LEGAL NOTES.

[This department will appear in the third issue of every month. Should there be any particular case you wish reported we would be pleased to give it special attention, providing it is a case that will be of special interest to engineers or contractors.—Ed.]

INFRINGEMENT OF PATENT.

Question.—A piece of machinery is patented. If I make a machine **somewhat similar** to it **for my own use, and not for sale, and only make one** such machine, am I liable to the holder of the patent?

Answer.—There are really two distinct questions included in above inquiry. Firstly, what amount of manufacture or use amounts to an infringement of the rights of the patentee? and, secondly, what degree of similarity is allowable without amounting to such an infringement?

Firstly,—Patent law is a subject of Dominion jurisdiction and as such is largely determined by the "Patent Act," R.S.C., Cap 69, and decisions recorded thereunder. Thus it will be seen the law is the same in all parts of Canada. Now, section 7 of the said act gives the patentee "the exclusive property" in the machine invented, while the form in which the Canadian patent is granted is even more full, and express granting "exclusive right, privilege and liberty of **making,** constructing and using and vending to others." Thus the mere making of an article for the purpose of sale or use is an infringement, although no actual sale or use has taken place. (See Muntz v. Foster, Web. P.C. 101.) It will be seen then that the mere making even for my own use renders me liable, as the patentee is the only person entitled to make the said machine in Canada. A state of the law which appears highly desirable in an age when the making for their own use would be quite feasible for such firms as the Canadian Pacific Railway Company or the T. Eaton Company, and would at the same time rob the patentee of a great part of all advantage which would otherwise accrue to him. We might also notice that verbal permission by the patentee would not be sufficient. The statute says you cannot make the machine without such permission being in writing.

Secondly,—The degree of similarity to which you may go in imitating the patented machine and still escape liability cannot be stated with any certainty. It is an intricate question in every case, involving questions of law as well as of fact and nothing but a judgment of the proper court on the facts of the particular case could really determine as to whether you had exceeded your bounds or otherwise.

It is, however, possible to state some of the principles which would apply in trial of such a case as suggested:

1. If there be substantial identity with the patented article—there is no doubt you are liable.

2. Infringement of patents for machines usually takes place by the substitution of "equivalent parts;" change of function or substantial difference in the result produced are evidence of a new combination and may avoid the charge of infringement.

3. Any person may accomplish a result performed by a patented device provided he employs means substantially different from those shown in the patent.

4. The patent may be for a combination, i.e., possibly the several members were all known and in use prior to the patent, but the patentee contrived a new and useful combination of them. In this case it is not an infringement if you can contrive a combination which dispenses with one of the elements in the former combination and substitutes therefor a new part that is substantially different in construction and operation, but serves the same purpose. So also you are not liable if you manage to dispense altogether with one member of the combination, e.g. if the patent is for a combination abcd, it is not infringement to use a combination abd or a combination abfd.

5. A patent for a water condenser is not infringed by an air condenser, the purpose is entirely different. Downes v. Falcon Works, R.P.C.

6. A patent for pavement lights, consisted in eights, so constructed as to throw the light in an inclined direction by using glass moulded so as to consist of a series of angles. The defendants used lights moulded to a **curve.** Held they were liable. Haywood v. Pavement Light Co., R.P.C.

DEFECTIVE SYSTEM—LIABILITY OF CONTRACTOR.

Dagg v. McLaughlin.—McLaughlin was a contractor, and as such had undertaken the excavation work for a subway on Bank Street in the City of Ottawa. The plaintiff Dagg was employed to drive the horses in hauling down laden cars from the excavation to the dump and in bringing back empty cars to the work. He had been engaged for six days on such work when the loaded cars he was taking to the dump collided with some empty cars which were coming in the opposite direction at great speed to take the switch where they would get out of the way of those the plaintiff was bringing down by taking another track. The plaintiff sustained serious injuries which resulted in the loss of a leg.

It appeared on trial that this was the system according to which the defendant's foreman was carrying out the work and that the plaintiff had complained beforehand.

In giving his decision the presiding judge said in part: "There was no provision made for applying the brakes on the last of the cars driven by the plaintiff, and for all practical purposes, the cars might as well have been without a brake. And the defendant's foreman should not have permitted flying shunts to be made, as there was danger, from the speed at which the empties were running, of meeting the loaded cars where the track conveyed, which he well knew, from the complaint made by the plaintiff, was a dangerous point on the railway. Because of the defendant's negligent system of managing the works, he is responsible to the plaintiff for the injury sustained, and I assess the damages at $3.000."

MacMahon, J., 23rd April, 1908.

The case illustrates the principle long established that the contractor's liability extends not only to dangerous or defective machines and works, but also to the system and manner in which the work is carried out. McLaughlin knew, or ought to have known, that the methods followed were not safe and as injury resulted he is liable. The fact that he left the management to his foreman is no defence.

DANGEROUS MACHINE—DUTY TO WARN.

Lawson v. Packard Electric Company, Limited.—The plaintiff, a boy in his fifteenth year, was engaged by the foreman of the defendant's factory to help anyone who needed assistance on a certain floor. On this floor were different machines and amongst them a varnishing machine, a drill and a stamping machine used in punching out tin plates. The power to drive the latter came by a belt which passed over the shaft and the machine was set in motion by the operator pressing his foot upon the treadle, thereupon the stamp descended and punched out the metal plate. The operator would then take his foot from the treadle; the machine would stop and he would remove the plate, usually making use of a stick for this purpose. The boy was employed assisting the man who was running the stamp machine, he had not been warned that the machine was dangerous nor forbidden to run it and when the man was called away for some minutes the boy tried to keep the machine in operation. He took hold of the press in trying to get a plate out and apparently through his in-