correct. But the Commissioner, in the grounds of his decision, has, I think, shown the machines to be substantially alike.

The third reason of appeal is merely an objection to the opinion of the Commissioner. Whatever may have been his opinion on that point, the decision may be correct, and the opinion is no ground for reversing it.

The fourth reason of appeal involves no point which would justify a reversal of the decision of the Commissioner.

I am therefore of opinion, and so decide, that the decision of the Commissioner rejecting the application of the said Matthew A. Crooker is correct and ought to be, and is, affirmed.

John Bulloch, for appellant.

ARNOLD JILLSON, APPELLANT,

vs.

OLNEY WINSOR, APPELLEE. INTERFERENCE.

REASONS OF APPEAL—DECISION CONFINED THERETO.—The refusal of the Commissioner to receive as evidence certain certificates of manufacturers and others not having been assigned as error in the reasons of appeal, cannot be considered as such by the judge upon appeal.

EVIDENCE—CERTIFICATE UNDER OATH.—Certificates not under oath in due form of law, cannot be received as evidence in an interference proceeding.

EVIDENCE—DRAWINGS WITHOUT TESTIMONY NO EVIDENCE.—A drawing in an account-book in the possession of one of the parties to the interference not of itself evidence that the invention therein shown was the invention of such party, and not taken as evidence of the existence of the invention at the date of the surrounding entries in the book, in the absence of corroborating circumstances or the positive testimony of witnesses.

(Before CRANCH, Ch. J., District of Columbia, July, 1850.)

CRANCH, J.

This is an appeal from the decision of the Commissioner of Patents rejecting the application of Arnold Jillson for a patent for an improvement in weavers' temples, because it would inter-

fere with the claim of Olney Winsor for a patent for the same invention.

The decision of the Commissioner was in these words:

"Upon the hearing of this case, it appears by the testimony of two witnesses that the said Winsor invented the temple in question at least as early as the winter or spring of 1847, and it does not appear by the testimony adduced the said Jillson made the same invention earlier than the winter of 1848.

"Priority of invention is therefore decided in favor of the said Olney Winsor."

After the amendment of the specification, the only point involved by the reasons of appeal is the question of priority of invention.

The appellant contends that certain certificates of manufacturers should be received as evidence in the cause, but the refusal of the Commissioner to receive them is not alleged as a reason of appeal filed in the Patent Office, and cannot now be received as such; and if they had been so alleged, they were properly rejected, because not on oath in due form of law. The question of priority, therefore, is the only point in the reasons of appeal, and it is the only question decided by the Commissioner.

Mr. Winsor, in support of his claim to priority of invention, produces his ledger—a book of accounts—upon a blank leaf of which (page 258) is found a drawing of an instrument called a weavers' temple, exactly like that which Mr. Jillson claims to have invented in June, 1848. On the preceding page, viz., page 257, on the same sheet, is an account against Seth Scott—the only entry in which, on the debit side, is dated "1842, March 10th," written with blue ink, and on the creditors' side, "March 28th." At the top of the page (258) containing the drawing are the words "Providence, August 10th, 1845," in black ink. The page (259) is quite blank, but ruled with red ink, as all the other pages in the book are. On the next page (260) is an account against Whipple & Willmarch, commencing 1846, August 24th, and running on to December 25th, 1846.

There are no entries in the book (except the words "Providence, August 10th, 1845," on the top of page 258) between March 28th, 1842, and August 24th, 1846. This is accounted for by the fact, as testified by B. F. Kendall, that Mr. Winsor

failed in business in 1842, and did not get into business again till 1846, when he went into the machine business with Albert G. Coffin, and continued to work with him until 1848, when the connection was dissolved.

1. Mr. Albert G. Coffin testified that in 1846 he saw the draft on Mr. Winsor's book; and the plan now shown is that which Mr. Winsor showed him in 1846. He believes it was in 1846, second month, that Mr. Winsor came to work with this witness; that the charges made in the book were made at or about the time they bear date, commencing August 24th, 1846; the last charge was made January 25th, 1848.

Being required to state the exact time when Mr. Winsor showed him this draft of a temple, he said, "I cannot be positive of the day when he showed it to me; I think it was in the second month of 1846; I cannot be positive of the day—not to certify to it."

Being asked when Mr. Winsor first showed him the model in the book, and where was it, he says, "First at the house; I think in the second month of 1846; I won't be positive as to the date of the month; afterwards at the shop." He does not know when Winsor first manufactured any temples from this model. He dissolved business with Winsor in 1848, "somewhere along in July or August"—can't tell the date. Between the time when he showed the witness the draft and the dissolution of their connection Winsor did not manufacture any of these temples—witness never saw one in operation. After dissolving business with Coffin, Winsor worked some, making temples, at a small shop in Providence. Can't tell what kind of temples he made. He made temples of various kinds, some of this kind. Witness first saw one of this kind manufactured by him about the 1st of April, 1849. He said he was selling temples, but not of this kind. There are many different kinds. He had some of this kind in his shop. Does not know that he sold any.

Mr. Winsor usually kept the book at his house. The slate was taken to his house, where the entries were made from the slate. He saw the book about the time the partnership was dissolved—about July or August, 1848; does not know that Winsor made any before April, 1849.

Opinion of the court.

Benjamin F. Kendall testifies that he has not sold any of these temples.

It was the last of February or first of March, 1849, that witness first heard that Jillson had a temple like that claimed by Winsor. On his return from Providence he told Mr. Winsor what he had heard about the Woonsocket temple, and explained it to him. He (Mr. Winsor) said it was not a new principle, and claimed it as his own invention, and exhibited to this witness a drawing in a book, &c. Winsor was making temples, but not of this kind; witness had seen none of them; witness had never seen the drawing before. He was interested conjointly with Winsor in two temples—Priest's temple and Harris' temple. Witness had been concerned with Winsor about six months, but Winsor had never communicated to him any knowledge of the temple in controversy. He manufactured some of these temples about the 1st of April, 1849. That was the first the witness knew of it. He paid no attention to the manufacture of temples; he has no interest in this matter. The temples were put on the looms first at Lowell in April or May, 1849.

3. Oliver Hunt worked for Olney Winsor and A. G. Coffin in 1847, and during that time saw a drawing to the effect of that shown to him, on the same principle; could not say he saw it in the book shown to him. The drawing he saw was made by Olney Winsor. The book he saw it in looked like the one shown him, and the drawing was similar to this; apparently it is the same book. The principle of it was explained to those in the shop at the time. The plan was then chalked out on the floor and explained. A day or two afterwards he showed this drawing to the witness in the book at his house. Never saw a model of this made at that time or about that time. The time he saw this was the latter part of April or first of May, 1847. He fixes the time in May, 1847, by the time he went there to work. He worked for Winsor and Coffin over a year. Winsor showed him this drawing about two months, he should think, after he went there; it was the latter part of April or first of May; he cannot fix the day. He knows it was then, because he was talking with Mr. Joseph Winsor, the man he is now working for, about going to work on some harness machines, but he did not go to work for him until July last (1849). The drawing was shown to witness

in 1847. He knows that this took place at the time he had talked with Joseph Winsor, because he had seen him in town a day or two before the drawing was shown to him; it was shown to him in Coffin and Winsor's shop in "Central Falls." The witness does not know of Mr. Winsor's making any temples of this kind, but knows that he had two or three pairs in his shop, and there might have been more.

This is the substance of the evidence adduced by Mr. Winsor in support of his priority of invention of the temple in question.

Mr. Jillson does not claim to have invented it before June, 1848.

The only evidence that Mr. Winsor ever invented this temple is the fact that an exact drawing of it is found upon page 258 of a book of accounts belonging to Mr. Winsor, which does not appear to have been in use by him from March 28th, 1842, (the last preceding entry,) and the 24th of August, 1846, (the next succeeding entry,) on page 260, and the fact that that drawing in the book was shown by Mr. Winsor to Albert G. Coffin in the year 1846, and to Oliver Hunt about the 1st of May, 1847.

It is true that the witness Hunt, in speaking of the time when he saw the drawing in the book, says the drawing he saw was made by Mr. Winsor; but it is evident that his attention was not drawn to the question who made the drawing, but to the question when it was made. He seems to have taken it for granted that it was made by Mr. Winsor because it was in his book; and his assertion that the drawing was made by Mr. Winsor seems to be only an inference drawn by him from the fact that it is found in his book. There is, therefore, no direct and positive evidence that Mr. Winsor ever invented the temple in question; certainly not before the year 1849. There is no evidence that he made any such temple before that time. If he had made and perfected such an invention in 1846, it is not to be believed that he should have kept it secret until 1849, and made no use of it. The witnesses Coffin and Hunt, who say they saw the drawing in the book in 1846 and 1847, may have been mistaken as to the year, and they do not speak with certainty of the date.

Upon a close examination of the drawing in the book, and comparing it with the temple which Winsor borrowed of Jillson in the name of Harris, I am quite satisfied that the greater part of the drawing was made from that temple by placing it upon the leaf

and drawing the outline from the temple itself with a pen; and as that temple was not made until the year 1849, the drawing could not have been seen in 1846 and 1847.

There is no evidence that Mr. Winsor made any such temple until 1849.

On the contrary, Mr. Tourtellot, superintendent of the Albion Company Mills, testifies that in April, 1849, Mr. Winsor offered to sell him a temple—not one like those invented by Jillson. He asked the witness if he knew a better; witness described to him one of Jillson's, and told him he could see one at the Clinton Mills, Woonsocket, but he (Winsor) seemed to doubt whether it was better than his. This evidence shows that at that time he was ignorant of the temple invented by Jillson.

Ira Lee testifies that in April, 1849, Mr. Winsor came into the Clinton Machine Shop, at Woonsocket. Mr. Jillson, who was employed as master mechanic at the Clinton Mills, was in the shop. Mr. Winsor inquired if there was a new kind of temple, and if it was a good kind. The witness and Mr. Jillson explained it to him. He wanted to get a pair that night, but concluded to wait till the morning. They took him to be a manufacturer. He did not say it was new, but rather seemed to think he had never seen such a kind before, thus again showing his ignorance of Jillson's invention.

Cyrus Harris, superintendent of Doctor Harris' Mills, testifies that in April, 1849, Winsor came to the mills and said he had a temple he wanted him to try. It was a new temple he had found at Woonsocket, got up by one Jillson. He wanted the witness to take the temples and try them, if he would, and send them home to Woonsocket. As he had obtained them in the name of the witness, he wished him to take them and send them home in his name to Mr. Jillson or to Lippet & Jillson. That the temple now shown to the witness is the same, or of the same kind, as the one he showed to him, and which he said he obtained from Jillson; that Winsor stated to the witness that the reason why he used the name of Mr. Harris was that he thought the temple was the best he had seen, and that he could not get it in any other way. This witness further testified that Winsor told him that he had taken a model from the temple which he had borrowed of Jillson in the name of this witness.

Opinion of the court.

Charles T. Martin, in a deposition taken on the part of Mr. Winsor, testifies that in April, 1849, at the request of Mr. Winsor, he tried to get a pair of the temples made by Mr. Jillson, and went with him part way to Clinton Mills; that Mr. Winsor went in, and witness waited under the railroad bridge. When Mr. Winsor came out he had what witness supposed was a pair of temples, and asked witness to be with him as a witness of the time and the kind of temple he obtained of Mr. Jillson.

That Mr. Jillson invented the temple in question is abundantly proved by the testimony of the following witnesses:

1. Dudley Reach, who testifies that he first knew of Mr. Jillson's claim of an improvement in weavers' temples in May or June, 1848; that he used to go into the shop about that time, and saw him frequently at work on those temples.

2. Lorenzo B. Jillson, who testifies that he knows of Arnold Jillson's having invented an improvement in weavers' temples, and having applied for a patent thereon; thinks he first knew of this improvement in June, 1848, and first saw them in use the last of June, 1848, in Clinton Mill, in Woonsocket; that he saw Jillson making one. Being asked what is the improvement invented by Jillson in weavers' temples, and in what does it differ from other temples, he says: "All other jaw-temples which I ever saw have a device for opening and closing the jaw; these do not, but work by the action of the cloth."

3. Gardner Smith says he was present when Jillson was making improvements in weavers' temples, and did the blacksmithing for them in June, 1848; that he saw the improved temple made by Jillson in operation on trial, by way of experiment, in June, 1848, in the machine-shop of the Clinton Mill; that this improvement obviates the necessity of any spring whatever; the gravitation of the jaw is its motive power, and is unlike all others to his knowledge.

4. Robert Hilton worked in the weave-shop in the Clinton Mill, in Woonsocket, from 1843 to 1849, except twelve or thirteen months; had charge of the weave-shop and tried the temples, and made all the experiments with them, and they were the first he had ever heard or seen of the kind. It was about two years ago (February, 1848) since they were first applied to looms in Woonsocket. He never saw them applied in any other place.

Syllabus.

5. Mr. Tourtellot first heard of the invention late in the fall or winter of 1848.

6. Ira Lee, in April, 1849, was at work in the machine-shop at Woonsocket upon temples invented by Mr. Jillson.

7. Cyrus Harris says that Winsor came to the mills in April, 1849, and said he had a new temple he wanted him to try; he found it at Woonsocket; it was got up by one Jillson.

Upon consideration of the whole evidence, I am satisfied that the applicant, Olney Winsor, was not, and that the said Arnold Gillson was, the first inventor of the improvement in weavers' temples, which is now the subject of controversy in this case, and that the decision of the Commissioner of Patents rejecting the application of the said Arnold Jillson and awarding the priority of invention in favor of the said Olney Winsor ought to be, and the same is hereby, reversed.

W. P. Elliot, for appellant.

J. Dennis, Jr., for appellee.

MOSES M. MATTHEWS, APPELLANT,

vs.

HORACE D. WADE, APPELLEE. INTERFERENCE.

REASONS OF APPEAL—WHEN ONCE FILED, MUST BE HEARD AND DECIDED.—The filing of the reasons of appeal is a proceeding in the Office over which the judge has no control. If the Commissioner has received and filed the reasons of appeal, the judge cannot order him to strike them out. They must be heard and decided; and when brought before him on appeal, if they are not valid, he will overrule them.

JURISDICTION OF THE COMMISSIONER—CONTROL OVER THE PROCEEDINGS IN THE OFFICE.—The proceedings in the Office are all under the superintendence and control of the Commissioner, who acts immediately under the law, and who is uncontrolled in the discharge of the duties of his office, except so far as an appeal is expressly given by law.

VALID REASON OF APPEAL.—No reason of appeal can be regarded as valid which would not justify the Commissioner in refusing the patent.