

there is no difference between the rights of persons working for the Government and for other employers³.

It has been laid down that any patentable device, which suggests itself with respect to an article, during the progress of experiments made by the employer with a view to its improvement, will be presumed to have been conceived by the employer, and that it is incumbent on the employee to overcome this presumption by satisfactory proof⁴. But it is difficult to admit that a simple presumption can ever furnish an adequate basis for an adjustment of the rights between two persons. A commissioner of patents would not issue a patent to any one who was unable to show by positive and specific evidence, that he was the inventor, or the assignee of the inventor, and there seems to be no valid reason why a court should, in a controversy between a master and his servant, proceed upon a different principle.

(b) *Employé subjected to duress.*—On general principles it is manifest that an employer cannot as against his employé, retain the benefit of letters patent which the latter has been prevented from applying for by coercive conduct of his superior, which amounts to actual duress. But duress will not be inferred from the mere fact that the employé feared he would lose his employment if he asserted his rights⁵.

(c) *Patent taken out by employé in violation of his fiduciary obligations.*—Two English decisions proceed upon the principle that an employé may be declared a trustee for his employer, in respect to any patent, which he could not, under the circumstances, take out in his own name without violating his

³ "The government has no more power to appropriate a man's property invested in a patent than it has to take his property invested in real estate; nor does the mere fact that an inventor is at the time of his invention in the employ of the government transfer to it any title to, or interest in it. An employé, performing all the duties assigned to him in his department of service, may exercise his inventive faculties in any direction he chooses, with the assurance that whatever invention he may thus conceive and perfect is his individual property." *Solomons v. United States* (1890) 137 U.S. 342.

⁴ *Miller v. Kelley* (1901) 18 App. D.C. 163.

⁵ *Barr Car Co. v. Chicago & N.W. Ry. Co.*, (1901) 110 Fed. 972, 49 C.C.A. 194, 97 O.G. 2534.