

while in their employment"¹. The same doctrine is recognized by the American Courts². So far as regards its application,

¹ Byrne J. in *Worthington Pumping Engine Co. v. Moore* (1902) 19 Times L.R. 84.

The rule that if a servant, while in the employ of his master, makes an invention, that invention belongs to the servant, and not to the master, was recognized by Abbott, C.J., in the nisi prius case of *Blowam v. Elsee* (1824) 1 C. & P. 558; R. & M. 187.

"If an employer takes out a patent for an invention discovered and worked out by a workman in his employ, and the patentee has no more connection with the invention than that he is the employer of the workman, the patent will be void on the ground that the workman and not the patentee is the true and first inventor." Frost, Patents, (2nd Ed.) p. 14, citing *R. v. Arkwright* (1785) Dav. Pat. Cas. 61; *Barker v. Shaw* (1831) 1 Webst. Pat. Cas. 126, note.

The same author (p. 15) cites several rulings of the Patent Office as having established the principle, that, in the absence of special contract, the invention of a servant, even though made in the employer's time, and at the expense of the employer, does not become the property of the employer, so as to justify him in opposing the grant of a patent for the invention to the servant who is the proper patentee. Frost, Patents, (2nd Ed.) p. 15.

In a case where the evidence indicated that a manufacturer and his foreman were the joint inventors of the improvement in question, and the master sought letters-patent the granting of which was opposed by the foreman, Lord Cranworth was of opinion that they ought only to be granted on the terms of their being vested in trustees for the benefit both of the master and of the foreman. *Re Russell's Patent* (1857) 2 De G. & J. 130, per Lord Cranworth.

² "Persons employed as much as employers are entitled to their own independent inventions." *Agawam v. Jordan* (1888) 7 Wall. 583 (603); repeated in *Coliar Co. v. Van Dusen* (1874) 23 Wall. 530.

"If the employé makes an invention wholly independent of the employer, it is the law, that the invention belongs to him who actually makes it and that it does not inure to the benefit of the employer." *Muller v. Kelley* (1901) 18 App. D.C. 163.

"The mere fact, that the appellant was in the employment of appellee and received wages, and even used the material of appellee in the manufacture of his models, and even received assistance in making models, from the latter's employees, would not give it the property in the invention to the exclusion of the former." *Dice v. Joliet Mfg. Co.* (1882) 11 Ill. App. 109 (p. 114), Aff'd 105 Ill. 640.

A mechanic hired for the purpose of perfecting certain machinery, and bound to devote his skill and labour to the interest of those for whom the machinery is being worked, is not, by that fact, under any obligation to abstain from applying for a patent in his own name for such machinery, if otherwise entitled thereto. *Green v. Willard Barrel Co.*, (1876) 1 Mo. App. 202.

A man in the employ of the Fire Department of New York invented a heating apparatus, and attached it himself, to two of the engines, many other engines being also provided with it. The effect of the U. S. Gen. Stat. § 4899, under the circumstances was held to be, that the City had no right to the use of the invention, except in respect to those machines to which it had been applied before the employé had taken out a patent for it. *Brickill v. Mayor of New York* (1880) 7 Fed. 479.