history of the statute, and the practical application of it, the opposite implication.

Unless Congress, in each regulation issued, expressly states its intent to exclude the power of the state or to allow it in the interstices of the federal law, the courts will continue to be faced with this problem of interpretation. It has been urged that the Court adopt either one of these presumptions in order to have a uniform rule.[16] In any case there is the possibility of Congress "overruling" the Supreme Court by subsequent legislation. Upon several occasions decisions have been followed by statutes which laid down a rule different from that expressed by the Court.[17] It is interesting to note that in most of these cases, Congress has acted to return to the states powers which the Court had taken away in construing the statute. We may speculate as to what action Congress may take in connection with the instant case.[18]

J. D. H.

MECHANICS' LIENS—JUDGMENTS—STATUTE OF LIMITATIONS—[Missouri]. —A sheriff, in execution of a mechanic's lien judgment, sold two lots, the titles to which had previously been acquired by the appellants through a sale under a deed of trust. The sheriff's sales were on July 21, 1938, in pursuance of the executions issued upon judgments and decrees establishing a mechanic's lien. The decrees on the lots were entered in January and April, 1934. The appellants sought to cancel the sheriff's sale, contending that under Missouri statutes[1] the liens created by the judgments and decrees

16. Dowling, Interstate Commerce and State Power (1940) 27 Va. L. Rev. 1.

17. In Pennsylvania v. The Wheeling and Belmont Bridge Co. (U. S. 1851) 13 How. 518, a bridge authorized by the state of Virginia was declared illegal as an obstruction to interstate commerce. (1852) 10 Stat. 112, c. 112, declared it to be a valid structure, and in Pennsylvania v. Wheeling and Belmont Bridge Co. (U. S. 1856) 18 How. 421, the Court recognized the effect of the statute, and reversed the former opinion. Liesy v. Hardin (1890) 135 U. S. 100 held that a state could not prevent the interstate sale of liquor within its boundaries in the original package. The Wilson Act (1890) 26 Stat. 313, c. 728, 27 U. S. C. A. §121, gave this power to the states, and in In re Rahrer (1891) 140 U. S. 545 the reversing effect of the statute was recognized. In both of these cases, the silence of Congress was interpreted as an intent that the field be free of state regulation. Congress acted after the interpretation by the court, to express a different intent. See also Clark Distilling Co. v. Western Maryland Ry. Co. (1917) 242 U. S. 311 in connection with the Webb-Kenyon Act (1913) 37 Stat. 699, c. 90, 27 U. S. C. A. §122.

In Oregon-Washington Ry. & Navigation Co. v. Washington (1926) 270 U. S. 87 the Court inferred from an act of Congress (1912) 37 Stat. 315, c. 308, 7 U. S. C. A. §161, an intent to exclude state quarantine regulations. Within three months, Congress amended the act to refute this implication, and allow the action. 44 Stat. 250, c. 135, 7 U. S. C. A. §161.

18. To date there seems to have been no effort to effect a change in the rule set forth by the court.

1. R. S. Mo. (1939) §§1269, 1270.

had expired three years after the entry of judgment ,i. e. in 1937, and no attempt had been made to revive them. *Held*, for appellee; mechanic's lien judgments are *in rem*, created specially against the property in question, and continue for ten years without the necessity of revival. *Rosenzweig v. Ferguson.*[2]

In Missouri a judgment is a lien on the real estate of the person against whom it is rendered[3] and the lien continues in force for three years commencing on the day of the rendition of the judgment;[4] however, it may be revived by *scire facias* at any time within ten years after the entry of it.[5] Such judgments are *in personam.*[6] The proceedings of a mechanic's lien suit are the same as those of an ordinary civil action,[7] and may be commenced by either personal service[8] or by constructive notice[9] in accordance with the Missouri code of civil procedure. A judgment in the latter case should be issued as a general one against the party who ordered the work and as a special one against the property.[10] If the mechanic's lien judgment cannot be satisfied by the party who ordered the work, it may be satisfied by the execution of the lien against the property. This execution is had by a special *fieri facias,*[11] with which we are here concerned. Since the purpose of the mechanic's lien judgment is to establish a lien against the improved property[12] and execution is had by special *fieri facias*, the execution proceedings are considered to be *in rem.*[13]

The general statutes are silent with respect to the duration of liens of judgments for special benefits, but the Missouri Supreme Court has held that judgments for special benefits and tax assessments reduced to judgments are judgments *in rem*[14] and that they do not expire in three years

2. (Mo. 1941) 158 S. W. (2d) 124.
3. R. S. Mo. (1939) §1269.
4. R. S. Mo. (1939) §1270.
5. R. S. Mo. (1939) §1271.
6. Schwab v. City of St. Louis (1925) 310 Mo. 116, 141, 274 S. W. 1058, 1066 "It is evident that the purpose of section 1555 was to make judgments *in personam* a lien on the real estate of the judgment debtor * * *."
7. R. S. Mo. (1939) §3554.
8. R. S. Mo. (1939) §3560.
9. R. S. Mo. (1939) §3559.
10. Gill, *The Missouri Law of Title to Real Property* (3d ed. 1931) 717, §1627. Williams v. Porter (1873) 51 Mo. 441; Schmeiding v. A. W. Ewing (1874) 57 Mo. 78; Hassett v. Rust (1876) 64 Mo. 325; Lowry-Miller Lumber Co. v. Dean (1932) 226 Mo. App. 783, 47 S. W. (2d) 164.
11. R. S. Mo. (1939) §3561.
12. R. S. Mo. (1939) §3546.
13. "The proceeding to foreclose a mechanic's lien in a proceeding *in rem*, founded on statute, not *in personam*, and operates only as a foreclosure, and not as an action for the collection of a debt." Annotation 13 L. R. A. 706. See also, 36 A. J. 240, Davis v. Bilsland (U. S. 1874) 18 Wall. 659, 21 L. Ed. 969; J. C. Vreeland Building Co. v. Knickerbocker Sugar Refinery Co. (1907) 75 N. J. L. 551, 68 Atl. 215, 127 Am. St. Rep. 812, 15 Ann. Cas. 1083; Hunt v. Darling (1904) 26 R. I. 480, 59 Atl. 398, 69 L. R. A. 497, 3 Ann. Cas. 1098.
14. Schwab v. City of St. Louis supra note 5 at 310 Mo. 142, 274 S. W. 1066, "Judgments in proceedings for the collection of local assessments and special benefits are judgments *in rem*, not *in personam* and can only be for the enforcing of the lien against the particular property assessed."

but in ten.[15] The same court has also held that execution on a vendor's lien may be had at any time within ten years.[16] The court in the principal case draws an analogy between special benefit judgments and mechanic's lien judgments in that they can only be liens against the particular property involved and that they are judgments *in rem*. The court held unanimously that since a lien for a judgment for special benefits runs for ten years, the same limitation should apply to a mechanic's lien judgment.

R. R. N., JR.

PATENTS — DIRECT INFRINGEMENT — DEFENSES — ATTEMPT OF PATENT OWNER TO ESTABLISH MONOPOLY OVER UNPATENTED MATERIAL BY MEANS OF PATENT — [United States]. — Respondent (plaintiff in the lower court) patented machines for depositing salt tablets, used by the canning industry for flavoring canned foods. The machines were leased to canners, and the leases specified that the lessee should use only respondent's unpatented salt tablets in the leased machines. Respondent sought an injunction and an accounting for direct infringement of the patent by petitioner, a competitor in the salt business. Petitioner set up the defense that the condition in the leases was contrary to public policy and prohibited respondent from suing for infringement. *Held*, equity will not enjoin the infringement of a patent where the holder is using that patent to restrain trade or create a monopoly over and above that of the patent itself. *Morton Salt Co. v. G. S. Suppiger Co.*[1]

The principal case makes explicit a limitation on the legitimate use of patents which may be implied from earlier decisions. A patent grants an exclusive right to make, use and vend the particular device described in the patent,[2] but it does not carry with it the right to a monopoly not within the grant.[3] It is the general rule that courts, particularly courts of equity,

15. Gill, *op. cit.* supra note 9, at 636, §1421. Boyd v. Ellis (1891) 107 Mo. 394, 18 S. W. 29; Fleckenstien v. Baxter (1893) 114 Mo. 493, 21 S. W. 852; George W. Watson v. The Keystone Iron Works Co. (1904) 70 Kan. 43, 74 Pac. 269; Moore v. Ogden (1880) 35 Ohio St. 430; Eyssel v. St. Louis (1902) 168 Mo. 607, 68 S. W. 893; City of St. Louis v. Annex Realty Co. (1903) 175 Mo. 63, 74 S. W. 961, Schwab v. City of St. Louis (1925) 310 Mo. 116, 274 S. W. 1058; supra note 6, Wayland v. Kansas City (1928) 321 Mo. 654, 12 S. W. (2d) 438.

16. Hockaday v. Lawther (1885) 17 Mo. App. 636.

1. (1942) 62 S. Ct. 402, 86 L. Ed. 317.

2. These rights are sanctioned by the United States Constitution, Art. I, §8, cl. 8, which reads, "The Congress shall have power * * * (8) To promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." They are expressly provided for by statute (35 U. S. C. A. *passim*).

3. Strictly speaking, a patentee has no right to do anything under the patent grant, but only the right to exclude others from doing certain things. However, this is the language ordinarily used. Interstate Circuit v. United States (1939) 306 U. S. 208; Ethyl Gasoline Corp. v. United States (1940) 309 U. S. 436.