) To use, with implied leave to make; (*d*) To sell, with implied leave to use and to sell.

13. Recording and Notice.

(*a*) Recording unnecessary,—*Brooks* v. *Byam* (2 Story, 525); (*b*) A license good against the world, whether recorded or not, —*Chambers* v. *Smith* (5 Fisher, 14), *Farrington* v. *Gregory* (4 Fisher, 221), *Continental Windmill Co.* v. *Empire Windmill Co.* (8 Blatch., 295).

14. Warranty of Validity.

(*a*) No implied warranty of validity,—*Birdsall* v. *Perego* (5 Blatch., 251); (*b*) But implied warranty against eviction,— *White* v. *Lee* (14 Fed. Rep., 791).

15. Purely Implied Licenses.

(*a*) Licenses implied from conduct,—*United States* v. *Palmer* (128 U. S., 269). *Solomons* v. *United States* (137 U. S., 346); (*b*) Licenses worked by estoppel,—*Curran* v. *Birdsall* (20 Fed. Rep., 835).

16. Infringement.

(*a*) Of a patent for a process; (*b*) A machine or a manufacture; (*c*) A composition of matter; (*d*) A design.

17. Infringement of a Patent for a Process.

(*a*) Illustrated by the Fat Acid Case,—*Tilghman* v. *Proctor* (102 U. S., 730); (*b*) Illustrated by the Car-Wheel Case,—*Mowry* v. *Whitney* (14 Wallace, 620); (*c*) Illustrated by the Middlings Purifier Case,—*Cochrane* v. *Deener* (94 U. S., 787).

18. Infringement of Machines and Manufactures.

(*a*) The general rule; (*b*) Comparative results; (*c*) Comparative mode of operation; (*d*) Comparative structure.

19. Comparative Structure.

(*a*) Addition; (*b*) Interchange of position of parts; (*c*) Omission,—*Prouty* v. *Ruggles* (16 Peters, 341); (*d*) Substitution of equivalents.

20. The Doctrine of Equivalents.

(*a*) Primary inventions and secondary inventions,—*McCormick* v. *Talcott* (20 Howard, 405), *Railroad Co.* v. *Sayles* (97 U. S., 556), *Morley Machine Co.* v. *Lancaster* (129 U. S., 273); *Miller v. Eagle Co.*, (151 U. S., 207).

21. Infringement of Compositions of Matter.

(*a*) Addition,—*Byam* v. *Eddy* (2 Blatch., 521); (*b*) Omission,—*Otley* v. *Watkins* (36 Fed. Rep., 324); (*c*) Change of proportion; (*d*) Substitution of equivalents.

22. Infringements of a Design.

(*a*) Decided on the basis of the opinions of average observers,—*Gorham* v. *White* (14 Wallace, 528).

23. Ignorance of Patent.

(*a*) Does not negative infringement,—*Parker* v. *Haworth* (4 McLean, 373); *Norton* v. *Can Co.* (57 Fed. Rep., 933).

LECTURE IV.

COURTS AND PARTIES, AND ACTIONS AT LAW.

1. Courts.

(*a*) Circuit Courts of the United States,— Revised Statutes, Sections 629 and 711, *White* v. *Rankin* (144 U. S., 128); (*b*) District Courts of the Territories of the United States,— Revised Statutes, Section 1910; (*c*) Supreme Court of the District of Columbia,— Revised Statutes relating to the District of Columbia, Sections 760 and 764; (*d*) State Courts,— *Brown* v. *Shannon* (20 Howard, 56); *Wilson* v. *Sanford* (10 Howard, 101); (*e*) The Court of Claims, — *United States* v. *Palmer* (128 U. S., 269).

2. Parties.

(*a*) Plaintiffs at law; (*b*) Defendants at law; (*c*) Complainants in equity; (*d*) Defendants in equity.

3. Plaintiffs at Law.

(*a*) Patentees; (*b*) Assignees; (*c*) Grantees; (*d*) Legal representatives; (*e*) Owners in common; (*f*) Licensees.

4. Defendants at Law.

(*a*) Natural persons; (*b*) Partnerships; (*c*) Private corporations; (*d*) Public corporations.

5. Complainants in Equity.

(*a*) Must generally own interest in patent at time of action,— *Waterman* v. *Mackenzie* (138 U. S., 255); (*b*) May generally recover for infringement prior to assignment,— *Dibble* v. *Augur* (7 Blatch., 86).

6. Defendants in Equity.

(*a*) Not liable for profits realized by each other,— *Elizabeth* v. *Pavement Co.* (97 U. S., 140); (*b*) May be recipient of infringer's property,— *Mumma* v. *Potomac Co.* (8 Peters, 286).

7. Actions at Law.

(*a*) Trespass on the case,— Revised Statutes, Sections 4919; (*b*) Assumpsit; (*c*) Civil code action.

8. Declarations in Trespass on the Case.

(*a*) Statement of the right of action; (*b*) Conclusion.

9. Pleas.

(*a*) Dilatory pleas; (*b*) Pleas in bars.

10. Pleas in Bar.

(*a*) Their number is twenty-eight; (*b*) The first fifteen; (*c*) The next three; (*d*) The last ten.

11. Special Pleading.

(*a*) According to the ancient common law; (*b*) According to the modern practice.

12. The General Issue.

(*a*) Accompanied by notice of special matter,— Revised Statutes, Section 4920; (*b*) Where defense is based upon a fact within judicial notice.

13. Trials of Actions at Law.

(*a*) By a jury; (*b*) By a judge; (*c*) By a referee.

14. Evidence to Support the Declaration.

(*a*) The letters patent; (*b*) The title; (*c*) The infringement; (*d*) The damages.

15. Evidence to Support the Defenses.

(*a*) Judicial notice; (*b*) Prior Patents; (*c*) Prior printed publications; (*d*) Parol testimony.

16. Instructions to Juries.

(*a*) On questions of law; (*b*) On questions of fact.

17. Costs.

(*a*) The items recoverable,—Revised Statutes, Sections 823 and 983; (*b*) Exceptions to recoverability of costs,—Revised Statutes, Sections 973, 4917, and 4922.

18. New Trials.

(*a*) For error of judge; (*b*) For error of jury; (*c*) For newly discovered facts.

19. Writs of Error.

(*a*) Take all actions at law for infringement of patents to Circuit Court of Appeals, 26 Statutes at Large, Chapter 517, Section 6. (*b*) Such actions go from Circuit Court of Appeals to Supreme Court only on certificate or certiorari. *Ibid.* (*c*) Question whether an error made in overruling or sustaining a demurrer, can be thus reviewed,—*Brickill* v. *Hartford* (57 Fed. Rep., 218); (*d*) Patent cases may still go to the Supreme Court, through the Court of Appeals of the District of Columbia, from the Supreme Court of the District of Columbia,—27 Statutes at Large, p. 434, Ch. 74, Secs. 7 and 8.

LECTURE V.

ACTIONS IN EQUITY.

1. Courts having Jurisdiction in Equity in Patent Litigation.

2. The Functions of Equity Patent Cases.

(*a*) Injunctions; (*b*) Recovery of defendant's profits, — *Root* v. *Railway Co.* (105 U. S., 189); (*c*) Recovery of complainant's damages,— Revised Statutes, Section 4921; *Emigh* v. *Railroad Co.* (6 Fed. Rep., 283); *Marsh* v. *Seymour* (97 U. S., 348); *Star Salt Castor Co.* v. *Crossman* (4 Banning & Arden, 566).

3. The Original Bill.

(*a*) The title of the court; (*b*) The introduction; (*c*) The stating part; (*d*) The prayer for relief; (*e*) The interrogating part; (*f*) The prayer for process; (*g*) The oath.

4. Defenses to an Original Bill.

(*a*) By demurrer; (*b*) By plea; (*c*) By answer.

5. The Thirty Defenses.

(*a*) The twenty-eight defenses; (*b*) Non-jurisdiction of equity,— *Root* v. *Railway Co.* (105 U. S., 189), *Clark* v. *Wooster* (119 U. S., 324), *Dowell* v. *Mitchell* (105 U. S., 430), *Waterman* v. *Mackenzie* (138 U. S., 257); (*c*) Laches, — *Elmendorf* v. *Taylor* (10 Wheaton, 168), *Johnston* v. *Mining Co.* (148 U. S., 370), *Kittle* v. *Hall* (29 Fed. Rep., 510).

6. The Hearing of an Action in Equity.

(*a*) Before one or more judges; (*b*) Before a judge and a jury, — 18 Statutes at Large, Part 3, Chap. 77, Sec. 2; (*c*) Before a master in chancery, — *Parker* v. *Hatfield* (4 McLean).

7. The Hearing by a Judge.

(*a*) The preliminary hearing; (*b*) The interlocutory hearing; (*c*) The final hearing.

8. The Sources of the Rules of Decision.

(*a*) The Statutes of the United States; (*b*) The decisions of the United States Supreme Court; (*c*) The decisions of the United States Circuit Courts of Appeal; (*d*) The decisions of the United States Circuit Courts; (*e*) The ancient decisions of the chancellors of England; (*f*) The modern English decisions; (*g*) The decisions of State Courts; (*h*) The *obiter dicta* of Courts; (*i*) The commentaries of text-writers.

9. Questions of Fact.

(*a*) Undecided questions; (*b*) Questions previously decided by other Circuit Courts of the United States; (*c*) Questions previously decided by the Supreme Court of the United States; (*d*) Questions previously decided by a United States Circuit Court of Appeals.

10. Evidence.

(*a*) Same as in actions at law, except on question of laches, and question of money recovery.

11. Testimony.

(*a*) Taken by depositions in writing; (*b*) Taken orally in open court.

12. Depositions.

(*a*) Taken by commission; (*b*) Taken under equity rule 67; (*c*) Taken under Sections 863, 864, and 865 of the Revised Statutes.

13. Documentary Evidence.

(*a*) Which requires to be proved by oral testimony; (*b*) Which proves itself.

14. Decrees.

(*a*) Interlocutory decrees; (*b*) Final decrees.

15. Petitions for Re-Hearing.

(*a*) For matter apparent on the face of the record; (*b*) For newly-discovered evidence.

16. Appeals to a Circuit Court of Appeals.

(*a*) When allowed; (*b*) How heard.

17. Certificate to, or Certiorari from, the Supreme Court.

18. Injunctions.

(*a*) Preliminary; (*b*) Permanent.

19. Grounds for Preliminary Injunctions.

(*a*) Special presumption of validity,—*Dickerson* v. *Machine Co.* (35 Fed. Rep.), *Standard Elevator Co.* v. *El. Co.* (56 Fed. Rep., 719); (*b*) Proof of title,—*Mowry* v. *Railway Co.* (5 Fisher, 587); (*c*) Proof of infringement, or danger of infringement,—*Brush Elec. Co.* v. *Storage Battery Co.* (64 Fed. Rep., 776).

20. Defenses to Motions for Preliminary Injunctions.

(*a*) By way of traverse; (*b*) By way of confession and avoidance.

21. Permanent Injunctions.

(*a*) When granted,—*Potter* v. *Mack* (3 Fisher, 430); *Rumford Chemical Works* v. *Hecker* (3 Banning & Arden, 388); *Consolidated Roller Mill Co.* v. *Coombs* (39 Fed. Rep., 805); (*b*) When refused,—*Bignal* v. *Harvey* (18 Blatch., 356); *Draper* v. *Hudson* (1 Holmes, 208); *Mumma* v. *Potomac Co.* (8 Peters, 286).

LECTURE VI.

MONEY RECOVERIES.

1. Classes of Recoveries.

(*a*) Plaintiff's damages; (*b*) Defendant's profits.

2. Plaintiff's Damages.

(*a*) Their generic measure is plaintiff's loss, — *Coupe* v. *Royer* (155 U. S., 565); (*b*) Plaintiff's established royalty; (*c*) Hurtful competition; (*d*) A reasonable royalty to be assessed *vs.* Nominal damages.

3. Royalties.

(*a*) How established,— *Rude* v. *Westcott* (130 U. S., 152); *Corneley* v. *Marckwald* (131 U. S., 159); (*b*) How not established,— *Judson* v. *Bradford* (3 Banning & Arden, 549); *Westcott* v. *Rude* (19 Fed. Rep., 833); *Black* v. *Munson* (14 Blatch., 268); *Emigh* v. *Railroad Co.* (6 Fed. Rep., 284); *La Baw* v. *Hawkins* (2 Banning & Arden, 564); *Colgate* v. *Mfg. Co.* (28 Fed. Rep., 147); (*c*) How applied,— *Birdsall* v. *Coolidge* (93 U. S., 70); *Asmus* v. *Freeman* (34 Fed. Rep., 903).

4. Hurtful Competition.

(*a*) Lost Sales,— *Corneley* v. *Marckwald* (131 U. S., 159); (*b*) Reduction of prices,— *Boesch* v. *Graff* (133 U. S., 705).

5. Reasonable Royalty vs. Nominal Damages.

(*a*) Reasonable royalty, — *Suffolk Co.* v. *Hayden* (3 Wall., 315); *Hunt Co.* v. *Cassiday* (64 Fed. Rep., 506); (*b*) Nominal damages,— *Coupe* v. *Royer* (155 U. S., 565).

6. Exemplary Damages.

(*a*) May be imposed by the judge, but not by the jury,— Revised Statutes, Section 4919; *Wilbur* v. *Beecher* (2 Blatch., 143); (*b*) Under what circumstances imposed, — *Russell* v. *Place* (9 Blatch., 175); *Peck* v. *Frame* (9 Blatch.).

7. Increased Damages.

(*a*) May be imposed by the judge, but not by the jury,— Revised Statutes, Section 4919; (*b*) When justified; (*c*) And not changed on writ of error, except in clear case,— *Topliff* v. *Topliff* (145 U. S., 174).

8. Defendant's Profits.

(*a*) When recoverable,— *Root* v. *Railway Co.* (105 U. S., 214); (*b*) On what theory recoverable, — *Tilghman* v. *Proctor* (125 U. S., 148); (*c*) What are recoverable as defendant's profits,— *Rubber Co.* v. *Goodyear* (9 Wallace, 800); *Livingston* v. *Woodworth* (15 Howard, 546); *Dean* v. *Mason* (20 Howard, 203); *Elizabeth* v. *Pavement Co.* (97 U. S., 138); *Piper* v. *Brown* (1 Holmes, 198).

9. Rule for Ascertaining Defendant's Profits.

(*a*) The generic rule, — *Root* v. *Railway Co.* (105 U. S., 214); *Tilghman* v. *Proctor* (125 U. S., 148); (*b*) The rule where infringement consisted in making and selling; (*c*) The rule where infringement consisted in selling; (*d*) The rule where infringement consisted in using.

10. Defendant's Profits from Infringement by Making and Selling.

(*a*) The items of cost,—*Rubber Co.* v. *Goodyear* (9 Wallace, 803); *Williams* v. *Leonard* (9 Blatch., 476); *Mfg. Co.* v. *Cowing* (105 U. S., 257); *Seabury* v. *Am. Ende* (152 U. S., 564); (*b*) The selling price.

11. The Items of Cost.

(*a*) The market value of materials; (*b*) Money paid for making the infringing articles; (*c*) Proper remuneration for the labor of the infringer; (*d*) Interest on borrowed money; (*e*) Expenses of selling, including advertising.

12. The Selling Price.

(*a*) Where the patent covers the thing made and sold; (*b*) Where the patent covers only a part of the thing made and sold, — *Garretson* v. *Clark*, (111 U. S., 120); *Mason* v. *Graham* (23 Wallace, 276).

13. Defendant's Profits from Infringement by Selling Only.

(*a*) The purchase price; (*b*) The cost of selling.

14. Defendant's Profits from Infringement by Using Only.

(*a*) The generic rule, — *Mowry* v. *Whitney* (14 Wallace, 651); (*b*) In cases of affirmative gain; (*c*) In cases of saving from loss, — *Cawood Patent* (94 U. S., 709); *Mevs* v. *Conover* (125 U. S., 144); (*d*) In cases of affirmative gain and saving from loss, — *Tilghman* v. *Proctor* (125 U. S., 142).

15. The Standard of Comparison, under the Rule in Mowry *v.* Whitney.

(*a*) What is the true standard of comparison; (*b*) Must have been known at the time of infringement, — *Knox* v. *Quicksilver Mining Co.* (6 Sawyer, 436); (*c*) Needs not to have been used by the defendant, — *Locomotive Safety Truck Co.* v. *Railroad Co.* (2 Fed. Rep., 679).

16. Interest on Money Recoveries.

(*a*) On plaintiff's damages,—*McCormick* v. *Seymour* (3 Blatch., 222); (*b*) On defendant's profits,—*Tilghman* v. *Proctor* (125 U. S., 160).

17. Proceedings for Ascertaining Defendant's Profits.

(*a*) Reference to a master in chancery; (*b*) Evidence submitted to the master; (*c*) The master's report.

18. The Master's Report.

(*a*) The draft report,—*Troy Iron and Nail Factory* v. *Corning* (6 Blatch., 333); *Fischer* v. *Hayes* (16 Fed. Rep., 469); *Celluloid Mfg. Co.* v. *Cellonite Mfg. Co.* (40 Fed. Rep., 477); (*b*) The final report,—*Boesch* v. *Graff* (133 U. S., 705).

19. Exceptions to Master's Report.

(*a*) Defendant's exceptions,—*Sheffield Rwy. Co.* v. *Gordon* (151 U. S., 293); (*b*) Complainant's exceptions,—*Topliff* v. *Topliff* (145 U. S., 173).

20. Defendant's Exceptions.

(*a*) Defendant's affirmative exceptions; (*b*) Defendant's negative exceptions.

21. Complainant's Exceptions.

(*a*) Based on evidence; (*b*) Based on exceptions to evidence.

22. Hearings on Exceptions to Master's Reports.

(*a*) On what evidence based; (*b*) How resulting.