witness Farrington. The testimony also of Richard Jones, which strongly tends to prove, by the admissions of appellant, his failure and abandonment of his experiments, is relied on by appellee. There is also other proof of the same kind urged by the appellee against the credibility of this testimony, which I do not think it necessary particularly to state.

According to the best judgment I have been able to form upon a deliberate consideration of the whole case, I am satisfied that the appellant was ignorant of an essential feature of the invention, and that he did not succeed in producing the white oxide of zinc according to a patentable sense thereof.

I do therefore decide that the decision of the Commissioner that the said appellant was not the prior inventor, and his refusal to grant letters-patent to said appellant Jones, was correct, and ought to be affirmed.

John L. Hayes, for the appellant.

GEORGE H. RUGG, APPELLANT,

vs.

JONATHAN HAINES, APPELLEE. INTERFERENCE.

PUBLIC USE FOR TWO YEARS—SECTION 7, ACT OF 1839.—Under the seventh section of the act of 1839 an inventor cannot obtain a patent if his invention was in public use more than two years prior to filing his application.

SM—ESTABLISHED BY TESTIMONY IN INTERFERENCE.—An applicant must be rejected upon testimony taken in an interference proceeding showing a sale and use of the invention more than two years prior to filing the application.

(Before MORSELL, J., District of Columbia, October, 1855.)

STATEMENT OF THE CASE.

Reissue application by Rugg filed February 22d, 1855; original patent No. 9,005, June 8th, 1852.

Reissue application by Haines; original patent No. 6,254,

March 27th, 1849. The application subsequently issued as reissue patent No. 331, November 6th, 1855.

MORSELL, J.

The Commissioner, on the 11th of May, 1855, decided the question of invention in favor of the said Jonathan Haines. In the reasons for his decision, he says: "The interference in this case arises on an application for a reissue by each of the parties. The device now claimed by both is fully described by each in his original application. Haines' application was dated in 1848; that of Rugg in 1852. To show priority of invention, however, Rugg proves that in 1846 he had so constructed his harvester that the cutting apparatus could be elevated and depressed, and thus made to run at different heights above the ground. Now, the subject-matter of the interference in this case is an apparatus by which the person who conducts the machine can, by means of a lever, raise or lower the cutting apparatus at pleasure without stopping the machine. Rugg does not show that he had effected this contrivance in 1846, nor at any time prior to the filing of his application in 1852. It is true he may be said to have made a beginning towards it by so contriving his machine that by stopping it and procuring a fence rail or other lever he could adjust the cutter to any desirable permanent height; but that is not the subject of his present claim. Priority of invention will therefore be awarded to the said Haines, and a patent will issue."

From this decision the said George W. Rugg hath appealed. The reason for the appeal, as far as understood, is that the Commissioner erred in overlooking the points of invention claimed in his application for a reissue, which was that the invention was incomplete without the hinging of the reach or pole to the frame of the machine.

The Commissioner has laid before the judge the reasons of his decision in writing, with the original papers, the reason of appeal, and the evidence in the cause. Whereupon, notice being duly given to the parties of the time and place of hearing, the said parties by their respective attorneys filed their respective arguments in writing and submitted the case for the decision of the judge.

The point which first claims my notice is that urged in the

argument of the appellee's counsel, "that Haines, the appellee, takes the ground that Rugg, the appellant, has made, used, and sold the machine for which he is now contending some six years before he applied for a patent, and that for that reason he is cut off by the seventh section of the act of 1839, as he has proven himself that the thing which he claims was in public use and on sale with the applicant's consent and allowance prior to his application for six or seven years."

The testimony of Bronson Murray, a witness examined on the part of the appellant, is as follows:

The second interrogatory put to said witness by said appellant's counsel is: "Did you ever use a harvester made by George H. Rugg, of Otteron? If yea, when did you first use it?" Answer: "I bought one of him, reputed to be made by him, I think, in the spring of 1848, and the same was in use on my farm for some years; it was an old machine when I bought it."

The third interrogatory: "Do you recollect whether or not the tongue or reach was hinged in the main frame of the machine which carries the cutter-bar, so as to render it capable of raising or lowering the cutter-bar with a lever?" Answer: "It was."

The fourth interrogatory: "What was the usual way of raising or lowering the cutter-bar, and how was it held at the point required?" Answer: "By using a rail as a lever, and secured by a chain having a hook."

Fifth interrogatory: "Was this machine you speak of capable of having a lever permanently attached to it, as a part thereof, for the purpose of raising and lowering the cutter-bar?" Answer: "Yes."

The application for the patent in this case was filed on the 22d of February, 1855. The seventh section of the act of 1839 is: "That every person or corporation who has or shall have purchased or constructed any newly-invented machine, manufacture, or composition of matter prior to the application by the inventor or discoverer for a patent, shall be held to possess the right to use, and vend to others to be used, the specific machine, manufacture, or composition of matter so made or purchased without liability therefor to the inventor or any other person interested in such invention; and no patent shall be held to be invalid by reason of such purchase, sale, or use prior to the application for

a patent as aforesaid, except on proof of abandonment of such invention to the public, or that such purchase, sale, or prior use has been for more than two years prior to such application for a patent."

Such being the law and the fact, it can require no comment to show that the appellant is barred of his right, whatever it was, to a patent in this case.

I think, therefore, that the Commissioner was correct in his decision, and that the same ought to be affirmed.

John F. Clark, for the appellant.

JOHN B. CORNELL, APPELLANT,

vs.

THADDEUS HYATT, APPELLEE. INTERFERENCE.

POSITIVE AND NEGATIVE TESTIMONY—RELATIVE WEIGHT.—The rule of law is, that if one witness swears positively that he saw or heard a fact, and another merely swears that he was present, but did not see or hear it, and the witnesses are equally faithworthy, the general principle would, in ordinary cases, create a preponderance in favor of the affirmative.

SM—MUST BE RECONCILABLE.—This rule, however, is to be understood with this explanation: That the principle supposes that the positive testimony can be reconciled with the negative without violence and constraint.

SM—SUPERIORITY OF NEGATIVE TESTIMONY WHEN IRRECONCILABLE.—Evidence of a negative nature may, under particular circumstances, not only be equal, but superior, to positive evidence. This must always depend upon the question whether, under the particular circumstances, the negative testimony can be attributed to inattention, error, or defective memory.

SM—WEIGHT OF TESTIMONY—FAIRNESS OF WITNESS.—The negative testimony of a single witness, who is in a position to know the fact, may outweigh the positive testimony of two witnesses, particularly where they are shown by their answers to be unfair in their testimony.

REFUSAL TO ANSWER ON CROSS-EXAMINATION.—A witness, on cross-examination, is bound to answer all material and proper questions; and his refusal to do so, or the giving of an evasive answer, shows a want of fairness on his part that must be considered as affecting the credit to be given to his testimony.

(Before MORSELL, J., District of Columbia, February, 1856.)