by the patent. If it relates to a certain description of machine, only the specific machine or machines which are set up during the term of the employment are protected [6].

An implied license of this description is not transferable by the employer to a third person [7].

The existence of a license is treated by the courts as a mixed question of law and fact, and a determination of this issue in one suit does not furnish a decisive precedent for another [8].

4. Engagement of employé for the purpose of prefecting an original conception of the employer.—The rule applicable to cases in which a servant is employed to render assistance in perfecting the mechanical details and arrangements requisite for the complete elaboration of an invention of which the general idea has been conceived by the employer was thus formulated by Erle, J., during the trial of a patent case, in terms which were afterwards approved by all the other judges of the Court of Common Pleas:

"If a person has discovered an improved principle, and employs engineers, and they, in the course of the experiments arising from that employment, make valuable discoveries accessory to the main principle, and tending to carry that out in a better manner, such improvements are the property of the inventor of the original improved principle, and may be embod-

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[6] Lowell J. in *Wade* v. *Metcalf* (1883) 16 Fed. 130. This point was not referred to by the Supreme Court (129 U.S. 202); but the doctrine enunciated in the text has received the approval of the Court of Appeals in *City of Boston* v. *Allen* (1898) 91 Fed. 248, where the scope of the doctrine was restricted by a ruling to the effect that, where an engineer employed by a city to build a ferry, makes and afterwards patents an improvement in the gangway used, no presumption, either of law or fact, arises in favour of an implied license to the city to use the patented device at another ferry built at another place several years afterwards. It was intimated, however, that, when the patented matter is a product, particularly if it is a minor product, or even if it is a minor machine, so that in either case it is used in quantities, its unlimited use during the time of employment may raise an implication of fact in favour of a license for a time likewise unlimited, as in the case of a process.

[7] *Hapgood* v. *Hewitt* (1886) 119 U.S. 228, relying upon an earlier case in which the general rule was laid down that "a mere license to a party without having his assigns or equivalent words to them, showing that it was meant to be assignable, is only the grant of a personal favour to the licensees." *Tivy Etc. Factory* v. *Corning* (1852) 14 How. 193 (p. 216) citing Curtis, Patents. § 198.

[8] *City of Boston* v. *Allen*, (1898) 91 Fed. 248.