that case (Hotchkiss v. Greenwood, 11 Howard, 248) that had the court found mechanical skill or ingenuity present, *even in the means of attaching the knob to the shank*, to that extent the patent would have been upheld, but, as it was reduced, at most, *merely* to the selection of materials, the patent was found invalid for want of novelty.

On the other hand, in the case of Colgate v. Western Union Telegraph Co. (15 Blatchf., 365), Judge Blatchford held that a patent for a metallic wire covered with gutta-percha, based upon the discovery of the fact that gutta-percha is a non-conductor of electricity, was properly the subject of patent protection under the statute, though covered wire, as a protection against rust, existed before the patent.

We make the bald statement, and we challenge its contradiction in our federal constitution, in the history of our acts of congress in respect to patents, or in the acts of congress themselves, that, be the thing patented *new* and *useful* and let such a thing come fairly within the classes named in the statute, *i. e.*, "*any* new and useful art, machine, manufacture, or composition of matter, or *any* new and useful improvement thereof," the patent granted for same is one contemplated by law; and such a patent should not be declared invalid because, forsooth, some chancelor, after the thing has been disclosed, turning *pro tem.* into a metaphysician, finds the subject of the grant involved, by the test of metaphysics, but mechanical skill.

Call it by what name you will (like the rose, by any other name it will be as sweet to the patentee) if it respond to the above statutory requirements, it is a thing "invented"—brought to light—by the inventor, as such has become a part of the stock of useful knowledge, and as such is entitled to protection under our patent laws, as they exist today, and as they have existed since the first act of congress on the subject.

In nothing that we have said do we mean to charge that the courts have been wrong in all cases in which they declared patents invalid for want of novelty. No doubt, in many such cases the courts have arrived at correct conclusions and by correct methods of reasoning; while in others their conclusions were correct though the reasons for their conclusions may not have been sound. But we do mean to say that in all such cases in which patents have been justly declared invalid the judgments were just and lawful, no matter what the reasons assigned for the judgments may have been, not because the subjects of the patent were the result of mechanical skill, but because they were lacking either in novelty or utility.

Copyrights.

Our copyright statutes rest upon precisely the same foundation as our statutes in respect to patents, *i. e.*, that congress shall have power "to promote the progress of science and useful arts, by securing for limited times to *authors* and *inventors* the exclusive right to their respective writings and discoveries," yet the copyright laws, interpreted by the courts with that same liberality which has been evidenced by the supreme court in dealing with the patent laws, as expressed in its opinion by Chief Justice Marshall, *supra*, make no distinction between the humble compiler of a directory, the less deserving author of the "dime novel," and the genius of the poet, but recognizing each as an "author," deal out even justice to all.

It might as well be said, and with quite as much reason in the coustitution and statutes, that a chancelor could sit in judgment upon the literary merit of a book, the contents of which are admittedly new and useful, to determine whether or not the holder of the copyright was an "author"—that his book had enough literary merit to be consistent with the dignity of "authorship"—as to say that under our patent statutes, as they exist, a chancelor, in a case where the patented thing is admittedly new and useful, is to pass upon the metaphysical question as to whether or not the subject of the patent rises to the dignity of an invention or involves merely mechanical skill.

We submit that reason and the opinions of the most learned chancelors are with us in our contention; that the only safe guide to follow in these cases is to take the law as we find it in the statute, and, imbued with the history of that law and its true spirit as expressed by those nearest the fountainhead, and by those who have followed and by their writings shown themselves to be most thoroughly conversant with its history and the reason for its existence, and when we find that the subject of the patent can fairly be said to be or relate to "*any* art, machine, manufacture, or composition of matter or *any* improvement thereof" and that it is new and useful, no matter how simple, then to uphold the patent.

Mr. Curtis (Curtis on Patents, 4th ed., §32) saw this very clearly; he says:

"It may be doubted, whether all the different forms of stating or investigating the question of sufficiency of invention are anything more than different modes of conducting the inquiry, whether the particular subject of a patent possesses the statute requisites of *novelty* and *utility*, both of which qualities must be found uniting in it."

This, after all, is the principle recognized by the supreme court in the barbed wire cases (143 U. S., 275) by the able opinion of Mr. Justice Brown, and it is the same principle which has been recognized as correct and applied by many of the most learned judges of our country and of our day, in many cases. We think we see in some of these more recent decisions a recognition of the principles which are thus stated by Chief Justice Marshall in Grant v. Raymond and which will bear repetition here: "To promote the progress of useful arts, is the interest and policy of every enlightened government. It entered into the views of the framers of our constitution, and the power to 'promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries' is among those expressly given to congress. This subject was among the first which followed the organization of our government. It was taken up by the first congress at its second session, and an act was passed authorizing a patent to be issued to the inventor of any useful art, etc., on his petition, 'granting to such petitioners, his heirs, administrators, or assigns, for any term not exceeding fourteen years, the sole and exclusive right and liberty of making, using, and vending to others to be used the said invention or discovery.' The law further declares that the patent 'shall be good and available to the grantee or grantees, by force of this act, to all and every intent and purpose herein contained.' The amendatory act, of 1793, contains the same language and it cannot be doubted that the settled purpose of the United States has ever been, and continues to be, to confer on the authors of useful inventions an exclusive right in their inventions for the time mentioned in their patent. It is the reward stipulated for the advantages derived by the public for the exertions of the individual and is intended as a stimulus to these exertions. The laws which are passed to give effect to this purpose ought, we think, to be construed in the spirit in which they have been made, and to execute the contract fairly on the part of the United States, where the full benefit has been actually received—if this can be done without transcending the intention of the statutes, or countenancing acts which are fraudulent or may prove mischievous.

"The public yields nothing which it has not agreed to yield—it receives all which it contracted to receive; the full benefit of the discovery, after its enjoyment by the discoverer for fourteen years, is preserved; and for his exclusive enjoyment of it during that time the public faith is pledged. That sense of justice and of right, which all feel, pleads strongly against depriving the inventor of the compensation thus solemnly promised."

Justice.

How just and equitable these principles are, and what a safe guide do we not find in them!

What harm can come of following these principles, even as applied to what the courts may call "a narrow inven-