servance of their own rules by the company, accept tickets which have expired, or take up tickets which are being used in the wrong direction, as was actually done by the conductor from Quebec to Montreal in this case. Such conduct might easily induce a person of ordinary intelligence to suppose that the company waived a strict compliance with the terms of the ticket in this particular. The question of negligence depends, too, not wholly upon what was done in a particular case, but somewhat upon the age, capacity, and experience of the party doing the act. Had the plaintiff been an experienced railroad man, a jury would probably find little difficulty in holding that he must have known his ticket would not have been accepted, and that he should have returned to the office of the company, and had the mistake corrected. On the other hand, had he been an ignorant man, wholly unacquainted with traveling and the usages of railroads, a jury would be quite likely to find that he was not guilty of negligence in acting upon the advice of a man in charge of the office of the company at the station, and I should have been disposed to uphold a verdict in his favor. The question for the court in every such case is whether the evidence of contributory negligence is so clear that intelligent men should not differ in their conclusions. This being the test, it seems to me the question in this case should have been submitted to the jury.

The opinion of the court seems to hold that the plaintiff was bound to know, as a matter of law, that his ticket would not have been accepted. This is practically holding that if the agent who sold the ticket, himself had told the plaintiff that his ticket, though defective, would be accepted, the plaintiff would still be guilty of contributory negligence in acting upon his advice.

It seems to me that this is carrying the maxim concerning ignorance of the law to an unwarranted extent.

UNITED STATES v. CHIN QUONG LOOK.

(District Court, D. Washington, N. D. August 30, 1892.)

CHINESE EXCLUSION ACTS—MERCANTILE DOMICILE.

A Chinaman who formerly resided in the United States, and acquired an interest in a firm long established and doing business here, although he returned to China, and remained over six years, retaining his interest in the firm, and receiving his share of the profits, has a "commercial domicile" in the United States, and cannot be sent back to China under the exclusion act. *Lau Ow Bew* v. *U. S.*, 12 Sup. Ct. Rep. 517, 144 U. S. 47, followed.

At Law. Proceeding to enforce Chinese exclusion act. Appeal from judgment of United States commissioner convicting the defendant of being unlawfully in the United States. Reversed, and defendant discharged.

P. C. Sullivan, Asst. U. S. Atty.

W. H. White and *F. Hartley Jones*, for defendant.

HANFORD, District Judge. The defendant was arrested on his arrival at the city of Seattle from China, via Vancouver, B. C., and after a hearing before JAMES KIEFER, one of the commissioners of the circuit court, he was adjudged to be a Chinese person not lawfully entitled to enter the United States, or to remain therein, and ordered to be sent back to China. By an appeal he has secured a new trial in this court.

The evidence is very clear and satisfactory, and establishes the following as the material facts: The defendant formerly lived in Seattle, and while here he acquired a one-fifth interest as a member of a firm called the Gee Lee Company. Said firm has maintained a mercantile establishment in Seattle continuously for nearly 18 years. The business of the firm is importing, buying, and selling groceries and all kinds of goods used by the Chinese people, and it is now doing a business amounting to from $40,000 to $50,000 per annum. The defendant returned to China six or seven years ago, but retained his interest in the Gee Lee Company, and has received from time to time his dividends from the profits of said business. I understand the commissioner to have held that, by returning to his domicile of origin, and remaining there over six years, the defendant surrendered his right to claim a domicile in this country. Conceding this to be true, still, by maintaining a mercantile establishment, he has a commercial domicile here, which, according to my understanding of the decision of the supreme court in the case of *Lau Ow Bew* v. *U. S.*, 144 U. S. 47, 12 Sup. Ct. Rep. 517, is sufficient to entitle him to come and go freely, as any other merchant may. In that case Chief Justice FULLER says:

"We are of opinion that it was not intended that commercial domicile should be forfeited by temporary absence at the domicile of origin, nor that resident merchants should be subjected to loss of rights guarantied by treaty, if they failed to produce from the domicile of origin that evidence which residence in the domicile of choice may have rendered it difficult, if not impossible, to obtain; and, as we said in considering the application of this petitioner for the writ of *certiorari*, (141 U. S. 583, 588, 12 Sup. Ct. Rep. 43,) we do not think that the decision of this court in *Wan Shing* v. *U. S.*, 140 U. S. 424, 12 Sup. Ct. Rep. 729, ruled anything to the contrary of the conclusions herein expressed. As there pointed out, Wan Shing was not a merchant, but a laborer. He had acquired no commercial domicile in this country, and whatever domicile he had acquired, if any, he had forfeited by the departure and absence for seven years with no apparent intention of returning."

Evidently the phrase "commercial domicile" was selected and used intentionally by Chief Justice FULLER, for the purpose of conveying the idea that the rule which that decision affirms is broader than would be necessary to merely open a way for the ingress and egress of those Chinese merchants who personally dwell continuously within the country. Bouvier's definition of "commercial domicile" is as follows: "There may be a commercial domicile acquired by maintenance of a commercial establishment in a country, in relation to transactions connected with such establishments." 1 Bouv. Law Dict. (15th Ed.) 557.

It is my conclusion, therefore, that the commissioner's decision should be reversed, and that the defendant is entitled to be discharged.

FOX *v.* PERKINS *et al.*

(Circuit Court of Appeals, Sixth Circuit. October 5, 1892.)

No. 30.

1. PATENTS FOR INVENTIONS—NOVELTY—PRIOR ART.
   Reissued letters patent No. 11,062, issued February 25, 1890, to William R. Fox, for an improvement in miter cutting machines, are void for want of patentable novelty, in view of the prior state of the art, as shown more particularly in the Howard patent of August 21, 1886, No. 57,325; the Aiken patent of February 21, 1871, No. 111,896; the Jones patent of July 21, 1874, No. 153,343; the Nichols patent of July 18, 1876, No. 179,944; and the Lannartson patent of April 16, 1878, No. 202,445.
2. SAME—EXTENT OF CLAIM—PRIOR ART.
   If the Fox machine could be held to show patentable invention, it constitutes one of a series of improvements, all having the same general object and purpose, and the patent must therefore be limited to the precise form and arrangement of parts described in the specifications, and to the purpose indicated therein. *Bragg* v. *Fitch*, 7 Sup. Ct. Rep. 980, 121 U. S. 483, and *Caster Co.* v. *Spiegel*, 10 Sup. Ct. Rep. 409, 133 U. S. 360, followed.
3. SAME—ABANDONMENT.
   This construction of the patent is also rendered necessary by the fact that various broader claims were rejected and abandoned, under both the original and the reissue applications.
4. SAME—NOVELTY—EFFECT OF LARGE SALES.
   Large sales of a patented machine, while evidence, more or less cogent, of value and usefulness, are not conclusive evidence of patentable novelty, and are of little weight when it appears that such sales are the result of active and energetic efforts by means of circulars and traveling agents. *McClain* v. *Ortmayer*, 12 Sup. Ct. Rep. 76, 141 U. S. 427-429, followed.

Appeal from the Circuit Court of the United States for the Western District of Michigan.

In Equity. Bill by William R. Fox against Harford J. Perkins, William J. Perkins, and Joseph W. Oliver for infringement of a patent. Decree for defendants. Complainant appeals. Affirmed.

George H. Lothrop, for appellant.

Edward Taggart and *Arthur C. Denison*, for appellees.

Before BROWN, Circuit Justice, and JACKSON and TAFT, Circuit Judges.

JACKSON, Circuit Judge. This is a suit in equity, brought by appellant against appellees for the alleged infringement of reissued letters patent No. 11,062, granted to William R. Fox, February 25, 1890, for certain new and useful "improvements in miter cutting machines." The defenses chiefly relied on are that the supposed invention was described in previous patents; that, in view of the state of the art, the device claimed as new was not a patentable invention; and that, upon a proper construction of the patent, the defendants do not infringe it. The circuit court entertained doubts whether, in view of the previous patented devices set up in the answer and shown by the exhibits, there was anything patentable in the alleged invention covered by said reissued letters patent, but, without deciding that point, held that defendants' machine was not an infringement of complainant's patent, even assuming the latter to be valid, and thereupon dismissed the bill. From this decree the complainant has appealed, assigning as ground for its reversal that the lower court erred in deciding that the defendants had not infringed, and in dismissing his bill.