the former would not authorize the patentee to broaden his claim, because he had not put it in his original application. It never was suggested that cold fat would answer the required purpose until it was stated in the amended specifications, on the application for a reissue, and it was therefore held that it did not come within the case of *Morey* v. *Lockwood*. That case was decided as far back as 8 Wall. The patentee in that case had applied originally for a broader claim, but he was compelled to cut it down, and take such as the patent-office was willing to grant him. Some years afterwards he applied again to the new commissioner, reinserting his original claim, and got his patent reissued covering it. The court said in that case it was not the patentee's fault. He did the best he could to obtain his patent, and a reissue was sustained; but there was no question then as to the time when the application must be made. It was long before this decision in the *Brass Co. Case* was announced. The decision in the *Brass Co. Case* has been recognized, by the bar, at least, as a departure from the rule that had theretofore obtained; so that that question never was raised in the case of *Morey* v. *Lockwood*. Since the *Brass Co. Case* the question has been raised and decided, over and over again, that if a party fails to promptly pursue his right to a patent covering his whole invention he thereby abandons it to the public. Where the party examines the patent, and sees that it does not cover all he claims, he should apply promptly. It is claimed here that the party sought to get a broader patent in his original application. I am by no means certain that the original application is as broad as the present; but, conceding it to be so, it seems to me it makes it, under the later decisions, a stronger case against him, instead of a weaker one, because, not only by the reading of the patent could he see that his patent did not cover his whole invention, but he did, in fact, know that it was defective, because he sought to obtain a broader patent and it was rejected; and, having been rejected, he not only had an opportunity of knowing by reading his patent, but he knew in fact, that he had not obtained as much as he claimed, and yet neglected to take any means, by appeal or otherwise, to enlarge his claim for 11 years. The case seems to me clearly within the rule laid down in the cases cited.

I am, therefore, unable to take it out of these cases, and I must hold the patent void in those points in which it was claimed to be infringed; and the bill must therefore be dismissed.

CURRAN v. CRAIG.[1]

(Circuit Court, E. D. Missouri. October 14, 1884.)

1. PATENTS—LICENSE—RECEIVER.
   A license to construct and use a patented invention is personal to the licensee, and the receiver of a firm to which such a license has been granted, will not succeed to the firm's right.
2. LIABILITY OF RECEIVERS FOR UNLAWFULLY TAKING POSSESSION OF PROPERTY.
   Where a demand against a receiver does not involve the administration of the trust committed to him, but arises from his having taken unlawful possession of property not included in the trust, a suit will lie against him personally as for a trespass, even though he took possession of such property under an order of court.
3. PRACTICE—COMITY OF COURTS.
   In such cases, where the receiver has acted under an order of a state court in taking possession of the property, an application should be made to such court to correct its order before resorting to an action of trespass on the case in a federal court.
4. SAME.
   If that course is not followed, the federal court will suspend proceedings before it until the application to the state court is made, in order to avoid a conflict of jurisdiction.

At Law.

Krum & Jonas, for plaintiff.

Dyer, Lee & Ellis, for defendant.

TREAT, J. This is an action on the case for an infringement of a patent, to which there is interposed a plea to the jurisdiction. To that plea a demurrer is filed. The plaintiffs conveyed to the copartnership of Hill, Nall & Co. the right to construct and continually use two kilns or dry-houses named. Said copartnership constructed and used said kilns, and thereafter the circuit court of St. Louis, in a case pending before it, appointed the defendant a receiver for said copartnership, directing him to continue the business of the said firm until further orders of that court, and to use all the machinery and appliances pertaining to the business of said firm, *including the two kilns aforesaid*. The defendant, under said order, has used said kilns accordingly. The defendant has operated said kilns only as receiver, pursuant to said order, and no leave of said court has been obtained to sue him therefor.

This plea to the jurisdiction may be technically defective, inasmuch as it involves the merits of the case, as well as the jurisdiction of this court. Without disposing of the case on such narrow considerations, it may be well to determine the rights of the respective parties. The case of *Oliver* v. *Rumford Chem. Works*, 109 U. S. 75, S. C. 3 Sup. Ct. Rep. 61, apparently decides that a license is personal to the licensee, whereby an executor, administrator, or assignee, voluntary or *involuntary*, does not succeed to the privilege of the grant. If that be so,

[1] Reported by Benj. F. Rex, Esq., of the St. Louis bar.