

such invention, a jury, or a court trying the facts, is warranted in finding that he has so far recognized the obligations of service flowing from his employment and the benefits resulting from his use of the property, and the assistance of the co-employés, of his employer, as to have given to such employer an irrevocable license to use such invention''⁴.

⁴*Solomons v. United States* (1890) 137 U.S. 342 (346). There the facts upon which the court held that the license should be implied were as follows: The patentee was in the employ of the government when he invented an improved stamp. His experiments were wholly at the expense of the government. He was consulted as to the proper stamp to be used, and it was adopted on his recommendation. He notified the government that he would make no charge if it adopted his recommendation and used his stamp; and for the express reason that he was in the government employ, and had used the government machinery in perfecting his stamp. He never pretended, personally, to make any charge against the government. The court considered that the mere fact that the servant's wages were not increased in this case, while in the case next cited such an increase was granted, was not sufficient to create a distinction between the two cases.

An earlier decision which was relied in in the *Solomons Case*, as a precedent precisely in point, was *McClurg v. Kingsland* (1843) 1 How. 202. There it was held that a license to the employer to use the invention might justifiably be presumed from evidence to the effect, that the patentee, while working for wages in a factory, had, after making several unsuccessful experiments at the expense of his employer invented the improvements patented; that his wages had been increased in account of the useful result; that he remained for some months afterwards in the same employment, continuing during that period to manufacture the improved article for his employers; that he finally applied for and obtained a patent; that, while continued in the employment he proposed that his employers should take out a patent, and purchase his right, which they declined; that he made no demand on them for any compensation for using his improvement, and gave them no notice not to use it, till, on some misunderstanding on another subject, he gave them such notice, about the time of his leaving their establishment, and after making the agreement with the plaintiffs for an assignment to them of his right.

For other cases which illustrate the doctrine stated in the text, see *Lane & B. Co. v. Locke*, (1893) 150 U.S. 193, 37 L. ed. 1049, (engineer and draftsman, at a fixed salary, in the employ of the defendants, and using their tools and patterns, invented a stop valve, which the firm used with his knowledge in certain elevators constructed until its dissolution, and after that a corporation organized by the firm used it in the same way and with the like knowledge); *Keyes v. Eureka Consol. Min. Co.* (1893) 158 U. S. 150, 39 L. ed. 929, (employé of smelting company who had invented a new method of withdrawing molten metal from a furnace took out a patent for it, and permitted his employer to use it without charge so long as he remained in its employ, which was about ten years); *Chabot v. American Button-Hole & O. Co.* (1872) 9 Phila. 378, 6 Fish. Pat. Cas. 71, (presumption of license held to be strengthened by the terms of an express contract, which had been made before the employé applied for a patent, and which provided that a large number of machines should be manufactured by the use of the defendant's factory, machinery, tools and materials, the employé supplying, at a specified price, merely the labour ex-