Statement of the case.

izing it. The reason of this is obvious. The army and navy must be fed, and clothed, and cared for at all times and places, and especially when in distant service. The army in Mexico or Utah are not to be disbanded and left to take care of themselves, because the appropriation by Congress, for the service, has been exhausted, or no law can be found on the statute book authorizing a contract for supplies. The above act confers upon the secretaries full authority to contract for these supplies, and which bind the government; and the most ready and convenient mode of accomplishing this, would be by accepting bills of exchange drawn by the contractors of the distant army or navy, upon the secretaries at home.

The credit of the government, thus pledged, would at once furnish the necessary subsistence, clothing, and shelter.

Our conclusion is, that the judgment below should be reversed, and the cause remitted, with directions to grant a new trial, and further proofs taken, that complete justice may be done between the parties.

WHITELY *v.* SWAYNE.

1. Where a patent has been granted for improvements, which, after a full and fair trial, resulted in unsuccessful experiments, and have been finally abandoned, if any other person takes up the subject of the improvements, and is successful, he is entitled to the merit of them as an original inventor.
2. He is the first inventor, and entitled to the patent, who, being an original discoverer, has first *perfected and adapted* the invention to actual use.

WHITELY filed a bill against Swayne, in the Circuit Court for Southern Ohio, to enjoin the use of a certain machine known as the Kirbey Harvester.

As the case was presented in the argument, he relied upon a patent granted to one Steadman, May 23, 1854, for an improvement in clover and grass-seed harvesters, which had

been assigned to him (Whitely), and surrendered, and three reissues granted to him on the 19th June, 1860.

The machine complained of, and sought to be enjoined, had been originally patented to one Byron Dinsmore. Dinsmore's specification was sworn to, December 31st, 1850, and was received at the Patent Office, January 10th, 1851. His patent was issued February 10th, 1852. He made and tried one of his machines in 1850, and cut some ten or twenty acres with it. In 1851 he made twenty-one of them, and between fifty and sixty of them in the following year. On the 18th of April, 1852, three months after the date of Dinsmore's patent, Steadman filed a caveat in the Patent Office, in which he stated that he was engaged in making experiments for perfecting certain improvements in a machine for harvesting clover and grass-seed, preparatory to letters patent therefor. As already stated, this patent was granted May 23, 1854. Besides the caveat and the patent, there was an account, given in the testimony, of the working of the machine, by Mr. Hatch, a neighbor of Steadman's, who resided in Holley, Orleans County, New York, in 1854. The machine was tried in the neighborhood on several occasions in clover fields, but never went into successful practical operation. No machines were ever made under the patent after the first, which was about the time the patent was granted. The experiment appeared to have been wholly given up and abandoned by Steadman as a failure; and it thus remained for some six years, when the complainant (Whitely), took from him an assignment of the patent, and procured the three reissues already referred to.

The bill was dismissed by the court below, and the complainant brought the case here.

Mr. Fisher, for the appellant.

Mr. Wright, contra.

Mr. Justice NELSON delivered the opinion of the court.

The plaintiff's title, and the one upon which he must succeed against the defendant, if he succeeds at all, rests upon

a patent for improvements in a machine for harvesting clover and grass-seed; which improvements, after a full and fair trial, resulted in unsuccessful experiments, and which were finally abandoned. They never went into any useful or practical operation, and nothing more was heard of them from Steadman or any other person, for a period of six years. At the end of this period the plaintiff takes an assignment of the patentee, and is, doubtless, vested with all his rights. But what were those rights? Clearly, if any other person had chosen to take up the subject of the improvements, where it was left off by Steadman, he had a right thus to enter upon it, and if successful, would be entitled to the merit of them as an original inventor, for he is the first inventor, and entitled to the patent, who, being an original discoverer, has first perfected and adapted the invention to actual use.*

Hence, if Dinsmore's patent was later than that of Steadman, and was for similar improvements, it would constitute a perfect defence against the suit in the present case, as the plaintiff is obliged to rely wholly on this assignment of Steadman, and stands in his footsteps, and has no better title. But the fact is otherwise. Dinsmore's invention goes back to the year 1850. His first machine was successfully tried in the harvest of that year. Some twenty-one were made in the year 1851, and from fifty to sixty in 1852. Steadman's caveat was even not filed in the Patent Office till after Dinsmore's patent was issued. The present defendant derives his title from Dinsmore. The case is too plain to require any extended examination.

DECREE AFFIRMED.

* Curtis on Patents, § 43, p. 37, and notes.