claimed or patented there, provided there has been no *laches*.

What could have been claimed as part of the invention under the specifications and descriptions accompanying the original patent, but was not, by reason of error, mistake or inadvertence, may be claimed on a re-issue if there has been no *laches*. Not what the patentee claims as his invention, but what is for the first time disclosed to the public on his application is the measure of his rights on a re-issue.

Under our Patent Act of 1872, which differs slightly from the analogous provision now in force in the United States, R. S. U. S. sect. 4916, a re-issue is permissible whenever the claim is, through inadvertence, accident, or mistake, *defective, i. e.*, by reason of the applicant not claiming all of his invention that might be claimed under the description.

Per PROUDFOOT, J.—A re-issued patent must be for the same invention as that embraced and secured in the original patent. It is a misconstruction of the Patent Act of 1872, to say it authorizes a re-issue "with broader and more comprehensive claims," if by that is meant that it authorizes a re-issue with a claim not in the original patent at all. Neither is it enough to entitle the inventor to a re-issue to allege that all the elements of his new claim may be found in the specification; what the 19th sect. of the Patent Act of 1872 provides is, that a re-issue may be had if the claim is so imperfectly described, through error or mistake, as not to cover the invention. Here the sixth claim in the re-issued patent did not remedy any defect in the original claim. It was an addition of an entirely new device or combination.

The earlier decisions in the United States on the subject of re-issues are more in conformity with the language and intention of our Patent Act, which is similar to that of the United States, than the later decisions, which seem to recognize the right in the re-issue to broaden the claims in a manner that does not appear to be in accordance with the law.

American decisions reviewed at length on the subject of re-issued patents.

S. H. Blake, Q. C., and *W. Cassels*, for the appellants.

J. Macdougall and *Shepley*, contra.

PRACTICE CASES.

Proudfoot, J.] [Feb. 19.

PURDY V. PARKS.

Mortgage—Costs—Reference.

In a mortgage suit it was referred to the Master to ascertain whether a sale or foreclosure was more beneficial, and to take an account, etc. On the reference the defendants claimed credit for certain payments endorsed on the mortgage in the handwriting of the deceased mortgagee, but for which they did not hold receipts.

On a revision of the taxation, the taxing officer at Toronto disallowed the costs of the reference, as the Master had found in favour of the defendants as to the payments.

On appeal, PROUDFOOT, J., allowed the plaintiffs the costs occasioned by the enquiry as to the sale or foreclosure, and the defendants the costs caused by the taking the account.

Foster, for the plaintiff.

Harcourt, contra.

Mr. Dalton.] [Feb. 26.

STEWART V. BRANTON.

Costs—Stay—Condition—Rule 428 O. J. A.

In an action against the bail, an order was obtained staying proceedings on the render of their principal upon payment of costs. These costs not being paid, execution issued, and a motion to set aside the execution was dismissed, the Master in Chambers holding that the words, "upon payment of costs," were words of agreement, and the costs not being paid, the execution should stand.

Motion dismissed with costs.

Clement, for the plaintiff.

G. H. Watson, for the defendants.

Mr. Dalton.] [March 7.

GUELPH V. WHITEHEAD.

Production.

Action to restrain the infringement of a patent.

The solicitor for the defendant procured from the United States patent office, copies of certain American patents, to be used on his behalf.

Held, that defendant was not bound to produce them.

H. Cassels, for plaintiff.

Hoyles, for defendant.