

Case No. 6,248.

HAWLEY v. BAGLEY.

PATENTS—DATE NECESSARY ON PATENTED ARTICLES.

1. It is necessary that each article should be stamped with the day of the month as well as the year, but if this is done it is sufficient, even if the word “patented” is abbreviated.
2. To entitle the plaintiff to recover, he must allege and prove facts showing that he has a title to recover, and the proof must correspond with the allegations. Where the declaration charged the defendant with having sold an “extension pen-holder,” while the proof showed the patent to be for an “improvement in pens and pencil cases.” *Held*, that the plaintiff could not recover.
3. In an action *qui tam*, under section 6 of the act of 1842 [5 Stat. 544], for a penalty, the proof must correspond with the allegations of the declaration. Where the declaration charged the defendant with having sold an “extension pen-holder” without stamping on it the date of the patent, while the proof showed the patent to be for an “improvement in pens and pencil cases.” *Held*, that the plaintiff could not recover.

{Cited in Law, Dig. 584, 588, and 675, to the points as stated above. Nowhere more fully reported; opinion not now accessible.}