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action of ejectment the case was submitted to the court upon the evidence, without the intervention of a jury, leaving it to the court to decide the fact, as well as the law, upon the evidence and admissions before it. The case, therefore, is the same in principle with that of *Guild and others v. Frontin*, 18 How., 135. And the doctrine in that case was reaffirmed in *Suydam v. Williamson*, 20 How., 428, and the grounds upon which it rests fully set forth. It is unnecessary to repeat here what was stated in these two decisions. It is sufficient to say that the agreement of parties cannot authorize this court to revise a judgment of an inferior court in any other mode of proceeding than that which the law prescribes, nor can the laws of a State, regulating the proceedings of its own courts, authorize a district or Circuit Court sitting in the State to depart from the modes of proceeding and rules prescribed by the acts of Congress.

The judgment of the Circuit Court must therefore be affirmed.

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ROSS WINANS, PLAINTIFF IN ERROR, *v.* THE NEW YORK AND  
ERIE RAILROAD COMPANY.

Where objection was made, during the trial of a cause, to the reception of the deposition of a witness, which had been taken under a commission, it was properly overruled, because the rules of practice in the Circuit Court of New York give time and opportunity to move for a suppression of the deposition or a re-examination of the witness.

The paper which the witness referred to, but did not annex to his deposition, was not in his power.

In the trial of a suit for the violation of a patent right, the court cannot be compelled to receive the evidence of experts as to how a patent ought to be construed. The judge may obtain information from them, if he desire it.

Winans's patent for "a new and useful improvement in the construction of cars or carriages intended to travel upon railroads," was for the manner of arranging and connecting the eight wheels of a railroad carriage for the purpose of enabling burden and passenger cars to pursue a more smooth, even, and safe course over the curves and irregularities of a railroad. And it was proper to instruct the jury, that if they found, from the evidence, that before the time when Winans claimed to have made the discovery, carriages with eight wheels, arranged and connected substantially in the same manner and upon the same mechanical principles with those described in the patent, were known, and publicly used, Winans was not entitled to recover.

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THIS case was brought up by writ of error from the Circuit Court of the United States for the northern district of New York.

It was an action brought by Winans against the railroad company for a violation of his patent for a new and useful improvement in the construction of cars or carriages intended to travel upon railroads.

In order that the reader may understand the nature of the improvement, the description of it, as given by Winans himself, is here inserted, because it is remarkably clear and well drawn up.

The following is the schedule referred to in the letters patent:

"To all whom it may concern: Be it known, that I, Ross Winans, civil engineer, of the city of Baltimore, in the State of Maryland, have invented a new and useful improvement in the construction of cars or carriages intended to travel upon railroads; which improvement is particularly adapted to passenger cars, as will more fully appear by an exposition of the difficulties heretofore experienced in the running of such cars at high velocities, which exposition I think it best to give in this specification, for the purpose of exemplifying the more clearly the object of my said improvement.

"In the construction of all railroads in this country which extend to any considerable distance, it has been found necessary to admit of lateral curvatures, the radius of which is sometimes but a few hundred feet; and it becomes important, therefore, so to construct the cars as to enable them to overcome the difficulties presented by such curvatures, and to adapt them for running with the least friction practicable upon all parts of the road; the friction to which I now allude is that which arises from the contact between the flanches of the wheels and the rails, which, when it occurs, causes a great loss of power, and a rapid destruction of, or injury to, both the wheel and the rail, and is otherwise injurious. The high velocities attained by the improvements made in locomotive engines, and which are not only sanctioned, but demanded, by public opinion, render it necessary that certain points of construction and

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arrangement, both in the roads and wheels, which were not viewed as important at former rates of travelling, should now receive special attention. The greater momentum of the load, and the intensity of the shocks and concussions, which are unavoidable, even under the best constructions, are among those circumstances which must not be neglected, as the liability to accident is thereby not only greatly increased, but the consequences to be apprehended much more serious. The passenger and other cars in general use upon railroads have four wheels, the axles of which are placed from three and a half to five feet apart; this distance being governed by the nature of the road upon which they run, and other considerations. When the cars are so constructed that the axles retain their parallelism, and are at a considerable distance apart, there is a necessary tendency in the flanges of the wheels to come into contact with the rails, especially on the curvatures of least radius, as the axles then vary more from the direction of the radii. From this consideration, when taken alone, it would appear to be best to place the axles as near to each other as possible, thus causing them to approach more nearly to the direction of the radii of the curves, and the planes of the wheels to conform to the line of the rails. There are, however, other circumstances which must not be overlooked in their constructions. I have already alluded to the increased force of the shocks from obstructions at high velocities—and, whatever care may be taken, there will be inequalities in the rails and wheels, which, though small, are numerous, and the perpetual operation of which produces effects which cannot be disregarded. The greater the distance between the axles, while the length of the body remains the same, the less is the influence of these shocks or concussions; and this has led, in many instances, to the placing them in passenger cars, at or near their extreme ends. Now, however, a compromise is most commonly made between the evils resulting from a considerable separation and a near approach, as, by the modes of construction now in use, one of the advantages must be sacrificed to the other. But it is not to the lateral curvatures and inequalities of the road alone that the foregoing remarks ap



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ply. The incessant vibration felt in travelling over a railroad is mainly dependent upon the vertical motion of the cars in surmounting those numerous though minute obstructions which unavoidably exist. The nearer the axles are placed to each other, the greater is the effect of this motion upon the passengers, and the greater its power to derange the machinery and the road. It becomes very important, therefore, both as regards comfort, safety, and economy, to devise a mode of combining the advantages derived from placing the axles at a considerable distance apart, with those of allowing them to be situated near to each other. It has been attempted, and with some success, to correct the tendency of the flanches to come into contact with the rails, on curved and other parts of the road, by making the tread of the wheel conical; and if the travelling upon railroads was not required to be very rapid, this would so far prove an effectual corrective, as the two rails would find diameters upon the wheels which would correspond with the difference in length, the constant tendency to deviation being as constantly counteracted by this construction; but at high velocities, the momentum of the body in motion tends so powerfully to carry it in a right line, as to cause the wheel on the longer rail to ascend considerably above that part of the cone which corresponds therewith. The consequence of this is, a continued serpentine motion, principally, but not entirely, in a lateral direction; nor is this confined to the curved parts of the road, but it exists to an equal or greater extent upon those which are straight, especially when the axles are near to each other, the irregularities before spoken of constantly changing the direct course of the wheels, whilst there is no general curvature of the rails to counteract it. To avoid this effect, and the unpleasant motion and tendency to derangement consequent upon it, an additional motive is furnished for placing the axles at a considerable distance apart.

"The object of my invention is, among other things, to make such an adjustment or arrangement of the wheels and axles as shall cause the body of the car or carriage to pursue a more smooth, even, direct, and safe course, than it does as cars are ordinarily constructed, both over the curved and straight

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parts of the road, by the before-mentioned desideratum of combining the advantages of the near and distant coupling of the axles, and other means to be hereinafter described. For this purpose, I construct two bearing carriages, each with four wheels, which are to sustain the body of the passenger or other car by placing one of them at or near each end of it, in a way to be presently described. The two wheels on either side of these carriages are to be placed very near to each other; the spaces between their flanches need be no greater than is necessary to prevent their contact with each other. These wheels I connect together by means of a very strong spring—say double the usual strength employed for ordinary cars—the ends of which spring are bolted, or otherwise secured, to the upper sides of the boxes, which rest on the journals of the axles, the longer leaves of the springs being placed downwards, and surmounted by the shorter leaves. Having thus connected two pairs of wheels together, I unite them into a four-wheel bearing carriage, by means of their axles, and a bolster of the proper length extending across, between the two pairs of wheels, from the centre of one spring to that of the other, and securely fastened to the tops of them. This bolster must be of sufficient strength to bear a load upon its centre of four or five tons. Upon this first bolster I place another of equal strength, and connect the two together by a centre pin or bolt passing down through them, and thus allowing them to swivel or turn upon each other in the manner of the front bolster of a common road wagon. I prefer making these bolsters of wrought or cast iron; wood, however, may be used. I prepare each of the bearing carriages in precisely the same way. The body of the passenger or other car I make of double the ordinary length of those which run on four wheels, and capable of carrying double their load. This body I place so as to rest its whole weight upon the two upper bolsters of the two before-mentioned bearing carriages or running gear. I sometimes place these bolsters so far within the ends of the body of the car as to bring all the wheels under it, and in this case less strength is necessary in the car body than when the bolster is situated at its extreme ends. In some cases, however,



I place the bolster so far without the body of the car, at either end, as to allow the latter to hang down between the two sets of wheels or bearing carriages, and to run, if desired, within a foot of the rails.

“When this is done, a strong frame-work projects out from either end of the car or carriage body, and rests upon the upper bolsters of the two bearing carriages. This last arrangement, by which the body of the car is hung so low down, manifestly affords a great security to the passengers, exempting them in a great degree from those accidents to which they are liable when the load is raised. Several bodies may be connected, or rest on a common frame, and be supported on the bearing carriage, in a manner similar to that of a single body. When the bolsters of the bearing carriages are placed under the extreme ends of the body, the relief from shocks and concussions, and from lateral vibrations, is greater than it is when the bolsters are placed between the middle and the ends of the body, and this relief is not materially varied by increasing or diminishing the length of the body, while the extreme ends of it continue to rest on the bolsters of the bearing cars, the load supposed to be equally distributed over the entire length of the body.

“Although I prefer the use of a single spring to a pair of wheels as above described, instead of the ordinary spring to each wheel, and consider it as more simple, cheap, and convenient, than any other arrangement, the end which I have in view may nevertheless be obtained by constructing the bearing carriages in any of the modes usually practiced, provided that the fore and hind wheels of each of them be placed very near together; because the closeness of the fore and hind wheels of each bearing carriage, taken in connection with the use of two bearing carriages coupled remotely from each other as can conveniently be done, for the support of one body, with a view to the objects and on the principles herein set forth, is considered by me as a most important feature of my invention, for, by the contiguity of the fore and hind wheels of each bearing carriage, while the two bearing carriages may be at any desirable distance apart, the lateral friction from the rubbing of the

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flanches against the rails is most effectually avoided, whilst at the same time all the advantages attendant upon placing the axles of a four-wheeled car far apart are thus obtained. The bearing of the load on the centre of the bolster, which also is the centre of each bearing carriage, likewise affords great relief from the shocks occasioned by the percussions of the wheels on protuberant parts of the rails or other objects, and from the vibrations consequent to the use of coned wheels; as the lateral and vertical movements of the body of the car resulting from the above causes are much diminished. The two wheels on either side of one of the bearing carriages may, from their proximity, be considered as acting like a single wheel, and as these two bearing carriages may be placed at any distance from each other, consistent with the required strength of the body of the car, it is evident that all the advantage is obtained which results from having the two axles of a four-wheeled car at a distance from each other, whilst its inconveniences are avoided. Another advantage of this car, compared with those in common use, and which is viewed by me as very important, is the increased safety afforded by it to passengers, not only from the diminished liability to breakage, or derangement in the frame work, but also from the less disastrous consequences to be apprehended from the breaking of a wheel, axle, or other part of the running gear, as the car body depends for its support and safety upon a greater number of wheels and bearing points on the road. I do not claim as my invention the running of cars or carriages upon eight wheels, this having been previously done; not, however, in the manner or for the purposes herein described, but merely with a view of distributing the weight, carried more evenly upon a rail or other road, and for objects distinct in character from those which I have had in view, as hereinbefore set forth. Nor have the wheels, when thus increased in number, been so arranged and connected with each other, either by design or accident, as to accomplish this purpose. What I claim, therefore, as my invention, and for which I ask a patent, is, the before-described manner of arranging and connecting the eight wheels, which constitute the two bearing carriages, with a railroad car, so as to

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accomplish the end proposed by the means set forth, or by any others which are analogous and dependent upon the same principles.

ROSS WINANS."

The patent was originally issued in 1834, and continued regularly until 1848, when it was extended by the Commissioner of Patents for seven years from the 1st of October, 1848.

The defendants pleaded the general issue, and gave notice under the statute that Winans was not the original inventor, but that, substantially, the same contrivance was described in many books, known to many persons, and used in many places. Other grounds of defence were also mentioned. The case came on for trial in June, 1856, when the jury found a verdict for the defendants.

The first exception was to the admission of the testimony of Conduce Gatch, a witness for the defendant, who had been examined under a commission. The questions and answers were as follows:

"One hundredth cross-interrogatory. Did you, before answering the said direct interrogatories, or the said cross-interrogatories, or any of them, see or read, or hear read, or hear stated, any part of, or the substance of any part of, any testimony given or affidavit made by you, or by any other person or persons, in the case of Ross Winans against the Eastern Railroad Company, or in the case of Ross Winans against Orsamus Eaton and others, or in the case of Ross Winans against the New York and Harlem Railroad Company? And, if yea, in what case was such testimony or affidavit given, and by whom was the same read or shown, or stated to you, or to any other person or persons in your presence or hearing?"

To this, Gatch answered:

"X 100th. To the one hundredth cross-interrogatory he saith: At the time of the commissioner's reading to me the direct interrogatories, when I was before him for the purpose of giving my deposition in this case, it struck me forcibly that the questions, if not identically the same, were the same in substance of those I had answered in the case of Winans against the New York and Harlem Railroad Company; and upon ascertaining that the commissioner had a copy of the answers I



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then gave, and for the purpose of facilitating the execution of this commission, I adopted the answers before referred to, altering them in some particulars so as to be more explicit; and I now declare that, independent of seeing the copy of my answers, the facts I have herein testified to are true."

The one hundred and second cross-interrogatory was too long to be inserted. It inquired whether he had heard, read, or stated, any paper, &c., &c.; and if any suggestion had been made in writing, &c., to annex a copy of such writing.

To which Gatch answered:

"To the one hundred and second cross-interrogatory he saith: I refer to my answer to the one hundredth cross-interrogatory."

Upon the trial, the counsel for the plaintiff moved to exclude the whole testimony of Gatch, because he did not annex the writing to his answer. But the court overruled the objection and admitted the evidence, which constituted the first exception.

After this, there were thirty-one exceptions taken, viz: nine to the refusal of the court to allow the plaintiff to prove certain matters which he offered to prove, fourteen to various parts of the charge of the court, and eight to refusals by the court to charge the jury in accordance with the prayers of the plaintiff.

As the first class of exceptions is particularly noticed in the opinion of this court, it is proper to mention the circumstances under which they were taken.

After the defendants had rested their case, and after the plaintiff had thereafter put in a part of his evidence in reply, the plaintiff made to the court the following offer to prove the facts and matters stated in said offer, namely:

"1. The plaintiff, by his counsel, offers to prove that the action of coned wheels, specified in the patent, requires the wheels to be fast on, and turn with their axles. That at the time the plaintiff's patent was granted, it was the general practice, in constructing cars for running at high velocities, to construct them with coned wheels, fast on and turning with their axles, and that non-coned wheels, or coned wheels turning on their axles, are not equivalent for, and cannot produce, the

effects described in the patent as peculiar to the use of coned wheels."

The defendants objected to the proving of any of the facts and matters stated in said offer, on the ground that all of said facts and matters were immaterial and irrelevant, and the court sustained said objection, and refused to allow the plaintiff to prove any of the facts and matters stated in said offer, to which sustaining and refusal the plaintiff then and there duly and in due time excepted.

The plaintiff then made to the court the following offer to prove the facts and matters stated in said offer, namely:

"2. The plaintiff, by his counsel, offers to prove, that the end proposed in the specification of the plaintiff's patent cannot be effected by a car having two swivelling four-wheeled tracks connected with a body or platform, unless the wheels of the bearing carriages are coned on their treads, and are fast on, and turn with their axles."

The defendants objected to the proving of any of the facts and matters stated in said last-mentioned offer, on the ground that all of said facts and matters were immaterial and irrelevant; and the court sustained said last-mentioned objection, and refused to allow the plaintiff to prove any of the facts and matters stated in said last-mentioned offer, to which last-mentioned sustaining and refusal the plaintiff then and there duly and in due time excepted.

These two offers of proof by the plaintiff sufficiently show the character of the proof offered, and which the court ruled out. The remaining seven were similar in their character.

The exceptions to the charge of the court when construing the patent are too voluminous to be inserted, as are also the prayers to the court on behalf of the plaintiff.

Upon all these exceptions the case came up to this court.

It was argued by *Mr. Blatchford* and *Mr. Keller* for the plaintiff in error, and *Mr. Davis* and *Mr. Whiting* for the defendants.

In the argument of a patent case, it is impossible to give to the reader a clear idea of the arguments, because drawings and

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models were produced, without which all attempts at explanation would be superfluous.

Mr. Justice GRIER delivered the opinion of the court.

The patent which the defendants are charged to have infringed purports to be, "for a new and useful improvement in the construction of cars or carriages intended to travel upon railroads."

The specification commences with an enumeration of the difficulties attending short curves in railroads from friction, and the consequent necessity of placing the wheels, where four only are used, near together. But in high velocities the shocks from obstructions or inequalities on the rails are thus greatly increased; so that a compromise is usually made between the evils consequent on too great a separation and too near approach, wherein the advantage of one is necessarily sacrificed for the sake of the other. The incessant vibration felt in traveling on railroad cars is mainly imputed to the minute obstructions which unavoidably exist, and the approximation of the wheels necessary to avoid friction tends to increase the effect of this motion, and its power to derange the machinery of the road.

The important object which the plaintiff's invention seeks to obtain, as regards comfort, safety, and economy, "is to devise a mode of combining the advantages derived from placing the axles at a considerable distance, with those of allowing them to be situated near each other."

The specification then states the methods heretofore used to remedy these difficulties; such as making the track-wheels conical, which, in case of slow travelling, has been found an effectual correction. But in high velocities it caused a serpentine motion, not only on curves, but where the track was straight. To avoid this effect, an additional motive is furnished for placing the axles at a considerable distance apart.

For this purpose the patentee proposes to construct two bearing carriages, each with four wheels, to sustain the body of the cars, one at or near each end thereof; the two wheels on either side of these carriages to be placed very near each other. These wheels may be connected by a strong spring, double the



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usual strength employed for ordinary cars. The use of this spring, though preferable, is not absolutely required, as the end in view may be obtained by constructing the bearing carriages in any of the modes usually practiced, provided the fore and hind wheels of each of the carriages be placed near together; because the closeness of the fore and hind wheels of each bearing carriage, coupled remotely from each other, is considered as the most important feature of the invention.

On each of these carriages a bolster is placed, on which the car body rests, connected with each by a centre pin or bolt passing down through them, thus allowing them to swivel or turn upon each other.

After this description of the improvement contemplated, and the objects to be gained by it, (of which we have given a brief summary,) the specification concludes with the following disclaimer and statement of what the patentee claims to have invented:

"I do not claim as my invention the running of cars or carriages upon eight wheels, this having been previously done; not, however, in the manner or for the purposes herein described, but merely with a view of distributing the weight carried more evenly upon a rail or other road, and for objects distinct in character from those which I have had in view, as hereinbefore set forth. Nor have the wheels, when thus increased in number, been so arranged and connected with each other, either by design or accident, as to accomplish this purpose. What I claim, therefore, as my invention, and for which I ask a patent, is, the before-described manner of arranging and connecting the eight wheels, which constitute the two bearing carriages, with a railroad car, so as to accomplish the end proposed by the means set forth, or by any others which are analogous and dependent upon the same principles."

The defence set up in the pleadings does not deny that defendants use cars constructed as described in the patent, but takes issue on the originality of the invention, averring, among numerous other matters, that the same, or substantially the same, improvement had been previously made and used on the Quincy railroad, near Boston.

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The first bill of exceptions taken on the trial is to the refusal of the court to reject a deposition taken on interrogatories, because the witness had not annexed to it a copy of a former deposition, which, in answer to a previous interrogatory, he admitted he had seen and had used to refresh his memory.

There are two sufficient reasons why this exception cannot be sustained. 1. By the rules of practice in force in the Circuit Court, such an objection cannot be made on the trial of a cause, when the party, as in this case, had full time and opportunity to move for a suppression of the deposition or a re-examination of the witness.

And, secondly, the paper was not in the power of the witness, but in that of the commissioner, or the plaintiff himself, who might have used it if he thought proper.

After the parties had each given evidence tending to prove the issues between them, and the defendants had closed their testimony, the plaintiff's counsel made nine distinct offers of proof, which were severally overruled as irrelevant, and exception taken.

They then proposed eight several instructions, which they requested the court to give to the jury, and took exceptions to the court's refusal. Besides all this, the charge was parcelled out into fourteen paragraphs, and an exception taken to each.

To state each one of these thirty-one propositions at length, and discuss them severally, would be a tedious as well as an unprofitable labor.

There was in fact but one question to be decided by the court, viz: the construction of the patent; the question of novelty being the fact to be passed on by the jury.

The testimony of experts which was rejected had no relevancy to the facts on which the jury were to pass, but seemed rather to be intended to instruct the court on some mechanical facts or principles on which the court needed no instruction, or to teach them what was the true construction of the patent.

Experts may be examined to explain terms of art, and the state of the art, at any given time. They may explain to the court and jury the machines, models, or drawings, exhibited.



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They may point out the difference or identity of the mechanical devices involved in their construction. The maxim of "*cuique in sua arte credendum*" permits them to be examined to questions of art or science peculiar to their trade or profession; but professors or mechanics cannot be received to prove to the court or jury what is the proper or legal construction of any instrument of writing. A judge may obtain information from them, if he desire it, on matters which he does not clearly comprehend, but cannot be compelled to receive their opinions as matter of evidence. Experience has shown that opposite opinions of persons professing to be experts may be obtained to any amount; and it often occurs that not only many days, but even weeks, are consumed in cross-examinations, to test the skill or knowledge of such witnesses and the correctness of their opinions, wasting the time and wearying the patience of both court and jury, and perplexing, instead of elucidating, the questions involved in the issue.

If the construction given by the court to the specification be correct, and in fact the only construction of which it is capable, as we think it is, it would be wholly superfluous to examine experts to teach the court, what they could clearly perceive without such information, that the necessity for coned wheels to avoid friction on curves was a consequence of the fact that the wheels were fixed to the axle.

The improvement claimed by the patent being a device to remedy, among other things, the serpentine or wabbling motion of such wheels in high velocities, the testimony offered concerning them, if it would have any effect at all, would tend only to mislead both court and jury from the only issue in the case.

The following extracts from the charge will show that the judge has given the only construction which the language of this specification will admit, and one which had been previously given by Mr. Chief Justice Taney in 1839, and again by Mr. Justice Nelson:

"According to the import and true construction of the plaintiff's patent and specification, he claims to be the first inventor of 'a new and useful improvement in the construction of cars



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and carriages intended to travel upon railroads,' which improvement consists in *the manner of arranging and connecting* the eight wheels, which constitute the two bearing carriages, with a railroad car, the object of which is to make such an adjustment of the wheels, axles, and bearings of the car, as shall enable a car with a comparatively long body to pass curves with greater facility and safety, and less friction, and as shall at the same time cause the body of the car to pursue a more smooth, even, direct, and safe course, over the curvatures and irregularities, and over the straight parts of the road.

"*The manner* of such arrangement and connection is to place upon the upper bolsters of two bearing carriages, each having four wheels, with the flanches of each pair of wheels very near together, the body of a car, so as to rest its weight and have the bearing of the load upon the centre or central portion of the bolsters, being also the centre or central portion of the bearing carriages; the bolsters of the bearing carriages and car body, respectively, being connected by centre pins or bolts, so as to allow them to swivel and turn upon each other, in the manner of the front bolster of a common road wagon, and the bolsters being placed at, near, or beyond, the ends of the body.

"And the closeness of the fore and hind wheels of each of the two bearing carriages coupled as remotely from each other as may be desired, or can conveniently be done, for the support of one body, is a most important feature of the invention, with a view to the objects and on the principles set forth in the specification.

"The patentee does not claim to be the inventor of a car body (either for freight or for passengers) of a new or peculiar construction in size or form, nor of any single and wholly separate part of the entire car; but he claims, as his invention, *the manner* of arranging and connecting the eight wheels, which constitute the two bearing carriages, with a railroad car, in the mode and by the means described in his specification, for the ends before described, whether such railroad car is adapted to the transportation of freight or of passengers.

"The leading principle set forth in the specification, upon which the arrangement and connection act to effect the objects

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aimed at, is, that by the contiguity of the fore and hind wheels of each bearing carriage, and the swivelling motion of the trucks or bearing carriages, the planes of the flanches of the wheels conform more nearly to the line of the rails, and the lateral friction of the flanches on the rails, while entering, passing through, and leaving curves, is thereby diminished; while at the same time, in consequence of the two bearing carriages being arranged and connected with the body of a passenger or burden car, by means of the king bolts or centre pins and bolsters, placed as remotely from each other as may be desired or can be conveniently done, and with the weight bearing upon the *central* portion of the bolsters and bearing carriages, the injurious effects of the shocks and concussions received from slight irregularities and imperfections of the track, and other minute disturbing causes, are greatly lessened."

The remarks of the court about the want of a disclaimer, where the patent claimed too much, though correct as a general statement of the law, could have little bearing on the present case, where the disclaimer, to be effectual, would include the whole invention claimed.

It is abundantly evident, therefore, that the court having given a correct construction to the patent, there could be no error in refusing to give a different one, or in refusing to admit testimony which, under this construction, was wholly irrelevant to the issue on which the jury were about to pass.

The judgment of the Circuit Court is therefore affirmed, with costs.

Mr. Justice DANIEL dissents, on the ground of a want of jurisdiction.

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THE COMMONWEALTH OF PENNSYLVANIA, PLAINTIFF IN ERROR, *v.*  
WILLIAM RAVENEL, EXECUTOR OF ELIZA KOHNE, DECEASED.

The question of domicile, so far as it depends upon the facts, is one for the jury. But it was proper for the court to instruct the jury what constituted a domicile in law; and to say, further, that as the husband had his domicile in Pennsylvania at the time of his death, the domicile of the widow remained also in Pennsylvania. Whether or not she afterwards changed it to South Carolina, was a ques-