Opinion of the court.

LANSING E. HOPKINS, APPELLANT,

vs.

DANIEL BARNUM, APPELLEE. INTERFERENCE.

JURISDICTION OF JUDGE—APPEAL BY PATENTEE.—The judge has no jurisdiction in case of an appeal taken by a patentee from a decision of the Commissioner, not refusing or rejecting, but granting, the application for letters-patent.

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

MORSELL, J.

On the 23d of December, 1853, Daniel Barnum filed an application in the Patent Office for letters-patent for improvements in making hat-bodies, which was declared to interfere with a patent granted to the said Lansing E. Hopkins in December, 1852, 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 16th of May, 1854, awarded priority of invention to the said Daniel Barnum; from which said decision the said Lansing E. Hopkins hath appealed and filed his reasons of appeal.

The Commissioner has laid before the judge the grounds of his decision in writing, with the original papers and the evidence in the cause; and a time and place being appointed for the hearing of said appeal, the parties by their counsel filed their respective arguments in writing, and submitted the case.

The appellee's counsel objected to the jurisdiction of the judge, being, as before said, an appeal by a patentee from a decision of the Commissioner, not refusing or rejecting, but granting, the application for letters-patent.

The arguments on each side on this point have been read and considered.

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 ever since followed by me, 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 which I

Syllabus.

do hereby certify to the Honorable Commissioner, and shall return the papers to the Patent Office, together with this my order that the said appeal be dismissed.

J. J. Greenough, for the appellant.

W. N. P. Brown, for the appellee.

JOHN RICHARDSON, APPELLANT,

vs.

WILLIAM S. HICKS, APPELLEE. INTERFERENCE.

COMMISSIONER AND EXAMINERS EXAMINED UNDER OATH—SECTION 11 OF ACT OF 1839 CONSTRUED.—The provisions of the eleventh section of the law of 1839, that the Commissioner and the examiners in the Patent Office may be examined under oath in explanation of the principles of the machine or other thing, &c., must be considered in connection with the similar provisions of the seventh section of the code of 1836, governing appeals to the board of examiners.

SM—EXAMINATION MAY BE AT LARGE.—The section (section 11, act of 1839) means that the explanation which it authorizes to be required of the Commissioner and examiners may be so full and clear an explanation of the principles as to enable the judge duly to apply and weigh the evidence offered to support the issue in the case, and not to be limited to a mere exposition of the terms used. Such explanations so given, the judge is bound to respect as part of the case.

DECLARATIONS AND CONVERSATIONS OF PARTY—EXCEPTION TO RULE IN PATENT CASES.—The exception in patent cases to the rule that the declarations and conversations of the plaintiff are not admissible in evidence is founded upon necessity and to prevent a failure of justice by reason of the impossibility of otherwise proving an invention; and such declarations, when admitted, should be free from suspicion, and accompanied by acts forming the *res gestæ*, to which the credit is to be given, and not to the declarations.

SM—MACHINE NOT PRODUCED IN EVIDENCE.—*Doubted*, whether the rule laid down in Railroad Company *v.* Stimpson, that the conversations and declarations of an inventor stating that he had made an invention, and describing its details and explaining its operation, are properly to be deemed an assertion of his right at that time as an inventor to the extent of the facts