FOREWORD PAGE

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MacArthur's

PATENT CASES

determined in the

Circuit and Supreme Courts

of the

District of Columbia

by

Frank MacArthur

Examiner of Interferences, U. S. Patent Office

1885

covering period 1841–1859

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REPORTS OF CASES

ARISING UPON

Applications for Letters-Patent for Inventions

DETERMINED IN THE

CIRCUIT AND SUPREME COURTS OF THE DISTRICT OF COLUMBIA

ON APPEAL FROM

THE COMMISSIONER OF PATENTS,

AND A

TABLE OF THE PATENTS DIRECTLY INVOLVED THEREIN, TOGETHER WITH REFERENCES TO THE CASES WHERE THESE PATENTS HAVE BEEN SUBSEQUENTLY LITIGATED, AND CONSTRUED, SUSTAINED, OR HELD INVALID.

BY

FRANK MAC ARTHUR,
Examiner of Interferences, U. S. Patent Office.

Volume I.

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Rep

JUDGES

OF THE

CIRCUIT AND SUPREME COURTS OF THE DISTRICT OF COLUMBIA

WHOSE OPINIONS ARE REPORTED IN THIS VOLUME.

WILLIAM CRANCH, . . . CHIEF JUSTICE.

JAMES S. MORSELL, }
WILLIAM M. MERRICK, } . ASSOCIATE JUSTICES.

JAMES DUNLOP, ... CHIEF JUSTICE.

PREFACE.

It is believed that these decisions of the judges on appeal, now presented to the profession in collected form, will prove an interesting addition to the literature of patent law. The decisions cover very nearly the entire period of the active life of the Patent Office. In the system of *quasi-judicial* investigation, or examination preceding the grant of the patent, which was instituted by the act of 1836, the judges of the Circuit and Supreme Courts of the District of Columbia have acted for many years as the tribunal of last resort. According to the provisions of the original act of 1836 the applicant was given an appeal from the decision of the Commissioner to a Board of Examiners appointed by the Secretary of State for that purpose. By the act of 1839 this appellate jurisdiction was vested in the Chief Justice of the Circuit Court of the District of Columbia. This jurisdiction was extended by the act of 1842 to include the associate justices of the court. By the act of 1870 and by the Revised Statutes now in force the appeal is taken to the Supreme Court of the District of Columbia, sitting in general term.

In their anomalous relations with an executive department, the judges do not exercise the purely judicial functions of a court of record. The judgment is recorded in the Patent Office and controls the further proceedings of the Commissioner, but does not preclude any person interested from renewing the contest in another forum. The very singularity of this relation, however, gives peculiar value to these decisions as the opinions of the judicial mind upon the many questions that arise in the Patent Office in the preliminary stages of the patent unaffected by the presumptions of law that follow the patent itself throughout the subsequent litigation. In this regard these cases furnish a line of precedents bearing upon the controversies that arise by way of bill in equity under section 4915 R. S. to compel the issuance of the patent.

For a brief period immediately following the opinion of the Attorney-General of August 20th, 1881, the Secretary of the Interior exercised concurrent jurisdiction with the court as an appellate tribunal from the Commissioner of Patents, by way of petition, in the nature of appeal. It may now be regarded, however, as definitely established by the decision of the Supreme Court of the United States in the case of The United States *ex rel.* R. Hoe & Co. and George C. Gill *vs.* Butterworth, Commissioner of Patents, (29 O. G., 615,) that the Supreme Court of the District of Columbia exercises an exclusive jurisdiction

over the judicial actions of the Commissioner. This circumstance may be thought to lend additional importance to these volumes.

Many of the decisions appearing in this volume are already well known. Some of the opinions of Judge Cranch were included in an early edition of Curtis on Patents, and individual opinions have from time to time found their way into periodicals or have become familiar by dint of citation; but as a body of judicial learning, the decisions have been practically unavailable to the profession. Many of the cases were digested by Mr. Law in his valuable digest, under the name of "The Manuscript Appeal Cases;" but, as the lawyer is aware, the syllabus without the case is but an illusive guide to the law.

This volume has been carefully and faithfully compiled from the original records on file in the United States Patent Office. It is expected that another volume of equal size will bring the Reports down to date, and it is the present intention of the author to include in the second volume the opinions of the Attorneys General in Patent Matters, now scattered through the sixteen volumes of the opinions of the Attorneys-General.

The Table of Patents, which immediately precedes the text, will enable the reader to follow the subsequent history of the application or patent under consideration in any particular case so far as it has been involved in litigation, and has been construed, sustained, or declared invalid.

FRANK MAC ARTHUR.

WASHINGTON, D. C., *September*, 1885.

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3d. The Patents issued after further Proceedings upon Applications unfavorably considered in these Decisions;

TOGETHER WITH

References to the Cases where these Patents have been subsequently Litigated, and Construed, Sustained, or held Invalid.

Aiken, H., 7676. October 1st, 1850.—Wrought-iron car wheels.

Allen, E. G., 18,526. October 27th, 1857.—Steam gauge.

Babcock, G. H., 16,263. December 23d, 1856.—Printing-press.

Bain, A., 6328. April 17th, 1849.—Electric telegraph. Held not to interfere with Morse's patent No. 6420. (Bain *v.* Morse, 6 West. L. J., 372.)

Barber, H. B., 15,273. July 8th, 1856.—Method of drawing water from wells.

Barnum, D., 11,805. October 17th, 1854.—Machinery for forming hat bodies.

Bell, William, 11,928. November 14th, 1854.—Lamp caps.

Blandy, H. and F. L. J., 21,059. August 3d, 1858. Steam-engine. Construed; patentee, and not his workman, held to be inventor; held novel, and infringed. (Blandy *v.* Griffith, 3 Fish., 609; Same *v.* Same, 6 Fish., 434.)

Boardman, Jr., William, 5352. November 6th, 1847.—Portable steam pump.

Boughton, E., 10,467. January 31st, 1854.—Cultivator.

Brookfield and White, 9789. January 14th, 1853.—Glass manufacturing.

Burrows, J. E., 13,416. August 14th, 1855.—Furnace for manufacturing white oxide of zinc. Limited, in view of unsuccessful prior experiments, to date of application, and held anticipated by patent founded on caveat filed and successful experiments prior to such date. (Burrows *v.* Lehigh Zinc Company, 1 Ban. & Ard., 529.)

Carter and Rees, 8322. August 26th, 1851.—Nut and washer machine. Reissue No. 313, June 19th, 1855, construed, held novel, and not invalid for delay in reissuing. (Wood *v.* Cleveland Rolling-Mill, 4 Fish., 550.)

Chandler, T. A., 17,023. April 14th, 1857.—Pendulum levels.

Cole, Richard H., 18,499. October 27th, 1857.—Nut machine.

Cole, R. H., 21,551. September 21st, 1858.—Nut machine.

Clark, Terence, 8994. June 8th, 1852.—Manufacture of glass.

Connison, Alexander, 2872. December 5th, 1842.—Steam-engine.

Corbin and Martlett, 17,264. May 12th, 1857.—Artificial honey.

Cornell, S. G., 5253. August 21st, 1847.—Lead-pipe machinery. (Tatham *v.* Le Roy, 2 Blatch., 484.)

Cornell, J. B., 14,281. February 10th, 1856.—Illuminating vault covers.

Cramer, J. P., 16,364.—Cultivator tooth.

Cressler, William, 9740. May 17th, 1853.—Seed planter.

Cunningham, C., 12,535. March 13th, 1855.—Benzole vapor apparatus. Held to be for a novel and patentable invention. Fourth claim construed, sustained, and infringed. (Munson *v.* Gilbert and Barker Manufacturing Company, 18 O. G., 194.)

Cushman, W. M. C., 3889. January 16th, 1845.—Railroad rails.

Davidson, C. H., 22,018. November 9th, 1858.—Lacteal instrument.

Degener, F. O., 22,611. January 11th, 1859.—Printing-press.

Dietz, M. A., 23,832. May 3d, 1859.—Lamp. Reissue No. 802, August 30th, 1859.

Douglass, A., 17,082. April 21st, 1857.—Bustles.

Gamble, J. K. and W. P., 13,258. July 17th, 1855.—Railroad draw.

Gambrill and Burgee, 18,124. September 1st, 1857.—Carding machine.

Goodyear, C., 3461. March 9th, 1844. India-rubber shirred goods. (*Ex-parte* Robinson, 2 Biss., 309; Gardner *v.* Goodyear Dental Vulcanite Company, 3 O. G., 295; Day *v.* Cary, 4 Blatch., 278; Day *v.* Stellman, 1 Fish., 501; Day *v.* Goodyear, 1 Blatch., 565.

Greenough, J. J., 9791. June 14th, 1853.—Manufacture of glass.

Haines J., 6254. March 27th, 1849.—Harvester. Reissue No. 331, November 6th, 1855.

Halsey, J. E., 15,292. July 8th, 1856.—Fire-arms.

Harris, E., 12,550. March 20th, 1855.—Lamp.

Heath, George, 2393. December 14th, 1841; antedated July 3d, 1841.—Hydraulic gate for canal locks.

Hebbard, A., 18,546. November 3d, 1856.—Ice pitcher.

Herriet, Julius, assignor to John Gaylord Wells, 11,831. October 24th, 1854.—Stereotype composition.

Hildreth, George W., 1517. March 19th, 1840.—Improved culvert or sluice gate for canal locks.

Hopkins, Lansing, 9450. December 18th, 1852.—Machine for manufacturing hat bodies.

Howard, Rufus L., assignee of William F. Ketchum, 9737. May 17th, 1853.—Mowing machine.

Hoyt, William H., 8119. May 27th, 1851.—Omnibus steps.

Hyatt, T., 4266. November 12th, 1845.—Vault cover. (Lake *v.* Fitzgerald, 6 Fish., 420.) Reissue No. 303, April 3d, 1855.

Jewett and Root, 9780. June 14th, 1853.—Fire-place stoves.

Jillson, A., 8368. September 16th, 1851.—Weavers' temples.

Kelsea, H., 19,283. February 2d, 1858.—Manufacture of sewing silk.

Kenyon, William, 8427. October 14th, 1851.—Nut and washer machine. Reissue No. 566, February 15th, 1858. Construed, held novel, and not invalid for delay in reissuing. (Wood *v.* Cleveland Rolling-Mill, 4 Fish., 550.)

King, J. T., 14,818. May 6th, 1856.—Washing machine.

Ladd, Jr., W. G., 7263. April 9th, 1850.—Fluid level.

Matthews, M. M., 7636. October 1st, 1850.—Printers' ink.

Mee, J., 9718 and 9719. May 10th, 1853.—Knitting loom.

Morse, S. F. B., 6420. May 1st, 1849.—Telegraph. Sustained and held infringed. O'Reilly *v.* Morse, 15 How., 62. Sustained. Morse *v.* Bain, 9 West. L. J., 106.

New England Screw Company, assignee of Cullen Whipple, 9669.—Improvement in shaving the heads of screw blanks. April 12th, 1853; antedated November 30th, 1852.

O'Neil, J., 7531. July 30th, 1850.—Churn. Patent for additional improvement, May 13th, 1851, No. 97.

O'Reilly, P., 9703. May 3d, 1853.—Rails for railroads.

Parkhurst, S. R., 4023. May 1st, 1854.—Wool carding machine. Patentee held first and original inventor. (Parkhurst *v.* Kinsman, 1 Blatch., 488; Parkhurst *v.* Kinsman, 2 Blatch., 72; 2 Blatch., 76; Kinsman *v.* Parkhurst, 18 How., 289.) Reissue No. 1137, February 12th, 1861. (Morris *v.* Lowell Manufacturing Company, 3 Fish., 67.)

Rankin, Jr., J., 10,124. October 18th, 1853.—Propeller.

Renton, J., 11,838. October 24th, 1854.—Making wrought iron direct from the ore.

Richardson, J., 11,820. October 17th, 1854.—Pencil case.

Robertson, T. J. W., 12,015. November 28th, 1854.—Sewing machine. (Ellithorp *v.* Robertson, 4 Blatch., 307.)

Rugg, G. H., 9005. June 8th, 1852.—Harvester.

Ruggles, Stephen P., 9904. August 2d, 1853; antedated February 2d, 1853.—Printing-presses.

Salisbury, E., 13,364. July 31st, 1855.—Railway cars.

Seely, S., 9736. May 17th, 1853. Lime-kiln.

Singer, I. M., 8294. August 12th, 1851.—Sewing machine. Reissue No. 278, October 3d, 1854. Construed and found for defendant. (Singer *v.* Walmsley, 1 Fish., 579.)

Singer, I. M., 16,030. November 4th, 1856.—Sewing machine. Construed and found infringed; (Singer *v.* Walmsley, 1 Fish, 580;) held novel and valid; third claim patentable, not abandoned, and infringed. (Singer *v.* Braunsdorf, 7 Blatch., 521.)

Sloan, T. J., 9688. April 26th, 1853.—Screw machine.

Smith, Charles E., assignee of J. Dutton Steel, 9704. May 3d, 1853; antedated November 3d, 1852.—Rails for railroads.

Smith, H. L., 9776. June 7th, 1853. Letter files.

Spear, James, 19,956. April 13th, 1858.—Cooking stoves.

Stearns, Charles, 25,534. July 5th, 1859.—Machine for making corrugated and twisted lightning rod.

Steer, Isaac H., 13,118. June 19th, 1855.—Nut and washer machine. (Wood *v.* Cleveland Rolling-Mill, 4 Fish., 550.)

Tyson, W. F., 9810. June 21st, 1853; antedated December 21st, 1852.—Propellers.

Wade and Burnham, 19,885. April 6th, 1858.—Lamp attachment.

Wagner, I. Z., 17,999. August 11th, 1857.—Brick machine.

Walsh, J. C., 17,530. June 12th, 1857.—Gas burner.

Waterman, H., 3106. May 26th, 1843.—"Method of connecting tillers with the rudder-head of vessels."

Wellman, G., 14,481. March 18th, 1856.—Carding machine.

Wetherill, S., 13,806. November 13th, 1855.—Furnace for white-zinc manufacturing infringed. (Wetherill *v.* New Jersey Zinc Company, 5 O. G., 460; Wetherill *v.* Same, 1 Ban. & Ard., 485; Wetherill *v.* Passaic Zinc Company, 6 Fish., 50.)

Whipple, George A., 9715. May 10th, 1853.—Manufacturing iron directly from the ore.

Woodman, Horace, 15,313. July 8th, 1856.—Machinery for cleaning the top flats of carding machines.

Young, John, 9721. May 10th, 1853.—Printing-press.