and in the petition they are called Martha Phipps and Mary Bowers, wife of Charles Rice, "who is authorized and assisted in this suit by her said husband, Charles." The defendant is named "Elijah Peale, in his capacity of Trustee and Assignee of the President, Directors, and Company of the Agricultural Bank of Mississippi." The decree is in favor of Martha Phipps and Mary Rice.

The citation appears to have been issued by E. Peale, and was directed to Martha Phipps and Mary Rice, "wife of George Bowers, and by him assisted." And the service of the citation was accepted by S. S. Prentiss, plaintiff's attorney, at New Orleans, the 22d of October, 1849.

The names of the defendants in error are correctly stated in the citation, except that Mary Rice is represented as the wife of George Bowers, instead of the wife of Charles Rice. Under the procedure in Louisiana, the husband is named in the petition as assenting to the suit brought in the name of his wife. He is not a party to the suit, nor is he responsible for costs. The use of the name of the husband is merely formal, and the misnomer alleged could not have misled the defendants in error. Nor could they have been misled by the omission in the notice of the capacity of trustee, in which the defendant below was sued, and in which he necessarily prosecutes the writ of error. The acceptance of the service of the notice by the counsel of the defendants in error, without exception, shows that there could have been no misapprehension in regard to it. The motion to dismiss the case is overruled.

Order.

On consideration of the motion to dismiss this writ of error, submitted to the court by General Henderson, on a prior day *of the present term of this court, to wit, on [*258 Friday, the 28th ultimo, it is now here ordered by this court, that said motion be, and the same is hereby, overruled.

JACOB P. WILSON, COMPLAINANT, *v.* DANIEL BARNUM.

The following question, sent up to this court upon a certificate of division in opinion between the judges of the Circuit Court,—viz., "Whether, according to the true construction of the Woodworth patent, as amended, the machines made or used by the defendant at the time of filing the bill, or either of them simply, do or do not infringe the said amended letters patent?"—is a question of fact, over which this court has no jurisdiction.

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The jurisdiction given to it by statute in certified cases only extends to points of law.[1]

THIS case came up from the Circuit Court of the United States for the Eastern District of Pennsylvania upon a certificate of division in opinion between the judges thereof.

It is not necessary to do more than insert the statement of facts and point of division, as they are found in the record.

Statement of Facts and Point of Division of Judges.

UNITED STATES OF AMERICA, *Eastern District of Pennsylvania.*

At a Circuit Court of the United States, begun and held at the city of Philadelphia, for the Eastern District of Pennsylvania, on the 13th day of November, in the year of our Lord 1849.

Present, the Honorable Robert C. Grier, and the Honorable John K. Kane.

JACOB P. WILSON *v.* DANIEL BARNUM.

Statement of Facts.

This was a suit in equity. The bill was filed April 5th, 1849, by the plaintiff, as assignee of letters patent issued to William Woodworth. After due notice, a motion was made for a special injunction, which was fully heard before his Honor, John K. Kane, at a regular Circuit Court, on the 21st, 22d, 23d, 24th, and 25th days of May, A. D. 1849, his Honor, Judge Grier, being absent. The defendant resisted the motion, and filed affidavits on his part, when, after a full hearing of the parties and arguments of counsel, on the 1st day of June, 1849, a special injunction was granted, a copy of which is annexed to this statement. Afterwards, on the 4th day of June, 1849, the defendant filed an answer, setting up
*259] the fact of his having a patent for his machine, and denying all similarity between it and that of the plaintiff; which same defence had been previously set up by the said affidavits, on the hearing of the motion for the injunction. Afterwards, on the 29th day of June, 1849, a motion was made by the defendant to dissolve the injunction, which motion was duly argued on the bill and affidavits on the part of the plaintiff, and on the answer and affidavits on the part of

[1] FOLLOWED. *Dennistoun et al.* v. *Stewart*, 18 How., 568. CITED. *Silliman* v. *Hudson River Bridge Co.*, 1 Black, 584; *Weeth* v. *New England Mortgage Co.*, 16 Otto, 606.

the defendant; and on the 1st day of August, 1849, an order was made in the cause directing an issue to be tried by a jury, for the purpose of ascertaining whether the machines of the defendant were or were not infringements of the machine of the plaintiff, and ordering the injunction to stand, on the plaintiff giving security to the defendant in the sum of ten thousand dollars, which was done.

The issue came on to be tried by a jury on the 17th day of October, 1849, and after a protracted trial, the jury was discharged, not being able to agree.

At this present term of the court, both of the judges being present, a motion was made by the defendant to dissolve the injunction, and arguments of counsel were heard thereon. Thereupon, without any decision being had on said motion, and upon an agreement of the parties, with the consent and by the direction of the court, this cause was brought to a final hearing on the pleadings and the proofs which had been taken herein, as well as on the proofs and evidence which were put in on the trial of the issue before the jury, and which last-named proofs and evidence were, for the purpose of said final hearing, considered as proofs in this cause.

The pleadings were a bill, an answer, and a replication, copies of which are hereunto annexed, and a copy of all the proofs and evidence used on said final hearing is also hereunto annexed.

On said final hearing, it appeared and was determined by the court as matter of fact,—

1. That letters patent of the United States were issued to William Woodworth, on the 27th day of December, 1828, of the tenor and effect mentioned in the bill.

2. That William Woodworth died intestate, on the 9th day of February, 1839, in the city of New York, and that William W. Woodworth, his son, and one of his heirs at law, was thereupon duly appointed his administrator by the surrogate of the city and county of New York.

3. That on the 16th day of November, 1842, an extension of the said letters patent for seven years from the 27th day of December, 1842, was duly granted by the United States, under the eighteenth section of the Patent Act of July 4, 1836, to *the said William W. Woodworth, as administrator as aforesaid. [*260

4. That by an act of Congress of the United States, passed February 26th, 1845, the said letters patent were further extended to the said William W. Woodworth, as administrator as aforesaid, for seven years from the 29th day of December, 1849.

5. That on the 8th day of July, 1845, the said letters patent were surrendered for a defective specification, and renewed letters patent were thereupon issued on the same day, on an amended specification, to the said William W. Woodworth, as administrator as aforesaid; which renewed letters patent were of the tenor and effect set forth in the bill. An authenticated copy of the said renewed letters patent of July 8, 1845, and of the specification and drawings thereto, and an authenticated copy of the said original letters patent of December 27th, 1828, and of the specification and drawings thereto, were produced on the hearing, and may be produced on argument, before the Supreme Court of the United States.

6. That the exclusive right of the said renewed letters patent of July 8, 1845, for the district of Southwark, in the county of Philadelphia, and Eastern District of Pennsylvania, was vested in the plaintiff.

7. That the defendant had erected, within the said district of Southwark, and used and operated therein, since the said exclusive right became vested in the plaintiff, and before the filing of the bill, a machine for tonguing and grooving boards and plank, and also a machine for planing boards and plank. The machine for tonguing and grooving boards and plank was constructed as stated in the evidence. (A model thereof was produced on the hearing by the plaintiff, and the machine itself was produced on the hearing by the defendant. The same are certified by the clerk of the court, and may be used on argument before the Supreme Court of the United States.) The machine for planing boards and plank was constructed as shown by a model produced on the hearing by the plaintiff, and by the machine itself on the hearing by the defendant. (The same are certified by the clerk of the court, and may be used on argument before [the] Supreme Court of the United States.)

8. That letters patent were issued to the defendant on the 13th day of March, 1849, which are referred to in, and a copy of which is annexed to, his answer herein.

On the final hearing, the following question occurred, to wit:—

*261] Whether, according to the true construction of the Woodworth *patent, as amended, the machines made or used by the defendant, at the time of filing the bill, or either of them singly, do or do not infringe the said amended letters patent.

On which question the opinions of the judges were opposed.

Whereupon, on a motion by William H. Seward and St. George Tucker Campbell, plaintiff's counsel, it was ordered

that the point on which the disagreement hath happened may, during the term, be stated, under the seal of the court, to the Supreme Court to be finally decided.

R. C. GRIER.
J. K. KANE.

Mr. Chief Justice TANEY delivered the opinion of the court.

This case comes before the court upon a certificate of division, and has been submitted on printed arguments.

The plaintiff, who claims as assignee of what is generally called the Woodworth patent, filed a bill in equity, praying an injunction against the defendant to restrain him from using a certain machine, in which, as the complainant charged, boards were planed, tongued, and grooved in the same manner as in the Woodworth machine; the machine of the defendant operating in the same way in every respect as the one for which the complainant held the patent.

The defendant, in his answer, denied that his machine was substantially like and upon the plan of the Woodworth machine. Other defences were also taken in the answer. But it is not necessary to notice them, as they do not concern the question certified.

A great mass of testimony was taken on both sides in the Circuit Court, and models and drawings produced of the two machines; all of which have been sent up for the examination and consideration of this court, with the certificate of division.

On the final hearing of the case, the judges of the Circuit Court differed in opinion on the following question: "Whether, according to the true construction of the Woodworth patent, as amended, the machines made or used by the defendant at the time of filing the bill, or either of them singly, do or do not infringe the said amended letters patent?"

The question thus certified is one of fact, and has been discussed as such in the arguments offered on both sides. It is a question as to the substantial identity of the two machines. And its decision must depend upon the testimony of witnesses; the examination of the models and drawings, or of the machines themselves; and the application of mechanical principles and combinations, which the court could learn only *from the testimony of persons skilled in the [*262
science of mechanics.

The jurisdiction of this court to hear and determine a question certified from the Circuit Court is derived altogether from the act of 1802, ch. 31, § 6 (2 Stat. at L., 159); and that act evidently gives the jurisdiction only in cases where the judges

of the Circuit Court differ in opinion on a point of law. The language of the whole provision upon this subject so clearly requires this construction, that it is unnecessary to comment on it. And it would be utterly inconsistent with the well known and established proceedings of courts of equity, as well as courts of common law, to take out of a case during its progress a single question of fact, and send it here with the evidence upon that point only, for the final decision of this court. In the case before us, a great number of facts must be ascertained and determined from the evidence, before a final opinion could be formed upon the question certified.

Besides, this act of Congress has been in force for nearly half a century, and has been repeatedly acted on in this court; and it has uniformly received the construction we now give to it. In the multitude of questions which have been certified, this court has never taken jurisdiction of a question of fact. And in a question of law it requires the precise point to be stated, otherwise the case is remanded without an answer.

The question now certified being one of fact, we have no jurisdiction; and the case must therefore be remanded to the Circuit Court, to be there proceeded in as law and justice may require.

Order.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Pennsylvania, and on the point or question on which the judges of the said Circuit Court were opposed in opinion, and which was certified to this court for its opinion, agreeably to the act of Congress in such case made and provided, and was argued by counsel. And it appearing to this court, upon an inspection of the said transcript, that no point in the case, within the meaning of the act of Congress, has been certified to this court, the point or question being one of fact, it is thereupon now here ordered and decreed by this court, that this cause be, and the same is hereby, dismissed, and that this cause be, and the same is hereby, remanded to the said Circuit Court, to be proceeded in according to law.