

Case No. 5,567.

GOODYEAR v. DAY.

Circuit Court, D. New Jersey.

1850.

PROVINCE OF JURY—FRAUD—GENERAL ISSUE—PLEADINGS—IMMATERIAL
ISSUE—PATENTS—EXCLUSIVE LICENSE—SUIT FOR TARIFF—DEFENSES.

1. The jury must find the issues as presented, and assess the damages for the breach, if any, of the thing alleged. It makes no difference that it is an immaterial issue.
2. Where fraud is charged upon a party, in respect to his patent, it must be made out, at least prima facie.
3. Under a plea of the general issue, evidence may be introduced to show fraud or fraudulent representations on the part of the plaintiff as to the subject matter of the suit.
4. Where a patentee, G., gave to a person, D., an exclusive right or license to use his, G.'s, patented invention, for a certain consideration or tariff, G. agreeing however, to take up and cancel all other licenses granted by him, and there being a covenant between G. and D., that in the event of others claiming grants and using such invention, and thereby impairing the profits which would accrue to D., that then such tariff would cease, *held*, in an action of covenant for non-payment of such tariff and other non-compliances, that it was a good defence that others used the invention and impaired the right of D., and that it was of no consequence whether G. was unable to restrain other parties from such use, or whether it was to his advantage or not to do so.
5. If a party, by his pleading, tender an immaterial issue, the jury must find the issue as presented, and assess damages for the breach, if any of the thing alleged. It makes no difference that it is an immaterial issue.

Before GRIER, Circuit Justice.

[Cited in Law, Pat. Dig. 235, 339, 342, 468, 589, to the points stated as above.
Nowhere more fully reported; opinion not now accessible.]