and no transcript of the record was filed here during that term. But a transcript has been filed at the present term of this court, and the case docketed. And a motion is made to dismiss it, upon the ground that the appeal is not legally before this court, according to the act of Congress regulating appeals.

The construction of this act of Congress, and the practice of this court under it, has been settled by the cases of Villalobos *v.* The United States, (6 Howard, 81,) and The United States *v.* Curry, (6 Howard, 106.) The transcript must be filed in this court and the case docketed at the term next succeeding the appeal, in order to give this court jurisdiction. This case must therefore be dismissed.

But the dismissal does not bar the appellant from taking and prosecuting another appeal at any time within five years from the date of the decree, provided the transcript is filed here and the case docketed at the term next succeeding the date of such second appeal.

JOHN BROWN, PLAINTIFF IN ERROR, *v.* ——— DUCHESNE.

The rights of property and exclusive use granted to a patentee do not extend to a foreign vessel lawfully entering one of our ports; and the use of such improvement in the construction, fitting out, or equipment, of such vessel, while she is coming into or going out of a port of the United States, is not an infringement of the rights of an American patentee, provided it was placed upon her in a foreign port, and authorized by the laws of the country to which she belongs.

THIS case came up, by writ of error, from the Circuit Court of the United States for the district of Massachusetts.

The facts in the case and state of the pleadings in the Circuit Court are set forth so particularly, in the opinion of the court, that they need not be repeated.

It was submitted on a printed argument by *Mr. Dana* for the plaintiff in error, and argued by *Mr. Austin* for the defendant.

As the points raised in the case are entirely new, it is thought expedient to present them to the reader as they were brought before the court by the respective counsel.

Mr. Dana, for the plaintiff in error, after stating the circumstances of the case, said that the question for the court to decide was:

Whether, under these circumstances, there is an exemption

from the operation of our patent laws, by reason of the nationality of the vessel.

Since this cause was argued in the Circuit Court, my attention has been called to the case of Caldwell *v.* Van Vlissengen, 9 Hare, 415, (9 Eng. L. and Eq. Rep., p. 51.)

In that case, the machine patented was a screw propeller. This was a substantial part of the vessel, and almost necessary to her use. The vessel was built and solely owned in Holland, where the invention was in free and common use. The affidavits set forth facts sufficient to establish an exemption, if national character can give one. The court fully considers the question, and decides against the exemption. (On pp. 58, 59, the court puts the right to an injunction upon the ground that actions at law are maintainable in these cases.) The court considers that the question of the exemption of foreign vessels, either entirely, or in cases of reciprocity, is one of national policy, and to be dealt with by the Legislature, rather than by the courts.

After reading this decision, I wrote to Sir William Page Wood, the counsel for the respondents, then Solicitor General, and now Vice Chancellor, and received from him the following reply:

31 Great George St., Westminster,
November 6, 1855.

My Dear Sir: Your letter reached me yesterday. The case you refer me (Caldwell *v.* Van Vlissengen) was *not* appealed. I thought the decision was right, though it was against me. At the same time, I saw that there were inconveniences in the application of the law; and in the session of 1852, when a bill was passing through the House of Commons, with reference to the amendment of the Patent Laws, I proposed the insertion of the following clause. [Here follows section 26, of the act of 15 and 16 Victoria, ch. 83.]

The opinion of Sir William Page Wood is entitled to great weight before every judicial tribunal, as is well known to your honors.

After this decision, the act 15 and 16 Victoria, ch. 83, was passed; section 26 of which is as follows: (4 Chitty's Statutes, 217.) "No letters patent for any invention (granted after the passing of this act) shall extend to prevent the use of such invention in any foreign ship or vessel, or for the navigation of any foreign ship or vessel, which may be in any port of her Majesty's dominions, or in any of the waters within the jurisdiction of any of her Majesty's courts, where such invention is not used for the manufacture of any goods or commodities to be vended within or exported from her Majesty's

dominions. Provided, always, that this enactment shall not extend to the ships or vessels of any foreign State, of which the laws authorize subjects of such foreign State, having patents or like privileges for the exclusive use or exercise of inventions within its territories, to prevent or interfere with the use of such inventions in British ships or vessels, while in the ports of such foreign State, or in the waters within the jurisdiction of its courts, where such inventions are not so used for the manufacture of goods or commodities, to be vended within or exported from the territories of such foreign State."

Such is the state of the law in Great Britain, the greatest commercial nation of Europe. There is no reason to believe that the law of any other nation of Europe varies from that of England. Indeed, it is probable that other nations will do likewise, and keep in their own hands the power of granting or withholding such an exemption, on considerations of policy, by legislation or treaty.

It is therefore respectfully suggested that the court should leave this question to the law-making and treaty-making departments of our Government, in the mean time placing the law in this country upon the same basis upon which it rests in England.

Is there any controlling reason why the court should not do this?

It is conceded that the statute, in its terms, suggests no exemption. No *interpretation* of the statute would suggest an exemption. If one is established, it must be by some *imposed construction*, paramount over the plain language of the acts. This is found solely in certain supposed principles of international law. No decision in point, in this country, has been cited, and the English cases referred to are inapplicable, as shown in Caldwell *v.* Van Vlissengen, cited.

The defendant's vessel, being private property, and here voluntarily, for purposes of trade, has no exemption from general national jurisdiction. (Phillimore's Int. Law, 367, 373; The Exchange, 7 Cranch, 144; Story's Conflict of Laws, sec. 383.)

International law respects absolute rights, the violation of which is cause of war, and comity, or rights of imperfect obligation, the contravention of which is not presumed, but which each nation is competent to contravene if it chooses. (This distinction is well stated in Mr. Webster's letter to Lord Ashburton, in the appendix to Wheaton's Law of Nations.)

It will not be claimed that the prohibition of the use of such an article as this, in a private vessel, under these circumstances,

is a violation of any absolute right secured by the law of nations. The Government has the right to prohibit commerce altogether, or with particular nations, as by embargo or non-intercourse laws. (1 Kent's Com., sec. 33 n; Vattel, Book 2, Ch. 7, sec. 94; Ch. 8, sec. 100; Ch. 2, secs. 25, 33—Book 1, Ch. 8, sec. 90.)

As a nation may prohibit trade, so it may lay conditions and restrictions. Authorities cited supra. (Vattel, Book 2, Ch. 8, sec. 100.)

The question is really under the *comitas gentium.* Between countries trading freely, is there a presumption from the law of comity that no nation will prohibit or restrict the use of such an invention, under such circumstances, so well settled as to authorize a court to establish the exception against the language of the statute?

This can hardly be contended, since the case of Caldwell *v.* Van Vlissengen, and the act 15 and 16 Victoria.

This is not a question of property, or of the domicil or *situs* of property. The defendant may have his vessel full of these articles, if he chooses. We admit the property in the article to be in him, and that it is part of the national wealth of France, and has its *situs* in France, for purposes of taxation, and for all national purposes. (Hays *v.* Pacific Co., 17 How., 596.) The question is upon a restriction of its use within our dominions.

As the use of the machine is not alleged to be necessary, and the presence of the vessel here is voluntary, if the comity of nations does not allow the prohibition in this case, it would forbid it in all cases of patents; and vessels nominally owned in the British Provinces, and in the West India Islands, may use all our nautical patents.

To what burdens is the foreigner and his personal property subject?

Not to taxes *for the support of the Government.* (In re Bruce, 2 Cr. and J., 437; Vattel, Book 2, Ch. 8, sec. 106.)

Nor to duties that relate to the quality of a citizen, as militia or jury duties. But they are subject to all burdens, taxes, and duties, relating to the police and economical regulations of a State. (Vattel, B. 2, Ch. 8, sec. 106.)

They are subject to imposts and duties levied for the purpose of encouraging the manufactures or other industry of a country, and are liable to prohibitions and restrictions made for the same purpose. Such are most navigation laws, and a large part of the revenue laws of a country. (Vattel, B. 2, Ch. 8, sec. 106; 1 Kent's Com., 35.)

Their exemption seems to be based upon the principle that

they shall not be required to do anything inconsistent with their home allegiance, or anything which supposes an allegiance or fealty to the State in which they merely sojourn.

The patent and copyright laws of a country stand upon the same ground with navigation laws, and laws prohibiting altogether or restricting certain kinds of trade, for economical purposes, or to add to the military resources and strength, or to increase the effective power and industry of a country, or to develop its genius. As to these, each nation is the proper judge of its own policy. (Vattel, B. 2, Ch. 2, secs. 25, 33.)

Indeed, Vattel (B. 1, Ch. 20, sec. 255) seems to define the police regulations of a country so as to include patent laws.

The object of the patent laws is to develop the genius and industry of the country, as well for war as for peace. And whether the law in this case be looked upon as a prohibition of the use, or as a duty, burden, or tax, on the use, it is equally within the recognised jurisdiction of the sovereign, under the comity of nations.

Under the British copyright laws, a foreigner cannot introduce into England, even for his private use, a book printed in his own country, if it is subject to copyright in England; and the introduction entails a forfeiture, instead of a tax to be paid to the author. (Act 5 and 6 Victoria, Ch. 45.)

In this state of the international law, in the absence of all direct decisions in support of the defendant's position, and since the passage of 15 and 16 Victoria, and the decision in Caldwell *v.* Van Vlissengen, it is respectfully suggested that the question of exemption of foreigners (in cases not of necessity or charity) should be treated as a political rather than a legal question, and the British precedent be followed by the court, until Congress or the treaty-making power shall act upon it.

Mr. Austin, for defendant in error, made the following points:

I. Foreign vessels entering a port of the United States, by the express or implied permission of the Government, do so under an implied immunity and reservation of the right belonging to them by the laws of the country to which they belong, with an implied understanding that the persons on board shall not violate the peace or domestic laws of the country. (Vattel's Law of Nations, B. 2, Ch. 8, sec. 101.)

The Alcyon, coming from the island of Miquelon, may be deemed to have entered a port of the United States by express permission. (5 United States Statutes at Large, 748, Ch. 66, which specially mentions this island.)

The plaintiff says that the terms of the patent law are broad enough to render the use of the aforesaid contrivance or gaff-saddle on board of the Alcyon, while in the harbor of Boston, a violation of his right.

The question is, whether the patent law can be properly so construed as to include a use of said gaff-saddle, notwithstanding the circumstances under which the said gaff-saddle was incorporated into the structure of the Alcyon, and notwithstanding the express or implied permission of the United States, by force of which she entered a port of the United States.

II. What shall or does constitute a vessel must be determined exclusively by the law of the country to which the vessel belongs, i. e., by the law of the owner's domicil.

This follows necessarily from general maxims of international jurisprudence. (Story on Con. of Laws, secs. 18, 20.)

In order to ascertain what is or is not real property, we must resort to the *lex loci rei*, (Id., sec. 382, 447;) so as to what is or what is not a corporation. (Bank of Augusta *v.* Earle, 13 Pet., 519.)

The Alcyon, although in a port of the United States, was still within the jurisdiction of France.

Children born on board of her while in Boston harbor would have been French subjects. (Vattel L. of N., B. 1, Ch. 19, sec. 216.)

The extent to which this principle is applied is shown in the case of In re Bruce, (2 Cr. and J., 437,) and Thompson *v.* The Advocate General, (12 Clark and F., 1.) See also United States *v.* Wiltberger, (5 Wh., 76.)

The gaff-saddle was as much an integral part of the Alcyon as her rudder, or her keel, or her gaff. Whether a more or less necessary part, does not alter the fact that it *was* rightfully a part of the vessel by French law. Therefore, if the United States patent law operated to prevent the defendant from using the gaff-saddle while in the harbor of Boston, notwithstanding it was a part of his vessel, without plaintiff's permission, it operated just so far to impose a restriction on the implied permission accorded by the United States to all French vessels to enter the ports of the United States, and upon the express permission accorded to all French vessels from Miquelon.

The statutes of the United States relating to patents were not intended to affect, and do not affect, foreign vessels coming into the ports of the United States.

1st. The statutes of a country relating to patents are not such laws as a foreigner, visiting this country temporarily, and not to become a resident, is bound to obey, so far as those laws relate merely to the use of articles purchased abroad, and

brought into the country solely for the personal use of the party in possession while a transient visiter. (Vattel L. of N., B. 2, Ch. 8, secs. 101, 106, 109; Boullenois Traité des Statuts, pp. 2, 3, 4; Universities of Oxford and Cambridge *v.* Richardson, 6 Vesey, Jr., 689, which entirely supports this position.)

2d. The United States, in granting letters patent, or any other exclusive privilege to a citizen, necessarily always reserve by implication their own rights of sovereignty, which are not to be affected by any individual or private privilege.

Examples of the application of this principle are as follows:

1. In regard to the right of eminent domain.

This exists inherently in every Government. (Vattel's L. of N., B. 1, Ch. 20, sec. 244; Bonaparte *v.* The Camden and Amboy Railroad, 1 Bald., 220.)

It is recognised in the Constitution of the United States. (Amdt. V.)

Therefore, if the Government by a land patent convey today a portion of its public lands to an individual, it could tomorrow, by virtue of the implied reservation of its right of eminent domain, resume the land from its own grantee, and against his consent, by paying to him an indemnity.

Independently of the principle that the right of eminent domain, being an attribute of sovereignty, *could* not be conveyed away, the conclusion above stated follows from the rule that in public grants nothing passes by implication. (United States *v.* Arredondo, 6 Pet., 738; Jackson *v.* Lamphire, 3 Pet., 289.)

2. The constitutional power of Congress over commerce.

This power extends to navigation, (2 Story's Com. on Con., sec. 1,060,) and to every species of commercial intercourse. (Id., 1,061.)

In the exercise of this power, Congress in 1845, after the date of the plaintiff's patent, passed the law relating to French vessels coming from Miquelon, (ubi supra,) which law makes no exception as to the kind of vessel, or the mode of its rig, or the peculiarities of its structure.

Either, therefore, the power of Congress to pass an act thus broad in its terms was limited by the grant to the plaintiff of an exclusive right to use the contrivance in question, or the exclusive right was limited in its extent by the implied reservation of power to pass such an act. As the grant to the plaintiff, and the act of 1845, are in direct opposition, the grant must be construed against grantee. (Mills *v.* St. Clair County, 8 How., 569.)

The defendant does not contend that he would have a right to bring into a port of the United States a cargo or any number of these contrivances for sale; nor even that he had a right

to detach and sell that on board of the Alcyon. In this argument the gaff-saddle is deemed a part of the schooner, in the same way as fixtures are parts of the reality.

3. The power of Congress to alienate a portion of its territory.

This power exists in every Government, (Vattel's L. of N., B. I., Ch. 21, sec. 263.) It was exercised in the Treaty of Washington, 1842, (8 U. S. Stat. at Large, 572.)

Every patent right then existing extended over the whole country as then bounded. The alienation of a portion of the territory diminished the value, by diminishing the extent of every existing patent right; but they were all granted, subject to the implied reservation of power on the part of the Government thus to diminish their value.

The right, therefore, of the plaintiff, to an exclusive use of his patented contrivance within the jurisdiction of the United States, was limited by the paramount right of the sovereignty of the United States to admit all vessels into the ports of the United States, which right they have exercised in regard to French vessels, by implication, by treaty, and by statute. The same reasoning which would separate the gaff-saddle from the schooner might be allowed to separate her into as many parts as there should happen to be articles on board of her incorporated into her structure, the like of which were patented in this country.

3. The private right of every patentee is subject to the public right of the Government, to admit into the ports of the United States any foreign vessel, free from any private or public charges, tolls, or burdens, other than those imposed by treaty or by the laws of nations. (The Attorney General *v.* Burridge, 10 Price, 350; Same *v.* Parmeter, Id., 378; The same *v.* The Attorney General, Id., 412.)

The cases cited are exactly analogous in principle to the case at bar.

In the citations, the *jus privatum* was a grant by Charles I of his property in land between high and low water mark; and the *jus publicum* with which it interfered was the right of the public freely to pass and repass upon the salt water between high and low water mark.

In the present case, the *jus privatum* is the exclusive right granted to the plaintiff to use within the jurisdiction of the United States a certain machine, and the *jus publicum* with which it interferes is the right the public has to the free admission into the ports of the United States of all foreign vessels, being such according to the law of the country where they belong.

The grant by Charles I of land between high and low water mark was held void, so far as it prevented this free passage. By parity of reasoning, the letters patent of the plaintiff must be held void, or rather as never having extended to foreign vessels visiting the ports of the United States, as the Alcyon visited Boston.

The principle here contended for, as it applies to ports and harbors, is clearly stated by Lord Hale, in his treatise *De Jure Maris*, cap. 6, p. 35, and in the treatise *De Portibus Maris*, chapter on the *jus publicum*, pp. 84, 89: "When a port is fixed and settled," "though the soil and franchise and dominion thereof *prima facie* be in the King, or by derivation from him in a subject, yet that *jus privatum* is clothed and superinduced with a *jus publicum.*" So in the case at bar, the *jus privatum* of the patentee is subject to the *jus publicum* by which foreign vessels, however constructed, may enter our ports. This Government, never having undertaken to decide, nor ever having granted to an individual the right to decide for the Government, that certain vessels, or vessels constructed partly or wholly in a certain way, shall not enter our ports without paying a toll, or charge, or duty, not imposed by treaty or special laws relating thereto.

4. The statutes relating to patents cannot properly be so construed as to include machines or contrivances forming a part of the original structure of foreign vessels entering the ports of the United States, as the Alcyon entered Boston harbor.

(1.) Because such construction, for the reasons above stated, would introduce public mischiefs and manifest incongruities. (Sawin *v.* Guild, 1 Gall., 485; Talbot *v.* Seaman, 1 Cr., 1; Murray *v.* The Charming Betsey, 2 Id., 64.)

(2.) These statutes were passed *alio intuitu.* (See the reasoning of Judge Curtis, in the opinion delivered by him in this case, printed from the original MS. in 4 Am. Law Register, 152. Also, Lessee of Brewer *v.* Blougher, 14 Pet., 178: "The laws will restrain the operation of a statute within narrower limits than its words import, if the literal meaning of its language would extend to cases which the Legislatnre never designed to embrace in it"—198.) It cannot be supposed that Congress intended the statutes on patents to confer a right on a patentee to interfere in any way with the exercise of a license conferred by Government on a foreign vessel. (Same doctrine in Mercer *v.* Mechanics' Bank of Alexandria, 1 Pet., 64.)

IV. Letters patent of the United States confer upon the grantee the exclusive right to the subject-matter of the patent, *to be exercised within their jurisdiction.* A foreign ship coming

within one of the ports of the United States, with their express or implied permission, is without the jurisdiction within which this exclusive right is to be exercised.

1. Foreigners within the territorial jurisdiction of a country may yet be within its municipal jurisdiction for no purpose whatever. Such is the status of public ministers—(Wheaton's Elements of the L. of N., Part III, c. 1, s. 14; Id., Part II, c. 2, s. 9)—and of foreign sovereigns entering the territory of another—(id. id. id.)—and of foreign armies marching, &c., through the territory—(id. id. id.)—and of a foreign ship of war—(id. id. id.)—and Schooner Exchange *v.* McFadden, 7 Cr. 135, 147.)

2. Foreigners within the territorial may be within the municipal jurisdiction of a country for all purposes. This is the status of foreigners who come into the country *animo manendi*, becoming inhabitants. (Vattel's L. of N., B. I, c. 19, s. 213.)

3. Foreigners within the territorial may be within the municipal jurisdiction for some purposes, and not for others. This is the case with transient persons (Vattel's L. of N., B. II, c. 8, ss. 105–'6–'8–'9) and consuls; (Wheaton's Elements, P. III, c. 1, s. 23.) The same principle applies to a part of the country in temporary possession of an enemy. (U. S. *v.* Hayward, 2 Gall., 485.) To goods imported, and not entered, although within the territorial jurisdiction of the State, they are not subject to its municipal jurisdiction. (Harris *v.* Dennie, 3 Pet., 292.)

This principle applies to a foreign commercial vessel visiting a port of the United States. It is within the jurisdiction of the United States, so far that persons on board are bound to do no act against the public peace, or *contra bonos mores*, or against the revenue laws, &c., &c. But "for all the personal relations and responsibilities existing in a ship at the time she entered a port, and established or permitted by the laws of her own country, her authorities are answerable only at home; and to interfere with them in discharge of the duties imposed upon them, or the exercise of the powers vested in them by those laws, on the ground of their being inconsistent with the municipal legislation of the country where the ship happens to be lying, is to assert for that legislation a superiority not acknowledged by the law, and inconsistent with the independence of nations." (Mr. Legare's Opinion, 4 Op. of Att. Gen., 98, 102; Same point, 6 Webster's Works, 303.)

V. The case of Caldwell *v.* Van Vlissengen, (9 Hare, 415, reprinted in 9 Eng. Law and Equity R., 51,) will be cited by plaintiff in error, as deciding the point before the court. On this case, the defendants say:

1. It will be regarded by this court only so far as the reasoning commends itself to the court as sound.

2. The case was not placed upon the grounds assumed in the case at bar. The principles here contended for were neither considered nor even presented to the court.

3. Statute 15 and 16 Victoria, c. 83, s. 26, passed July 1, 1852, provides that letters patent thereafter granted shall not prevent the use of inventions in foreign ships resorting to British ports when not used for the manufacture of goods to be vended in or exported from England, excepting from the act, ships of foreign States in the ports of which British ships are prevented from using foreign inventions when not employed for the manufacture of goods to be vended in or exported from such foreign States.

This statute was passed in evident recognition of the existence and propriety of the principles of international law contended for by the defendant in error.

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

This case comes before the court upon a writ of error to the Circuit Court of the United States for the district of Massachusetts.

The plaintiff in error, who was also plaintiff in the court below, brought this action against the defendant for the infringement of a patent which the plaintiff had obtained for a new and useful improvement in constructing the gaff of sailing vessels. The declaration is in the usual form, and alleges that the defendant used this improvement at Boston without his consent. The defendant pleaded that the improvement in question was used by him only in the gaffs of a French schooner, called the Alcyon, of which schooner he was master; that he (the defendant) was a subject of the Empire of France; that the vessel was built in France, and owned and manned by French subjects; and, at the time of the alleged infringement, was upon a lawful voyage, under the flag of France, from St. Peters, in the island of Miquelon, one of the colonies of France, to Boston, and thence back to St. Peters, which voyage was not ended at the date of the alleged infringement; and that the gaffs he used were placed on the schooner at or near the time she was launched by the builder in order to fit her for sea.

There is also a second plea containing the same allegations, with the additional averment that the improvement in question had been in common use in French merchant vessels for more than twenty years before the Alcyon was built, and was the

common and well-known property of every French subject long before the plaintiff obtained his patent.

The plaintiff demurred generally to each of these pleas, and the defendant joined in demurrer; and the judgment of the Circuit Court being in favor of the defendant, the plaintiff thereupon brought this writ of error.

The plaintiff, by his demurrer, admits that the Alcyon was a foreign vessel, lawfully in a port of the United States for the purposes of commerce, and that the improvement in question was placed on her in a foreign port to fit her for sea, and was authorized by the laws of the country to which she belonged. The question, therefore, presented by the first plea is simply this: whether any improvement in the construction or equipment of a foreign vessel, for which a patent has been obtained in the United States, can be used by such vessel within the jurisdiction of the United States, while she is temporarily there for the purposes of commerce, without the consent of the patentee?

This question depends on the construction of the patent laws. For undoubtedly every person who is found within the limits of a Government, whether for temporary purposes or as a resident, is bound by its laws. The doctrine upon this subject is correctly stated by Mr. Justice Story, in his "Commentaries on the Conflict of Laws," (chap. 14, sec. 541,) and the writers on public law to whom he refers. A difficulty may sometimes arise, in determining whether a particular law applies to the citizen of a foreign country, and intended to subject him to its provisions. But if the law applies to him, and embraces his case, it is unquestionably binding upon him when he is within the jurisdiction of the United States.

The general words used in the clause of the patent laws granting the exclusive right to the patentee to use the improvement, taken by themselves, and literally construed, without regard to the object in view, would seem to sanction the claim of the plaintiff. But this mode of expounding a statute has never been adopted by any enlightened tribunal—because it is evident that in many cases it would defeat the object which the Legislature intended to accomplish. And it is well settled that, in interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the Legislature, as thus ascertained, according to its true intent and meaning.

Neither will the court, in expounding a statute, give to it a construction which would in any degree disarm the Government of a power which has been confided to it to be used for the general good—or which would enable individuals to embarrass it, in the discharge of the high duties it owes to the community—unless plain and express words indicated that such was the intention of the Legislature.

The patent laws are authorized by that article in the Constitution which provides that Congress shall have power to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. The power thus granted is domestic in its character, and necessarily confined within the limits of the United States. It confers no power on Congress to regulate commerce, or the vehicles of commerce, which belong to a foreign nation, and occasionally visit our ports in their commercial pursuits. That power and the treaty-making power of the General Government are separate and distinct powers from the one of which we are now speaking, and are granted by separate and different clauses, and are in no degree connected with it. And when Congress are legislating to protect authors and inventors, their attention is necessarily attracted to the authority under which they are acting, and it ought not lightly to be presumed that they intended to go beyond it, and exercise another and distinct power, conferred on them for a different purpose.

Nor is there anything in the patent laws that should lead to a different conclusion. They are all manifestly intended to carry into execution this particular power. They secure to the inventor a just remuneration from those who derive a profit or advantage, within the United States, from his genius and mental labors.

But the right of property which a patentee has in his invention, and his right to its exclusive use, is derived altogether from these statutory provisions; and this court have always held that an inventor has no right of property in his invention, upon which he can maintain a suit, unless he obtains a patent for it, according to the acts of Congress; and that his rights are to be regulated and measured by these laws, and cannot go beyond them.

But these acts of Congress do not, and were not intended to, operate beyond the limits of the United States; and as the patentee's right of property and exclusive use is derived from them, they cannot extend beyond the limits to which the law itself is confined. And the use of it outside of the jurisdiction of the United States is not an infringement of his rights, and

he has no claim to any compensation for the profit or advantage the party may derive from it.

The chief and almost only advantage which the defendant derived from the use of this improvement was on the high seas, and in other places out of the jurisdiction of the United States. The plea avers that it was placed on her to fit her for sea. If it had been manufactured on her deck while she was lying in the port of Boston, or if the captain had sold it there, he would undoubtedly have trespassed upon the rights of the plaintiff, and would have been justly answerable for the profit and advantage he thereby obtained. For, by coming in competition with the plaintiff, where the plaintiff was entitled to the exclusive use, he thereby diminished the value of his property. Justice, therefore, as well as the act of Congress, would require that he should compensate the patentee for the injury he sustained, and the benefit and advantage which he (the defendant) derived from the invention.

But, so far as the mere use is concerned, the vessel could hardly be said to use it while she was at anchor in the port, or lay at the wharf. It was certainly of no value to her while she was in the harbor; and the only use made of it, which can be supposed to interfere with the rights of the plaintiff, was in navigating the vessel into and out of the harbor, when she arrived or was about to depart, and while she was within the jurisdiction of the United States. Now, it is obvious that the plaintiff sustained no damage, and the defendant derived no material advantage, from the use of an improvement of this kind by a foreign vessel in a single voyage to the United States, or from occasional voyages in the ordinary pursuits of commerce; or if any damage is sustained on the one side, or any profit or advantage gained on the other, it is so minute that it is incapable of any appreciable value.

But it seems to be supposed, that this user of the improvement was, by legal intendment, a trespass upon the rights of the plaintiff; and that although no real damage was sustained by the plaintiff, and no profit or advantage gained by the defendant, the law presumes a damage, and that the action may be maintained on that ground. In other words, that there is a technical damage, in the eye of the law, although none has really been sustained.

This view of the subject, however, presupposes that the patent laws embrace improvements on foreign ships, lawfully made in their own country, which have been patented here. But that is the question in controversy. And the court is of opinion that cases of that kind were not in the contemplation of Congress in enacting the patent laws, and cannot, upon any

sound construction, be regarded as embraced in them. For such a construction would be inconsistent with the principles that lie at the foundation of these laws; and instead of conferring legal rights on the inventor, in order to do equal justice between him and those who profit by his invention, they would confer a power to exact damages where no real damage had been sustained, and would moreover seriously embarrass the commerce of the country with foreign nations. We think these laws ought to be construed in the spirit in which they were made—that is, as founded in justice—and should not be strained by technical constructions to reach cases which Congress evidently could not have contemplated, without departing from the principle upon which they were legislating, and going far beyond the object they intended to accomplish.

The construction claimed by the plaintiff would confer on patentees not only rights of property, but also political power, and enable them to embarrass the treaty-making power in its negotiations with foreign nations, and also to interfere with the legislation of Congress when exercising its constitutional power to regulate commerce. And if a treaty should be negotiated with a foreign nation, by which the vessels of each party were to be freely admitted into the ports of the other, upon equal terms with its own, upon the payment of the ordinary port charges, and the foreign Government faithfully carried it into execution, yet the Government of the United States would find itself unable to fulfil its obligations if the foreign ship had about her, in her construction or equipment, anything for which a patent had been granted. And after paying the port and other charges to which she was subject by the treaty, the master would be met with a further demand, the amount of which was not even regulated by law, but depended upon the will of a private individual.

And it will be remembered that the demand, if well founded in the patent laws, could not be controlled or put aside by the treaty. For, by the laws of the United States, the rights of a party under a patent are his private property; and by the Constitution of the United States, private property cannot be taken for public use without just compensation. And in the case I have stated, the Government would be unable to carry into effect its treaty stipulations without the consent of the patentee, unless it resorted to its right of eminent domain, and went through the tedious and expensive process of condemning so much of the right of property of the patentee as related to foreign vessels, and paying him such a compensation therefor as should be awarded to him by the proper tribunal. The same difficulty would exist in executing a law of Congress

in relation to foreign ships and vessels trading to this country. And it is impossible to suppose that Congress in passing these laws could have intended to confer on the patentee a right of private property, which would in effect enable him to exercise political power, and which the Government would be obliged to regain by purchase, or by the power of its eminent domain, before it could fully and freely exercise the great power of regulating commerce, in which the whole nation has an interest. The patent laws were passed to accomplish a different purpose, and with an eye to a different object; and the right to interfere in foreign intercourse, or with foreign ships visiting our ports, was evidently not in the mind of the Legislature, nor intended to be granted to the patentee.

Congress may unquestionably, under its power to regulate commerce, prohibit any foreign ship from entering our ports, which, in its construction or equipment, uses any improvement patented in this country, or may prescribe the terms and regulations upon which such vessel shall be allowed to enter. Yet it may perhaps be doubted whether Congress could by law confer on an individual, or individuals, a right which would in any degree impair the constitutional powers of the legislative or executive departments of the Government, or which might put it in their power to embarrass our commerce and intercourse with foreign nations, or endanger our amicable relations. But however that may be, we are satisfied that no sound rule of interpretation would justify the court in giving to the general words used in the patent laws the extended construction claimed by the plaintiff, in a case like this, where public rights and the interests of the whole community are concerned.

The case of Caldwell *v.* Vlissengen, (9 Hare, 416, 9 Eng. L. and Eq. Rep., 51,) and the statute passed by the British Parliament in consequence of that decision, have been referred to and relied on in the argument. The reasoning of the Vice Chancellor is certainly entitled to much respect, and it is not for this court to question the correctness of the decision, or the construction given to the statute of Henry VIII.

But we must interpret our patent laws with reference to our own Constitution and laws and judicial decisions. And the court are of opinion that the rights of property and exclusive use granted to a patentee does not extend to a foreign vessel lawfully entering one of our ports; and that the use of such improvement, in the construction, fitting out, or equipment of such vessel, while she is coming into or going out of a port of the United States, is not an infringement of the rights of an American patentee, provided it was placed upon her in a for-

eign port, and authorized by the laws of the country to which she belongs.

In this view of the subject, it is unnecessary to say anything in relation to the second plea of the defendant, since the matters relied on in the first are sufficient to bar the plaintiff of his action, without the aid of the additional averments contained in the second.

The judgment of the Circuit Court must therefore be affirmed.

MOSES C. MORDECAI, ISAAC E. HERTZ, JOSEPH A. ENSLOW, AND ISAAC R. MORDECAI, CARRYING ON BUSINESS UNDER THE NAME, STYLE, AND FIRM, OF MORDECAI & CO., LIBELLANTS AND APPELLANTS, *v.* W. & N. LINDSAY, OWNERS OF THE SCHOONER MARY EDDY, HER TACKLE, &C.

Where the decree of the District Court, in a case of admiralty jurisdiction, was not a final decree, the Circuit Court, to which it was carried by appeal, had no power to act upon the case, nor could it consent to an amendment of the record by an insertion of a final decree by an agreement of the counsel in the case; nor can this court consent to such an amendment.

The District Court having ordered a report to be made, the case must be sent back from here to the Circuit Court, and from there to the District Court, in order that a report may be made according to the reference.

THIS was an appeal from the Circuit Court of the United States for the district of South Carolina.

It was a libel filed on the 6th of April, 1854, in the District Court of South Carolina, by Mordecai & Co., against the schooner Mary Eddy, and all persons intervening.

A very brief narrative will be sufficient to show the condition in which the case was, when it left the District Court, and this is all that is required under the present opinion of this court.

In March, 1854, the Mary Eddy was in New Orleans, about to sail for Charleston. One hundred and two hogsheads of sugar were shipped on board of her, which were to be delivered to Mordecai & Co. The libel was for the non-delivery of these articles.

The answer admitted the shipment and arrival of the vessel in Charleston, and then averred the delivery of three hogsheads of the sugar, (together with some barrels of syrup,) the freight of which Mordecai & Co. refused to pay. The answer then alleged that the libellants, having refused to pay freight until the sugars were received by them at their store, or until possession had passed to them, the master unloaded the residue