

IMPORTANT DECISION ABOUT REJECTED CASES.

In the matter of the application of John W. Cochran for letters patent for improvement in the mechanism of a reissued patent for a...

To the Commissioner of Patents. Sir: I hereby withdraw my application for a patent for firearms, now in your office, which I request may be referred to me, agreeably to an act of Congress in such cases made and provided.

Washington, February 20, 1860. Applicant did nothing further until May 6, 1868, or more than eight years afterward, when he filed a new application, now under consideration. It contained three claims, all of which were rejected by the primary examiner.

Upon appeal to the Board of Examiners-in-Chief the case was remanded to the primary examiner for inquiry, and report as to the number of patents granted after the withdrawal, before the second application in which the same invention, in other combinations, or as part of the descriptive matter.

Upon his report, it appeared that the devices specified in the first and second claims were found in some eighteen different patents, granted within the period named, but that no patent was found showing the devices specified in the third claim, and the decision of the primary examiner in rejecting the first and second claims, and reversing his decision as to the third claim, which they allowed.

An appeal was taken to me from the decision of the board in refusing to allow the first and second claims. The question before me may be thus stated: Can an inventor withdraw his application, make no effort to renew it for a certain period, and then file a new application in which the invention has been incorporated into the substance of many subsequent inventions, and then file a new application and obtain a patent, which, to support the novelty of the invention, shall relate back to the first application?

Many conflicting opinions have been entertained upon this question. The practice of the office has not always been consistent. Patents have been found, doubtless, that have been granted under circumstances similar to those of the present application, and similar cases may also be found where patents have been refused. This is in part owing to the fact that, of twenty examiners, any one may pass a patent for issue, and the decision, if favorable to the patentee, is not the subject of appeal.

The decision of the appellate judges and of the courts upon this subject have not been more uniform than those of the office. Authorities upon this question, relating to patent law, may readily be obtained upon both sides. Prima facie, it would seem, that an application, deliberately withdrawn, was abandoned, and could no longer form a foundation for a second application.

This was the opinion of the judge who tried the case of Godfrey vs. Eames on circuit. In this case the first application was withdrawn and the second filed upon the same day. Upon the trial, it appeared that the invention had been in public use for more than two years before the second application, but for less than two years before the first.

The Court charged the jury that the continuity of the application was broken by the withdrawal, and that the public use must date back from the second application. The Supreme Court (Godfrey vs. Eames, 1 Wall, 317) held that this was error; but it is important to note the grounds of this decision. The Court says: "In our judgment, if a party chooses to withdraw his application for a patent, and pay the forfeit, intending, at the time of such withdrawal, to file a new petition, and be accordingly rejected, the two petitions are to be considered as parts of the same transaction, and both as constituting one continuous application, within the meaning of the law."

"The question of the continuity of the application should have been submitted to the jury." It is obvious that the courts do not mean to declare that the two petitions constitute one continuous application, no matter what may be the interval between the filing of the second petition and the withdrawal of the first. They say that there is still a question of continuity to be submitted to the jury; and this obviously means, that the jury are to judge of the question of the intention of the patentee in withdrawing the first application, and whether the interval is long enough to destroy the continuity of the application, or to require that upon withdrawing the first application, the patentee intended to file the second.

The case of Godfrey vs. Eames, was a suit at law. If it had been in equity, the question of intention and of continuity would have been submitted to the judge to be determined like any other question of fact. On an application for the issue of a patent, it is the duty of the Commissioner to decide all questions both of law and fact, which go to establish the right or the absence of right in the applicant to a patent, Marcy vs. Trotter, Dunlap J. 1860.

The questions of the intention of the applicant and of the continuity of the application are therefore submitted to the commissioner for his judgment, precisely as they could be submitted to a Court of Equity. The foundation of the law, in this respect, is laid forth by Judge Dunlap in the case of Simpson vs. Eames, 1861. He says: "A rejected applicant who has withdrawn his application may renew it, provided the renewed application is made within a reasonable time after the withdrawal of the first."

Nothing is more common than to submit the question of reasonable time or reasonable diligence as a question of fact to the judgment of the Commissioner. In coming to a conclusion, does not object to the necessity of a decision, no judge is justified in evading the responsibility of deciding any point which properly arises. Among the analogies which might be referred to, is the ordinary case of the failure to present a draft for payment within a reasonable time after it becomes due. The drawer of the draft is discharged from liability, no time is allowed for the presentation of the draft, but the law declares that it must be presented within a reasonable time, and submit to a court or jury the question as to what is or what is not reasonable.

so, when we find that instead of using diligence to obtain a patent, he deliberately and formally withdrew his application from the office and gave no sign of life for eight years, while eighteen patents were granted more or less affecting his rights. While it need not be asserted that the present applicant was setting a trap for these subsequent patents, it is obvious that, to sustain the present application, would be to offer strong inducements to others to set such traps hereafter.

The decision of the Board of Examiners in Chief is affirmed. (Signed) S. S. FISHER, Commissioner June 9, 1869

HOOP SKIRT LITIGATION.

BEFORE JUDGE BLATCHFORD.

Samuel H. Doughty vs. Joseph J. West et al.—This was a suit in equity to restrain the infringement of a reissued patent, granted to the plaintiff on August 1, 1865, for an "improvement in skeleton skirts." The patent was originally issued October 4, 1863, to the plaintiff, James H. Draper, who was the inventor, and it was reissued on December 27, 1865, and the plaintiff, by assignment, became the owner of the entire interest in it. He brought a suit on it against two of the defendants in this suit, the decision in which is to be found in 2 Fisher's Patent Cases, 553, in which the Court held that the plaintiff could not recover what was claimed by him without a reissue. That decision was made in June, 1865, and the present reissue was granted in August, 1865.

The bill charges as an infringement of the patent the making and selling of skeleton skirts by the defendants. One of the principal defenses set up to the bill is that Draper was not the original and first inventor of what is covered by the last reissue, and much testimony has been introduced by the defendants for the purpose of establishing the existence, before the time of the invention of Draper, of skeleton skirts similarly constructed. The main questions discussed on the hearing were, whether Draper was an original, and, if so, the first inventor of the improvement claimed in the last reissue, and whether he made such invention before the time when he applied for his original patent.

A good deal of testimony was submitted by defendant, but Judge Blatchford decided that the plaintiff had made out his case clearly, and to his (the Judge's) entire satisfaction, and decreed a perpetual injunction and an account, with reference to a master, and for costs of suits.

PATENT FOR STRETCHING CHAINS--NOVELTY.

BEFORE JUDGE BLATCHFORD.

Charles Hall vs. James Bird.—This was an action for infringement of a patent granted to the plaintiff on May 30, 1864, for a machine for stretching chains so as to make the links of uniform length. The defense set up was that in 1854 the defendant's father had a machine built for him for stretching chains, which he placed in his cellar and used, but which he kept concealed from persons in general; that this machine, after a while, was no longer used, his father having died in 1862; but in 1865 he removed the machine from that cellar into his shop, where it was fitted up, used to stretch chains, and that this was the infringement complained of. It appeared, however, that in 1854 the plaintiff's machine was described to the defendant by a workman in his employ who had seen it, and that till the removal of the old machine, the defendant had stretched chain links by hand, with the hammer and anvil.

Held by the Court.—That on the facts of the case, the knowledge of the defendant's machine was as effectually lost as if it had not been constructed, and that the plaintiff's invention was new and unknown, and patentable, notwithstanding the existence of the defendant's machine. (Gaylor vs. Wilder, 10 How., 477). That the defendant has failed to establish the identity of the old machine with the machine now used by him in one important particular, namely, in the provision in the jaws of the tongs for grasping the links of the chains, so as not to injure it or any other link. That on the evidence the plaintiff is entitled to recover, but as he has failed to establish any specific amount of damages, the amount awarded will be only six cents.

MANUFACTURING, MINING, AND RAILROAD ITEMS.

The impracticability of so connecting the waters of Lake Superior with the Mississippi to obviate the difficulties arising from low water in that river during the dry season, is thus shown in a letter to the Press by a St. Paul engineer: "The surface of Lake Superior is variously estimated to be from 600 to 650 feet higher than the ocean level; Lake St. Croix from 686 to 694 feet above the ocean level; the Mississippi river at St. Paul about 14 feet higher than Lake St. Croix; the mouth of Chippewa river about 30 feet lower than St. Croix lake, and therefore Lake Pepin must be about 40 feet higher than Lake Superior."

Last year 296,660 persons were employed in coal mining in England and Wales, and 59,160 in Scotland. The quantity of coal raised in Great Britain was 104,566,930 tons. There were 860 separate fatal accidents, and 1,011 lives lost, the proportion of persons employed for separate fatal accidents being 403, and 343 employed to every life lost. Every 103,429 tons of coal raised appears to have cost a life. These operations were carried on in 3,262 collieries. There were also 69 lives lost in ironstone mines.

In the United States Court at Cincinnati, in the case of the Government against five cases of imported reprints of American copyright books, part of seventy-eight cases seized for non-payment of Government duties, Judge Leavitt has decided that these books reverted to the copyright owner upon the payment of Government tax by him.

Every lumber yard in Hannibal, Mo., has a switch from the railroad into the yard. The cars are pushed into the yard by a "pony engine" and there loaded, when they start on their destinations, whether along the Hannibal and St. Joseph Railroad, the Cameron, or crossing the Missouri at Kansas City and thence into the State of Kansas.

On Saturday, June 5, two colored carpenters, formerly slaves, commenced work in the Washington Navy Yard. This is the first time, says the Herald, that colored mechanics of this class have ever been employed in the Washington Navy Yard upon an equal footing with white workmen.

At San Francisco the Chinamen have been set to work at making cheap shoes, and imported goods of that class are driven out of the market. They now talk of giving them similar employment in Brigham Young's dominions.

A petition has been presented to the Common Council or Newark, for assistance to build a ship canal from Newark to this city. It is proposed to make the canal 200 feet wide with 10 feet depth of water at low tide.

The four spool factories at Weld, Belgrade, Farmington Falls, and Greenwood (Lock Mills), Maine, furnish two-thirds of the spools for the whole country.

A company has been formed at Ridgefield, Conn., with a capital of \$200,000 to build a railway from that place to Port Chester, New York.

The work on the rolling mill to be erected by the Baltimore and Ohio Railroad Company has been commenced.

Twenty-four thousand acres of mineral land in Missouri were recently sold for \$540,000.

Recent American and Foreign Patents.

Under this heading we shall publish weekly notes of some of the more prominent home and foreign patents.

EXTENSION AND CHANGEABLE LADDER.—Wm. G. Phillips, Newport, Del.—This invention relates to a new sectional ladder which is so arranged that it can be extended to any desired length, or that it can be transformed into a ladder or scaffold.

FURNACE FOR EXTRACTING ZINC FROM ORE.—Alois Thoma, New York city.—The object of this invention is to remove the inconveniences heretofore existing in the production of zinc and to simplify the labor connected therewith.

STOP MOTION FOR LOOMS.—John J. Switzer, Chelsea, Mass.—This invention relates to a new thread detector and stop motion for looms, whereby the injury to fabrics, produced by the breaking of threads is instantly prevented by the stopping of the machinery.

PACKING BOX FOR ROTARY STEAM DRYERS.—W. B. Fowler, Lawrence, Mass.—This invention relates to a new box for packing the fixed pipe in the end of a hollow rotating steam cylinder, and on drying apparatus of paper machines. The object of the invention is to so construct all parts, that the steam will serve to make a light joint.

APPARATUS FOR ROASTING COFFEE, NUTS, ETC.—D. A. T. Gale, Poughkeepsie, N. Y.—This invention has for its object to provide an effective system of arranging the gas pipe and burner, an automatic power, and a device for allowing the wasting process to be carried on in a cylinder without revolving the same.

NAIL CLINCHER FOR HORSESHOES.—Nicholas Repp, Waterloo, Iowa.—This invention relates to a new instrument for cutting and clinching horse-shoe nails, and for filing the hoof under the clinched parts of the nails, said instrument being intended as a substitute for the four tools heretofore used for the same object; namely, a nail cutter, a nail head holder, a rasp, and a hammer for clinching.

SEED PLANTER.—F. E. A. Engelman, Cheektowaga, N. Y.—This invention relates to a new machine for planting seed to any suitable depth and in rows of suitable width, with or without fertilizing matter, and the invention consists in the general arrangement of parts, whereby the desired results is obtained, also in a new manner of making the seed cap adjustable, and in a novel arrangement for adjusting the apparatus to plant in rows at suitable distances apart.

BEEHIVES.—J. H. Bassler, Pine Grove, Pa.—This invention relates to a new manner of making the sides of beehives, and to the application of certain ingredients, used for that purpose, and it consists in a novel manner of arranging and constructing straw sides for the hives and of a novel cement used in connection with the straw sides.

FLY FRAMES FOR ROVING MACHINES.—J. G. Luseomb, Taunton, Mass.—This invention has for its object the production of a new apparatus for adjusting the belt on the cones of a fly frame, for regulating the velocity of the bobbins. The invention consists in a novel arrangement of devices for connecting the rack by which the belt is adjusted with the contact shaft and with a clutch gear whereby certainty of action and a suitable degree of decrease of motion are obtained.

SPRING BED.—Samuel Dunlap, Rome, Ga.—This invention consists in an arrangement of vulcanized india-rubber springs upon tension rollers at each end, extending across the space between the ends, the rollers being provided with ratchets or pawls for tightening or holding the springs.

WAGON WHEELS.—C. F. Carman, Hamburg, Iowa.—This invention consists in connecting two spokes to the hub in each mortise, one of which is dovetailed and keyed in to the mortise, similarly formed, by driving the other as a key, and both spokes of each pair have inclined tenons so that they branch in each direction to the rim, at distances from each other equal to the distances from one, to one of the next pair.

FRICTION CLUTCH AND BRAKE.—Darius Banks, New York city.—This invention consists in an arrangement of a loose sliding pulley with a conical projection, a set of friction rollers for imparting motion to the said pulley by frictional contact with the said hub, a fixed tubular brake with one or more internal annular flanges taking into grooves in the hubs of the wheels, and operating levers, all so arranged that a movement of the said levers in one direction connects the friction devices, and disconnects the brake, and the opposite movement disconnects the friction devices and, connects the brake.

CENTER BEARING FOR LOCOMOTIVES, ETC.—B. W. Healey, Providence, R. I.—This invention relates to improvements in supporting locomotives, tenders, cars, etc., on their trucks, and has for its object to provide a ball and socket connection for the same.

HARNES.—John K. Harris, Springfield, Ohio.—This invention relates to the harness patented by H. C. Smith, July 10th, 1866, and improved by J. K. Harris, May 26th, 1868, and comprises further improvements upon said harness, for the purpose of making it lighter, safer, neater in appearance, more economical in construction and more convenient in operation.

PAPER BOXES.—H. A. Devendorf, Port Jackson, N. Y.—This invention relates to an improvement in the manner of constructing paper boxes, whereby they can be made more economically and with less labor, while the article produced will be stronger and more substantial than the boxes hitherto made of the same material.

CAR COUPLING.—A. Z. Long, Scranton, Pa.—The object of this invention is to provide for public use, a simple and cheap automatic coupling for cars, so constructed that it is adapted to couple together cars of unequal height, and also cars constructed for different gages of road.

HEATING STOVE.—H. E. Blemker, Evansville, Ind.—The object of this invention is to provide an attachable and detachable device of improved construction, designed to be attached to heating stoves in order to secure more perfect combustion of the fuel and smoke, a better draft, and better radiation of the heat.

MODE OF RAISING WATER.—David Jones, Newport, Wales.—This invention relates to a new and important improvements in the method of raising water by means of a vacuum produced by the condensation of steam.

COMPOUND.—Philip O'Reilly, Hartford, Conn.—The object of this invention is to provide a compound for producing a fine jet in black paints, and for other purposes.

WEATHER STRIP.—E. P. Ford, Shipman, Ill.—This invention relates to a self-acting weather strip to be attached to outside doors for stopping wind and rain.

STUMP EXTRACTOR.—William Smith, Pine Hill, Wis.—This invention consists, in general terms, of a gallow frame, provided at its upper part with a ratchet wheel and pawl lever, the shaft of the ratchet wheel bearing a gear pinion, which engages with another gear wheel on the winding shaft or drum. The stump chain being attached to this latter shaft or drum is wound thereon when the ratchet lever is vibrated.

VEGETABLE GATHERER.—Jacob Schermerhorn, Daysville, N. Y.—This invention consists in a rake or comb, having long curved metallic fingers suspended from the front of a pair of handles supported on an axle and wheels, and provided with a pocket so arranged that the operator pushing the machine in advance may cause the fingers to run along the ground under the articles to be gathered, which will, by depressing the handles below the level of the axle, freely roll down over a riddle into the pocket, said riddle being arranged between the fingers and the pocket, for separating small articles and other matter liable to be taken up.

MEAT-CHOPPING MACHINE.—Paul Clareton, New York city.—This invention relates to a new machine, by which meat, vegetables, and other articles can be rapidly and successfully cut into small pieces for sausage stuffing, and other purposes. The invention consists in the arrangement of a carriage, which supports a driving shaft and a series of cutters that are fastened to vertical guide bars. By turning the shaft, which carries a series of cams, the cutters are alternately raised, and are then thrown down with considerable force by means of powerful springs.

KNIFE SCOURER.—Samuel R. Goodsell and John Quincy Adams, Brooklyn, N. Y.—This invention relates to a new device for cleaning knives, forks, and other similar articles, and consists in a novel construction of a sliding rubber.

VELOCIPÈDE.—J. W. McMillan, Greenville, Ala.—This invention relates to a new three or four-wheeled velocipede, which is so constructed that motion can be imparted to both axles at once, either by the hands or feet of the operator, or by both hands and feet combined. The invention consists in the general combination, with ratchet wheels mounted on both axles of connecting levers, treadles, and hand levers, all arranged in such manner that the aforementioned results can, without difficulty, be realized.

ZINC FURNACE.—Alois Thoma, New York city.—This invention relates to a new zinc furnace, which is so arranged, that it is doubled—that is to say, that the furnaces which are usually separated are, with their gas generators, built together to form a single structure, the double furnace. Room, building, material, and labor are economized by this arrangement.

VIOLINS.—Jacob Lenhard, New York city.—This invention relates to an improved manner of securing the bridge to a violin or other bow instrument, with the object of securing greater freedom to the sounding board, to allow the same to vibrate with less difficulty than heretofore.

COMBINED TOILET AND NURSERY TABLE.—Henry Havekors, Leavenworth City, Kansas.—This invention relates to a new table, which can be used as a toilet table, and which, as it can be supported on one single leg on the side, may be used as a nursery table, to have its top extending over the bed of a sick person. The table can also be used as a writing and reading desk, as it can be made high or low at will.