made, forcing a probably dependent beneficiary to pay premiums for the balance of the insured's life expectancy is a material change in the value of the promised benefit. *Modern Woodmen v. White*, 70 Colo. 207, 199 Pac. 965 (1921); *Roblin v. Supreme Tent*, 269 Pa. 139, 112 Atl. 70 (1920); *Fryer v. Modern Woodmen*, 179 N.W. 160 (Iowa 1920); *Sweet v. Modern Woodmen*, 169 Wis. 462, 172 N.W. 143 (1919).

The instant case joins a small minority in finding the by-law reasonable on the practical basis that in the large percentage of the "disappearance" cases the insured is in fact alive and the member is either attempting to defraud the insurance company or has deserted his family. *Steen v. Modern Woodmen*, 296 Ill. 104, 129 N.E. 546 (1921); *McGovern v. Brotherhood of Locomotive Firemen and Engineers*, 31 Ohio C. C. 243 (1909) aff'd, 85 Ohio 460, 98 N.E. 1128 (1911). This is especially true of mutual companies where many members are migratory workmen. The insurance is against death not desertion. These courts point out that disappearance does not have the same value in indicating death as it did when the presumption was formulated because then travel was hazardous. Excellent communication and police records render unlikely actual death being uncommunicated. These factors have led to a weakening of the presumption of death in at least one state. In New York it is now necessary to prove that death was the "probable cause" of uncommunicated absence before the presumption can be invoked. See *Butler v. Mutual Life Ins. Co.*, 225 N.Y. 197, 121 N.E. 758 (1919). Seemingly, therefore, in spite of the present weight of authority, it is becoming increasingly more difficult to say that future retroactive by-laws like the one in the principal case were not reasonably within the intention of the parties.

Mortgages—Effect of Appointment of Rent Receiver on Existing Leases—[Illinois].—The plaintiff, who had been appointed receiver to collect rents on the mortgagee's behalf pending foreclosure, sued a tenant to compel payment of rent under a lease made with the mortgagor subsequent to the mortgage and without the mortgagee's consent. The tenant contended that the appointment of the receiver terminated the lease. *Held*, for the plaintiff. The appointment of a receiver constitutes taking of possession by the court, not by the mortgagee, and does not constitute an eviction. *First Nat'l Bank of Chicago v. Gordon*, No. 38867, not yet reported (Ill. App. 1936).

The instant case is the first Illinois decision on the point. For a thorough discussion of the problem, see Tefft, Receivers and Leases Subordinate to the Mortgage, 2 Univ. Chi. L. Rev. 33 (1934).

Patents—Applicability of Notice Provision to Non-manufacturing Patentees—[United States].—In a suit by the plaintiff for patent infringement, the defendant counterclaimed for infringement of its patent. The defendant had not manufactured the patented article and had not given the plaintiff any notice of the patent until the filing of the counterclaim. Section 4900 of the Revised Statutes provides: "It shall be the duty of all patentees . . . . and all persons making or vending any patented article . . . . to give sufficient notice . . . . that the same is patented . . . . by fixing thereon the word 'patented.' " It further provides that any party "failing so to mark" shall recover damages for only those infringements occurring after notice. R. S. § 4900, 35

U.S.C.A. § 49 (1929). From a judgment of the circuit court of appeals, denying the defendant's claim for damages for infringements prior to the filing of the counterclaim, the defendant appealed. *Held*, reversed. Section 4900 does not apply to non-manufacturing patentees; the defendant may recover for infringements taking place both before and after notice given by the filing of the counterclaim. *Wine Ry. Appliance Co. v. Enterprise Ry. Equipment Co.*, 56 Sup. Ct. 528 (1936).

By the decision in the instant case, the Supreme Court has resolved a long standing ambiguity in section 4900 which has given rise to a sharp conflict in the decisions of lower federal courts. On the ground that the words "it shall be the duty of all patentees" clearly include non-manufacturing patentees, courts have reached a result contrary to the instant decision and non-manufacturing patentees have been required to give actual notice as a condition precedent to recovery for infringement. *Son v. Pressed Steel Car Co.*, 21 F. (2d) 528 (D.C. N.Y. 1927); *American Caramel Co. v. Thomas Mills and Bro.*, 162 Fed. 147 (C.C.A. 3d 1907); *Churchward International Steel Co. v. Bethlehem Steel Co.*, 262 Fed. 438 (D.C. Pa. 1919); *Flat Slab Patents Co. v. Northwestern Glass Co.*, 281 Fed. 51 (C.C.A. 8th 1922); *Van Meter v. U.S.*, 47 F. (2d) 192 (C.C.A. 2d 1931). Other courts, however, have urged, as did the Supreme Court here, that the words "failing so to mark" imply the existence of an opportunity to mark. *Olsson v. U.S.*, 72 Ct. Cl. 72, 102 (1931); *Wagner v. Corn Products Refining Co.*, 28 F. (2d) 617, 618 (D.C. N.J. 1928). Since manufacturing patentees alone have the opportunity to mark, the words "all patentees" have been limited to exclude non-manufacturing patentees. *Olsson v. U.S.*, 72 Ct. Cl. 72, 104 (1931); *Campbell v. City of N.Y.*, 81 Fed. 182, 184 (C.C. N.Y. 1897); *Ewart Mfg. Co. v. Baldwin Cycle-Chain Co.*, 91 Fed. 262 (C.C. Mass. 1898). Most of these decisions rest on or refer to *Dunlap v. Schofield*, 152 U.S. 244 (1893). However, this case is not in point because it involved a manufacturing patentee who failed to mark. See Curtis, The Marking of Patented Articles, 21 Col. L. Rev. 305, 310 (1921). Section 4900 has also been held inapplicable to manufacturers using process patents. *U.S. Mitis Co. v. Carnegie Steel Co.*, 89 Fed. 206 (C.C. Pa. 1898); *Wagner v. Corn Products Refining Co.*, 28 F. (2d) 617 (D.C. N.J. 1928). See 77 U. of Pa. L. Rev. 704 (1929). But these decisions can be distinguished from the instant case since the inability to give notice of a patented process by marking is due to the nature of the patented subject matter rather than the failure of the patentee to use the subject matter of the patent.

The decision in the instant case is unfortunate because it defeats the purpose of section 4900. The patent records often afford inadequate notice to prospective manufacturers and section 4900 was designed to give a fair warning to them by requiring marking or giving of actual notice, at least, by manufacturing patentees. Since the need for notice on the part of the prospective manufacturer is not reduced by the fact that the patentee has failed to manufacture, it is not reasonable to suppose that the legislature intended to exempt a non-manufacturing patentee from the notice requirement. It is of course true that a non-manufacturing, as distinguished from a manufacturing, patentee has had no opportunity to give notice by marking. But since the ultimate purpose of patent law is to increase the supply of useful articles by rewarding inventiveness, it is socially desirable to encourage the manufacture by patentees. 33 Law Notes 105 (1929); 9 Conn. B. J. 140 (1935). To allow damages only for infringements occurring after manufacture or notice might stimulate patentees to manufacture.

Practice—Appeal by Defendant to Whom New Trial Has Been Granted—[Ohio].—The defendant moved for a directed verdict at the close of the plaintiff's testimony and at the close of the entire evidence. Both motions were overruled and a verdict returned for plaintiff by the jury. The defendant then moved for judgment and for a new trial. The defendant's motion for judgment was overruled but his motion for a new trial was granted, on the grounds that the verdict was against the weight of the evidence. No judgment was at any time rendered for either party in the trial court. The defendant appealed, citing as error the overruling of his motions for a directed verdict and for judgment after verdict. *Held* (one judge dissenting), the order granting a new trial was a final order which would support an appeal from errors in the trial by the defendant to whom it was granted. *Michigan-Ohio-Indiana Coal Ass'n v. Nigh*, 131 Ohio St. 405, 3 N.E. (2d) 355 (1936).

The statement of the dissenting judge that an order granting a new trial was not a final order sufficient to support an appeal was in accord with earlier Ohio decisions and with decisions of other jurisdictions. *Continental Trust Co. v. Home Fuel & Supply Co.*, 99 Ohio St. 453, 126 N.E. 508 (1919); *Huff v. Pennsylvania R.R. Co.*, 127 Ohio St. 94, 187 N.E. 1 (1933); *Hunt v. United States*, 53 F. (2d) 333 (C.C.A. 10th 1931). But two recent Ohio *per curiam* decisions held an order granting a new trial a final order. *Hocking Valley Mining Co. v. Hunter*, 130 Ohio St. 333, 199 N.E. 184 (1935); *Cincinnati Goodwill Industries v. Neuerman*, 130 Ohio St. 334, 199 N.E. 178 (1935). See also Smith-Hurd's Ill. Rev. Stat. 1935, c. 110, § 201, Ill. C. P. A. 1933, § 77.

The court in the principal case insisted that granting a new trial to the defendant should not preclude him from appealing from the overruling of his motion for a directed verdict. The objection to allowing such appeal by the defendant after he has moved for and obtained a new trial is that he is thereby afforded too great an opportunity to delay action in the case without any detriment other than the costs of appeal. And by so delaying he may force the plaintiff to accept a relatively unfavorable settlement.

Where an order granting a new trial is not a final order, it is clear that no appeal can be taken from error in the trial by the party to whom a new trial is granted. *Bloomberg v. Bloomberg*, 148 Wash. 638, 269 Pac. 852 (1928); *Wolfe v. City of Miami*, 114 Fla. 238, 154 So. 196 (1934). In Iowa the appellate court (on an appeal raising the sufficiency of the evidence) usually remands for a new trial only, even though it feels that the trial court should have directed a verdict or given final judgment. 1 Iowa Bar Rev. 57 (1935). And in the federal courts, the jury's return of a verdict for one party precludes the entry of a final judgment for the other party even though the court admits that the evidence was insufficient to support the verdict. *Slocum v. New York L. Ins. Co.*, 228 U.S. 364 (1913); *cf. Baltimore v. Redman*, 295 U.S. 654 (1935); see also Rules of Civil Procedure for the Federal Courts, rule 56 (prelim. draft 1936). Again while a statute seems to provide for final judgment on appeal from the granting of a new trial, Pennsylvania courts have been very reluctant to upset the ruling granting a new trial. See Purdon's Penn. Stats. 1931, tit. 12, § 682; *March v. Philadelphia Co.*, 285 Pa. 413, 132 Atl. 355 (1926).

The Indiana courts have suggested that the defendant in moving for a new trial has elected not to pursue his remedy for the overruling of his motion for judgment *non obstante veredicto*. See *Lousiville Ry. Co. v. Miller*, 141 Ind. 533, 37 N.E. 343 (1894); *King v. Inland Steel Co.*, 177 Ind. 201, 96 N.E. 337 (1911); *Evansville Ry. Co. v. Cook-*