

Case No. 10,651.

PACKARD ET AL. V. GILBERT ET AL.
[4 Betts, C. C. MS. 87.]

Circuit Court, S. D. New York. April 25, 1846.

PATENTS—FIRST DISCOVERER—ABANDONMENT.

[This was an action by Austin Packard and others against L. Gilbert and I. Wilson.]

NELSON, Circuit Justice. 1. The subject matter in contestation, as shown by the case, was whether the patentee was the first and original discoverer of the thing patented. The cause did not turn, as supposed by the plaintiff, on the effect of a limited use of the invention by others before the patent was granted.

2. A prior discovery and use of a patented thing, by a stranger will destroy the validity of the patent, however limited such use may be, provided it be not intentionally secret and concealed.

3. A patent cannot be maintained by an inventor on his own discovery of a thing before known, though given up and disused by original and first inventor, before patent taken out or discovery made by patentee.

4. The charge of the judge was correct on the law, and motion for new trial denied.

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