still undetermined and no interruption of the claimant's use of the articles had occurred, plainly the controversy over the patent and its result would be no defense. American Electric Const. Co. v. Consumers' Gas Co., 47 Fed. Rep. 43, affirmed 50 Fed. Rep. 778, 1 C. C. A. 663.

In the case of Carman v. Trude, 25 How. Pr. 440, the plaintiff had sold a patent meat safe to the defendant, who paid the full price therefor, less $25, which the plaintiff told him was owing to the person having the patent right thereon, and whom the vendee assumed to pay. It appeared, however, that the $25 reserved was the price owing to the patentor for the use of the safe for a single year only; and that $25 more was required for the perpetual use of it. The supreme court of this state on appeal held that the sale carried an implied warranty of both the article and the right to use it, that the vendee was entitled to the additional $25, and that this was his only proper damage in the case. The decision was based, not upon the ground of fraud, but on the ground that the plaintiff was not the full owner of that which he had undertaken to sell and of what he had impliedly warranted; and that he must, therefore, pay as damages such an amount as was required to make the sale good.

While that case is not exactly parallel with the present, it seems to me to have been correctly decided, and that the principle of the case is applicable here. The mere ownership of the title to personal property designed solely for use is of no value, if the owner cannot lawfully use it at all. Its value is in its use. In a case like the present, the use is the very substance and essence of the right intended to be given and acquired. As respects the vendor's implied warranty the right to use should stand on the same ground as the title. Unless, therefore, sufficient facts appear to warrant the inference that the vendee took the risk of any conflicting claims as to the patent right, I think the vendor is bound either to secure to the vendee the right to use that which was sold for use, or else to answer in damages for the loss of the value of that use from the time any further use was prevented. See Benj. Sales, §§ 985--990, and notes. To give any ground, however, for damages, there must doubtless be an eviction of the vendee from the use of the article, or what is equivalent to an eviction. American Electric Const. Co. v. Consumers' Gas Co., supra. A final adjudication between the parties principally concerned, resulting in a perpetual injunction, such as is usually given in patent cases in a court of equity, is, I think, equivalent to eviction, when notice of such adjudication has been brought home to the party by the person having the legal right, with an imperative prohibition, such as was given in the present case, against any further use of the article.

What damages should be allowed to the defendant for the interruption of the further use of this battery, is not easy to determine upon the evidence. A proper award of damages, as indicated in the case of Carman v. Trude, supra, would be either what it would cost to procure a license for the continued use of the

battery in question; or, if that could not be done, then the amount of the pecuniary loss to the claimant arising from the inability to use the battery further. On the latter question, the value of the battery for practical use in the condition it was in when further use was prohibited, would be an important question; and on this point, according to the claimant's evidence, its value would seem to be small; partly from its failure to accomplish what was needed for his vessel, and partly from the damage or depreciation it sustained from its use during the season of 1891. Some time in September, 1891, as I understand, the yacht was taken to Newburgh, laid up for the winter, and the battery there taken out of her. Of the 376 cells, 117, as I understand from the captain, were bad. No defects were pointed out in the other parts of the work supplied. The evidence, as it stands, is insufficient to enable me to form any satisfactory judgment as to what is the damage to the claimant from the loss of the future use of the battery, arising from the final adjudication in the patent case. The fact, however, that no prohibition to use the battery was served on the claimant until after this libel was filed, nor until shortly before the answer and the cross libel were interposed, and long after the battery had been taken out of the yacht, suggests the surmise that this formal notice may have been voluntarily obtained by the claimant for the purposes of this suit.

A proper disposition of the matter for the present will, I think, be to suspend its further hearing, allowing to the libelant 30 days' time in which to procure, if it can, from the legal patentee a license to the claimant for the uninterrupted use of the battery; and if that be obtained and deposited in the court for the use of the claimant, then that the libelant have a decree for the balance of the contract price, with interest to November, 1891, when notice of the prohibition was served. If such license is not obtained within 30 days, that it then be referred to a commissioner to ascertain the value of the future use of the battery of which the claimant has been deprived; and that the amount, as thus determined, be allowed as an offset against the balance of the contract price and interest as above stated.

THE DESTROYER.

ALLEN et al. v. THE DESTROYER.[1]

(District Court, S. D. New York. April 20, 1893.)

SEAMEN'S WAGES—SERVICES NOT RENDERED IN NAVIGATING VESSEL.

To entitle one to a lien for wages against a vessel it is not necessary that the services be rendered in navigation alone. Hence, when engineers were employed on a submarine torpedo boat, partly in moving her about, but mainly in operating her machinery for throwing projectiles, which was her sole business, it was *held* that they had a lien for balance of wages, though the government was at the time experimenting with the boat, and was allowing the men a daily compensation.

[1]Reported by E. G. Benedict, Esq., of the New York bar.