the mind of an ordinarily skilful mechanic this double use to which it could be adapted without material change, then such adaptation to the new use, is *not* a new invention, and is not patentable.

The defendant offered to prove that such was the relation of the principle of the Newton patent and plaintiff's patent by experts, and we are clear that the resemblance was close enough to require the submission of the question of identity to the jury, and the admission of the testimony of experts on that subject.

This subject was fully considered in the case of *Bischoff* v. *Wethered*,* decided since the present writ of error was issued.

This court has no more right than the court below to decide that the one patent covered the invention of the other, or that it did not; and it is obvious that extended argument here, to prove such general resemblance as would require the submission of both patents to the jury, might prejudice the plaintiff's case on the new trial which must be granted. We therefore forbear to discuss the matter further; for the same reason we refrain from comment on the instruction. It is to be understood that in declining to pass upon the other alleged errors of the record, this court neither affirms or overrules the action of the court on those points, and the case is reversed for this fundamental error, which includes several others resting on that.

JUDGMENT REVERSED AND A NEW TRIAL ORDERED.

BUTLER *v.* WATKINS.

1. On a suit for damages by a patentee against a British corporation and its "managing agent," sent to this country, in having been fraudulently pretending in a series of negotiations to conclude an agreement with him, the patentee, to make use of his patent—the alleged real purpose

* 9 Wallace, 815.

Statement of the case.

having been through drafts of agreements and protracted consultations to keep the patentee from using his invention during a certain season, and so to get time to use another invention in which they were themselves largely interested—it is error to charge that if the corporation never gave any authority to the managing agent to assent to the draft of agreement in their behalf and in their name, and never sanctioned it as a corporate act, suit for such a fraud as above indicated could not be maintained. The suit not being on any contract, the corporation might be, notwithstanding, responsible for the fraud.

2. In actions for fraud, large latitude is given to the admission of evidence. If a motive exist prompting to a particular line of conduct, and it be shown that in pursuing that line a defendant has deceived and defrauded one person, it may be inferred that similar conduct towards another, at about the same time and in relation to a like subject, was actuated by the same spirit. On such a suit as above mentioned evidence was therefore held admissible that in the same spring or early summer the defendant had similar negotiations with a wholly different person respecting a patented invention of *his*, like the plaintiff's, and acted deceitfully towards him in order to keep *his* invention out of the market in that year.

ERROR to the Circuit Court of the United States for the District of Louisiana; the case being thus:

Butler, of New Orleans, had procured one or more patents for an invention called the "Butler Cotton-tie," a machine for fastening bales of cotton. There was at the same time a large manufacturing company near Birmingham, England, called "The Patent Nut and Bolt Company," of which one Watkins was the managing agent. Watkins being in this country, and at New Orleans, had some negotiation with Butler looking to an arrangement by which the company should largely assume the manufacture of cotton-ties under Butler's patent, giving to him a share of the proceeds of sale. The negotiations, though begun and carried on a certain way, were not concluded. Hereupon Butler sued the company and Watkins for damages.

The plaintiff's petition alleged that in February, 1868, in New Orleans, Watkins, in behalf of himself and the Nut and Bolt Company, had an understanding with him in relation to the manufacture and sale of his cotton-tie, for the year 1868; that Watkins, for himself and the company, promised that shortly after his return to England (which was to take

place a few weeks after the date already stated), certain formalities would be gone through, and the manufacture of the said ties commenced and completed in ample time for the business and demand of the year 1868; that for a long time after the return of Watkins to England (which occurred in or about the latter part of March, 1868), Watkins and the company caused him, Butler, to believe that the arrangement would be carried out, and did not undeceive him until late in the summer of 1868, when it was impossible for him to make any other arrangement for the manufacture and sale of the cotton tie.

The plaintiff then averred that these doings of Watkins and the company were deceitful and in bad faith from beginning to end; that they were done for the purpose of imposing upon him and inducing him to give to Watkins and the company the control of the Butler Cotton-tie for the year 1868, with the hope thereby of keeping it out of the market, and by that means render more certain the sale of the Beard and other ties, in which Watkins and the company were greatly interested. Further, that the artful and deceitful acts of Watkins and the company were so perfectly carried out, and the plaintiff so completely deceived, that his cotton-tie was kept from sale during the year 1868, and a large quantity of the Beard and other ties were sold and disposed of for the benefit of Watkins and the company; that had he, Butler, not been deceived and imposed upon by Watkins and the company he would have kept the management of his tie out of their hands, and under his own control, and would thereby have made from its sale during the year of 1868 at the least $35,000.

The defendants denied the validity of Butler's patent, and asserted, moreover, that they had never come under any obligation to him in regard to it.

On the trial it appeared that Butler had made a form of an agreement, such apparently as he considered had been fixed on between him and Watkins, and gave it to Watkins. The draft was dated February 1, 1868; but was not signed by any one, nor stamped. On the 3d of February Watkins,

Statement of the case.

being still in New Orleans, wrote a note to Butler, in which he says that he had read the draft and found it "to be about the thing," and that he will have the same put in shape on his arrival home and send him, Butler, one to retain, the others to be returned. Matters remained in that state till April 17th, 1868, when Watkins thus writes, from the company's works near Birmingham:

"I have laid your proposition before my co-directors and they have given same their favorable consideration; but you will understand that we Englishmen are very particular as to what we do—more so than Americans. We are not quite so fast in promising, but are generally faithful to our promises. There are a few facts in relation to cotton ties and cotton-tie business to be considered before the agreement is completed. In the meantime we have commenced the manufacture of your tie and will send the first shipment (which will be small) to Mobile or New Orleans for Memphis, as tonnage may offer. The ties which we send out will be forwarded without prejudice, whether the agreement is finally sealed by my company or otherwise, and will be disposed of on the same terms as named in your agreement proposal."

This evidence being before the jury, the plaintiff offered in evidence certain letters written by the defendants to one Charles Wailey (who, it was said, had also invented a cotton-tie), in the spring and summer of 1868, wherein the defendants led the said Wailey to believe that a contract between himself and Watkins, managing director of the company, had been recognized by them and would be by them carried out; and in connection therewith, the testimony of Wailey, for the purpose of proving that letters similar in many respects to letters written to Butler, and offered in evidence, were false and deceitful acts on the part of defendants, done in order to keep Wailey's tie out of the market during the year 1868. The letters were offered in connection with the testimony of Wailey for the purpose of showing the fraudulent and deceitful conduct of the defendants in keeping Wailey's tie out of the market in the year 1868, in order to advance their own interests by a sale of the Beard tie, with the object of

showing to the jury the systematic manner and course of the defendants in fraudulently preventing the sale of other cotton-ties, and thereby to establish the fraud and deceit of defendants in relation to plaintiff's tie, as charged and set forth in the petition, and generally to prove the deceitful and fraudulent conduct and bad faith of defendants in keeping the tie of plaintiff from sale during the entire year of 1868.

The defendants objected to the evidence on the ground that their letters to Wailey and his testimony in relation to them could not be proved for the purpose of thereby establishing fraud and deceit on the part of the defendants towards *plaintiff*, and that if such fraud and deceit existed it would have to be established by proof of the acts and conduct of defendants towards Butler, not towards Wailey.

Of this view was the court, and it accordingly refused to permit the letters to be read in evidence, or the testimony of Wailey in relation to them to be heard.

The plaintiff excepted.

The court—under requests from the defendants; the plaintiffs asking no instructions—charged among other things:

That to bind the plaintiff by the terms of the proposed agreement his signature to it was necessary, and that so long as it was unsigned it was only a proposition which he might at any time withdraw.

That if Watkins declined to sign the draft, and informed the plaintiff that it must go before the board of directors of the company and be examined by the board, and put in form, with the corporate seal attached thereto to render it valid, it was a notice to the plaintiff that the agreement was not completed, and that it was not obligatory upon either party until it was completed in that manner, or some other sufficient to bind the company.

That if *the corporation never gave any authority to Watkins to assent to the proposal or draft agreement in their behalf, and in their name, and never sanctioned the same as a corporate act, the suit cannot be maintained against them.*

Argument for the defendant in error.

Verdict and judgment having gone for the defendant, the plaintiff brought the case here.

Mr. W. F. Peckham, for the plaintiff in error:

The court erred in the first and second of the above quoted paragraphs of its charge; for whether the agreement was binding or not, was immaterial. The action was not on the agreement, but for the fraud in inducing plaintiff to enter into negotiations which defendants intended as a sham. The charge had a tendency to distract the jury's attention from the real issue.

So it erred in the portion of the charge above italicized; for here the gist of the action is ignored. The very wrong complained of is, that defendants never did intend to enter into the contract, and of course never authorized any one to bind them by it, but that they did enter into a conspiracy to make the plaintiff believe that they did intend to make the contract, while, in fact, never so intending at all.

And, previously to all this, it had erred on the trial, in excluding the letters to Wailey and his testimony. For in criminal law evidence of other doings under similar circumstances at about the same time is admissible, not as proving the other crimes, but as tending to prove the *intent* or the *animus* with which the act under investigation was done.

Messrs. P. Phillips and J. A. and S. D. Campbell, contra:

The claim for damages rests on an "understanding" evidenced by a certain draft and letters. Now to sustain an action on any agreement it must be complete. No obligation is imposed by a mere affirmation or offer to enter into an agreement. Here, on one side, patent rights were to be conveyed, which as all know pass under the statutes by written assignments, on the other hand a large undertaking for manufacturing by a foreign corporation, and the negotiation is with an agent in this country. The subject-matter then, the corporate character of one of the parties, and its

location in a foreign country, without more, leads to the strongest presumption that the "understanding" was not to be perfected until some written instrument was signed and delivered. But we are not left to *presumption*. The letters of Watkins to Butler place this question beyond doubt. It is evident that Watkins either had not the power to bind the corporation or was unwilling to exercise it.

The whole evidence offered by the plaintiff to show the "understanding," is in paper, and the question whether it amounted to a valid and binding obligation might properly have been determined by the court. But here the plaintiff had the full benefit of the jury as to any inferences which could be drawn from any circumstances.

Even if the rejection of the evidence about Wailey's letters was erroneous, still, if the plaintiff could not have recovered if they had been admitted, the error constitutes no ground for reversal.

Mr. Justice STRONG delivered the opinion of the court.

We are unable to discover error in the instructions given to the jury by the court below, or in the answers made to the prayers of the defendants, except in a single particular. What the court said may have been inadequate to a full presentation of the case, but the plaintiff asked for no instructions, and he cannot therefore now be heard to complain that full instructions were not given. The bills of exceptions bring upon the record only that which was said to the jury, and to that alone can error be assigned.

It is quite true that the suit was not brought upon any contract. The theory of the plaintiff was that no agreement had ever been made, and that the defendants had never intended making one, though all the while during the negotiation, deceptively and fraudulently holding out to the plaintiff a profession of intention to conclude an agreement, and that this was done with the purpose of keeping the plaintiff's "cotton-tie" out of the market. The answers to the defendants' prayers, so far as they tend to show that no contract had been concluded were, therefore, favorable rather

than hurtful to the plaintiff's case, and they furnish no just ground for complaint.

The court, however, erred in charging the jury that if they believed "the corporation never gave any authority to the defendant, Watkins, to assent to the proposal, or draft agreement, in their behalf, and in their name, and never sanctioned the same as a corporate act, the suit could not be maintained against them." If by this it was meant that no suit upon the contract could be maintained, the instruction was correct, but this could not have been so understood by the jury. No such question was before them. It does not follow, because the corporation never authorized or sanctioned a contract, that they may not be responsible for such a fraud as was alleged in the petition. We have not all the evidence before us, but it does appear that some evidence was given tending to show that the acts and conduct of the defendants (Watkins and the corporation), were deceitful and fraudulent, designed to mislead, and done for the purpose of keeping the plaintiff's cotton-tie out of the market, in order that they might secure heavy sales of the Beard tie, in which they were largely interested. If the evidence did establish or tended to establish such deceit and fraud, for such a purpose, and if the plaintiff was injured thereby, as his petition alleged, it was erroneous to charge the jury that the suit could not be maintained. Competition in efforts to secure the market is doubtless lawful. A manufacturer may by superior energy, or enterprise, supply all the buyers of a particular article, and thus leave no market for similar articles manufactured by others. But he may not fraudulently or by deceitful representations induce another to withhold from sale his products without being answerable for the injury occasioned by the fraud. Whether negotiations for a purchase never concluded were in fact fraudulent; whether they were commenced and continued solely with the purpose of dishonestly inducing the plaintiff to forego offering his goods until the market had been supplied, and whether such was the consequence of the defendants' fraudulent conduct, were questions of fact which should have been sub-

mitted to the jury on the evidence. If answered affirmatively, the action was sustainable. In order to maintain an action for fraud it is sufficient to show that the defendant was guilty of deceit, with a design to deprive the plaintiff of some profit or advantage, and to acquire it for himself, whenever loss or damage has resulted from the deceit. This was well illustrated in *Barley* v. *Walford.** There it appeared that a plaintiff, who was a dealer in silk goods, had been hindered in his trade and induced to refrain from making goods with a certain ornamental design, by a false representation made by the defendant, and known by him to be false, that a pattern of the goods had been registered by another, and it was ruled that an action would lie to recover damages for the injury, especially when the deceit was with a view to secure some unfair advantage to the defendant.

We think also the court erred in refusing to receive in evidence the defendants' letters to Wailey in connection with Wailey's testimony. It was an important inquiry in the case, what was the purpose or animus of the defendants in their negotiations with the plaintiff? Was it to mislead him by holding out false hopes of consummating an arrangement by which his cotton-tie could be introduced into the market, and was this in order to secure the defendants themselves against competition? Deceit in effecting such a purpose lay at the basis of the action. But how can such a purpose be shown when it has not been avowed? Actual fraud is always attended by an intent to defraud, and the intent may be shown by any evidence that has a tendency to persuade the mind of its existence. Hence, in actions for fraud, large latitude is always given to the admission of evidence. If a motive exist prompting to a particular line of conduct, and it be shown that in pursuing that line a defendant has deceived and defrauded one person, it may justly be inferred that similar conduct towards another, at about the same time, and in relation to a like subject, was actuated by the same spirit. If therefore it be true that in

* 9 Adolphus & Ellis, N. S. 197.

Statement of the case.

the spring or early summer of 1868 the defendant had similar negotiations with Wailey respecting his cotton-tie, and conducted towards him deceitfully in order to keep his tie out of the market that year, the fact tends to show that in their conduct towards the plaintiff, there was the same animus, and that they had the same object in view. That the evidence offered was admissible for that purpose is abundantly proved by the authorities.*

JUDGMENT REVERSED AND A NEW TRIAL ORDERED.

CAUJOLLE *v.* FERRIÉ.

A grant of letters of administration by a court having sole and exclusive power of granting them, and which by statute is obliged to grant them "to the relatives of the deceased, who would be entitled to succeed to his personal estate," is conclusive in other courts on a question of legitimacy; the grant having been made on an issue raised on the question of legitimacy alone, and there having been no question of minority, bad habits, alienage, or other disqualification simply personal.

Held, accordingly, after a grant under such circumstances, that the legitimacy could not be gone into by the complainants on a bill for distribution by the persons who had opposed the grant of letters, against the person to whom they had been granted; but on the contrary, that the complainants were estopped on that subject.

ERROR to the Circuit Court for the District of New York; the case being thus:

The Revised Statutes of New York, on the subject of granting letters of administration, thus enact:

"The surrogate of each county shall have *sole and exclusive power* within the county for which he may be appointed, to grant letters of administration of the goods, &c., of persons dying intestate—when an intestate at or immediately previous to his death was an inhabitant of the county of such surrogate.†

* Castle *v.* Bullard, 23 Howard, 172; Lincoln *v.* Claffin, 7 Wallace, 132.

† 2 Revised Statutes, 73, § 23.