the plaintiff's invention, which came afterwards, was his own invention, and remedied the defects, if I may say so, although he knew nothing of Mr. Strutt's wheel, he remedied the defects of Mr. Strutt's wheel, then there is no reason for saying the plaintiff's patent is not good. It depends entirely upon what is your opinion upon the evidence with respect to that."

Gibbs, Ch. J., in the case of Brown, in his charge to the jury, says: "Now, I wish to have what I state upon this subject observed by the counsel on both sides, that they may be aware how I put it. If a combination of those parts existed before; if a combination of a certain number of these parts existed up to a given point before, and Mr. Brown's invention sprung from that point, and added other combinations to it, then I think the specification stating the whole machine as his invention is bad. If, on the other hand, you think he has the merit of inventing the combination of all the parts from the beginning, then I think the specification is good, and that he is entitled to your verdict."

This, therefore, is the conclusion to which I feel myself obliged to come—that as between Burrows and Wetherill the priority of invention ought to be awarded to Burrows, and that Wetherill is not entitled to a patent upon his present application; and I do accordingly so decide and determine.

As between Burrows and Jones, there having been no decision by the Commissioner, there is, of course, no such case before me on appeal.

GEORGE A. WHIPPLE, APPELLANT,

vs.

JAMES RENTON, APPELLEE. INTERFERENCE.

INTERFERENCE—APPEAL BY PATENTEE DISMISSED.—An appeal in an interference by a patentee from a decision of the Commissioner, not referring or rejecting, but granting, the application, dismissed for want of jurisdiction or authority.

Pomeroy *v.* Connison (*ante*, p. 40) cited and approved.

(Before MORSELL, J., District of Columbia, September, 1854.)

Opinion of the court.

MORSELL, J.

On the 23d of December, 1853, James Renton filed an application in the Patent Office for letters-patent for an improvement in furnaces for making iron direct from the ore, which was declared to interfere with a patent granted to the said George A. Whipple on the 10th of May, 1853; and for the trial of the issue so formed the parties were allowed to take their testimony, which being done, and the said matter fully heard, the Commissioner on the 6th of June, 1854, awarded priority of invention to the said James Renton; from which said decision the said George A. Whipple hath appealed and filed his reasons of appeal.

The Commissioner has laid before me the grounds of his decision in writing, with the original papers and the evidence in the cause; and a time and place having been appointed for the hearing of said appeal, the party appellant by his counsel filed his argument in writing in reply to a motion to dismiss the appeal for the want of jurisdiction made by the counsel for the appellee; and the said case was thereupon submitted.

This, as before said, is an appeal by a patentee from a decision of the Commissioner, not refusing or rejecting, but granting, the application for letters-patent.

I have carefully examined and considered the argument made in support of the jurisdiction. The point being the same which was decided by Judge Cranch in the year 1842 in the case of Pomeroy *v.* Connison (*ante*, p. 40), on very full consideration, and followed by me since, I feel that I ought to consider the point as settled, and am therefore of opinion that I have no jurisdiction in this case, and order and direct the said appeal to be dismissed; and the same is hereby so certified by me to the Commissioner, and I shall herewith return the papers to the Patent Office.

J. J. Greenough, for the appellant.