

## RECENT DECISIONS RELATING TO PATENTS, TRADE MARKS, ETC.

By the U. S. Circuit Court.—Southern District of New York.

By Judge Wheeler.

LOOMS.—WEBSTER LOOM COMPANY vs. HIGGINS *et al.*

1. Patents are to be construed in the light of what was before known to persons skilled in the art to which they relate in order to give effect to the true meaning of what is there described.

2. The description in a patent must be so full and plain that a fairly competent workman in the art could take it, and, exercising the then existing knowledge of the trade, follow it out, and by it, without invention or addition, construct an operative machine containing the parts mentioned in combination.

3. If it requires experiment and invention to make and use the matter described the patent is invalid.

4. The several parts of a machine or device may combine in producing a result and yet not constitute a patentable combination, but only a mere aggregation.

5. In the absence of other evidence the date of the patent is to be taken as the date of invention, and the burden of proof is upon the defendant to show, beyond any fair doubt, prior knowledge and use. When such evidence has been produced the burden is shifted upon the plaintiff to show still earlier invention.

Bill dismissed with costs.

By the Commissioner of Patents.

TRADE MARK.—EX PARTE PEPER.

1. The statutory requirement of a *facsimile* of a proposed trade mark is mandatory. The *facsimile* of a trade mark consisting of an actual kernel of corn and the word "Corn" must include both the representation of the kernel of corn and the word "Corn."

2. An alternative form of trade mark seems to be warranted by the authorities.

TRADE MARK.—EX PARTE COHN.

The words "Druggists' Sundries" are not registrable as a trade mark for cigars.

The Examiner declines to register the words "Druggists' Sundries" as a trade mark for cigars. These words are descriptive of a class of goods in which druggists deal, which class includes cigars. They are not registrable.

The decision of the Examiner is affirmed.

TRADE MARK.—EX PARTE COHN.

The word and letter "Standard A" are not registrable as a trade mark for cigars.

The applicant demands registration of the word and letter "Standard A" as a trade mark for cigars. The Examiner refuses registration on the ground that "Standard A" is not an arbitrary symbol, but is descriptive. This term will obviously indicate that the cigars to which it shall be applied are in quality of the highest standard. It will, therefore, be descriptive.

The decision of the Examiner is affirmed.

TRADE MARK.—EX PARTE SMITH.

The letters and words "A. S. California Family Soap," with the symbol of a star placed between "Family" and "Soap," and a monogram formed of the letters "A. S." placed at the center of the star symbol, are excluded from registration as a trade mark for soap by the prior registration of the symbol of a star, No. 9, 1870, as a trade mark for soap, in favor of John K. Hogg, and the prior registration, No. 3,461, 1876, of the word "California" as a trade mark for soap, in favor of J. Biechele.

TRADE MARK.—EX PARTE SMITH.

The words "Smith's Medicated Prunes," associated with a pictorial representation of a part of a twig, three leaves, and a plum, are not registrable as a trade mark for medicated prunes.

The Primary Examiner declines to register as a trade mark for medicated prunes the pictorial representation of a twig, three leaves, and a plum, with the words "Smith's Medicated Prunes," on two grounds: First, that the picture is descriptive; and, second, that the words are descriptive. His decision is affirmed.

TRADE MARK.—EX PARTE WEISERT BROS.

The words "Belle of North Carolina," placed above a circular picture representing a female figure in a sitting posture in front of a rock, with packages of merchandise on either hand, the sea, a point of land, and a lighthouse being shown in the distance, so resemble the trade mark registered in favor of Marburg Bros., Nov. 3, 1874, and June 11, 1878, as to be calculated to deceive or mislead the public, and they are therefore not registrable as a trade mark.

TRADE MARK.—EX PARTE CONSOLIDATED FRUIT JAR COMPANY.

1. The word "Mason," in the collocation "Mason's Fruit Jar," was a valid trade mark at common law in 1870.

2. The name of a patented article which was a valid common law trade mark in 1870 cannot be registered for a period to extend beyond the expiration of the patent in favor of an applicant who is not the owner of the trade mark or the patent.

3. The validity of a common law trade mark is not affected by the fact that the owner of the trade mark is also the owner of a patent covering the article to which the trade mark is applied. The expiration of the patent does not terminate the existence of the trade mark.

4. An assignee of a common law trade mark which was in use before 1870, and of a patent covering the article to which the trade mark was applied, is protected by the statutory provision, which preserves the right to register common law trade marks which were in use before 1870.

5. While the fact that a term has become generic is fatal to its subsequent adoption as a trade mark, it is not fatal to its continued use, nor to its registration by the lawful assignee of those whose use rendered it generic, any more than to its continued use or registration by the assignors themselves.

## Progress of Chicago.

In a long letter to the *London Times* an English resident of Chicago predicts that in a few years the population of that city will number 2,000,000. He bases the prediction upon the rate of growth already established and the rapidly increasing business of the city due to the enormous and enormously rapid industrial development of the West. He says:

To give some idea of the products of the State of Illinois alone, a glance at the yearly production of leading articles will be all that is necessary. Now, the area of Illinois and England are very nearly equal, each containing somewhat more than 55,000 square miles. The whole surface of the country in this State is almost one unbroken plain or prairie, and 90 out of 100 acres is capable of profitable cultivation. I have before me a statement of the crop of Indian corn or maize in the State of Illinois for the year 1877, and I find it aggregates 269,889,742 bushels. This is nearly three times the annual wheat production of Great Britain, and gives just about six bushels per head to every one of the 45,000,000 now inhabiting the United States. The great bulk of this product goes to feed hogs and cattle and to furnish breadstuffs for consumption at home and export abroad. A fair crop of wheat for the State may be put at about 30 million bushels, which would give ten bushels per head for the residents within its territory, say 3,000,000.

Allusion is made to these two products of the State to signify the aggregate of surplus products handled in Chicago pouring in from all the Northwestern States in a similar proportion, except in the one article of Indian corn, in which this State is pre-eminent among all the States of the Union.

The reception, storage, and transshipment of this surplus gives employment, directly and indirectly, to a very large amount of labor, but it is all conducted so quietly that a careless observer could form no conception of the magnitude of the business. In 1876 the total receipts of grain at this point were 97,000,000 bushels—an amount equal to the entire production of wheat in Great Britain, passing through one city alone! Subsequent years show an increase on this amount. There seems practically no limit to the production of cereals in this region, as there must be at least 1,000,000 square miles of land suitable for culture and as yet untouched by the plow. The production of food is not the result only of the larger area of land than most countries, but is largely influenced by the immense amount of labor in the country as compared with most other civilized nations.

There is probably not a country in Europe in which the females do not largely exceed the males, and in the Continental countries standing armies composed of the best physical material of the country number from 200,000 to 700,000 men, which are virtually taken out of the labor market. Now, how stands the case in America? Instead of a surplus of women, we have an excess of some 600,000 men, most of them in the prime of life, and a consequence of the immigration from abroad. This, together with the fact that we have no standing army of any magnitude (the present army numbering only 25,000 men), gives a surplus of 1,000,000 laborers over any other country of an equal population. Nor does this cover the whole difference, for in those countries where large armies are maintained, many are employed in furnishing the food, clothing, arms, and material necessary for their maintenance, taking out so much labor which, in other circumstances, would have an influence on the commercial or trade production of the world, representing a local or international value; whereas the labor expended on standing armies is virtually lost to the nation, and is a continuous drain on its resources.

Now, as the great employment of this country is farming and some one of its varied forms, a very large proportion of the labor takes that direction, and we cease to be surprised at the bountiful result. The aggregate is simply enormous. In maize alone the production of the country was 1,300,000,000 bushels last year, or very nearly 30 bushels to every man, woman, and child in the whole country. Were this used for human food alone, we should have 600,000,000 bushels to spare for export. The produce of the most productive and extensive area of the country gravitates toward Chicago as a primary market, and in this fact we find one of the prominent causes of the rapid increase of this city and an exemplification of what has been before assumed—that an aggregation of population centers at the center of food production.

MEN of science, students, inventors, and every other class of persons desirous of keeping up with the times should become regular subscribers to this paper. They will find it a paying investment, for the *SCIENTIFIC AMERICAN* not only contains a record of all the important discoveries and inventions of this country, Great Britain, and other English-speaking countries, but translations from the French, German, and other foreign scientific and industrial publications, nearly all of which are received regularly at this office.

## How to Discourage Inventors.

The world owes its progress in material things mainly to inventors—men of original thought and restless brains, who are all the time seeking to devise some improvement on existing things and methods. Inventors are sometimes wildly impracticable men who annoy others with the persistency with which they advocate their particular hobbies, but there is too great a disposition, we fear, on the part of railway managers, as well as business men generally, to class all inventors in the same category, to assume the defensive at their approach, and to throw cold water on their enthusiastic projects for improvement.

In the railway service this tendency is often very strongly exhibited. Master mechanics and master car builders are mainly of two classes—the cautious, conservative men, who are governed largely by precedent, believe that their ways of doing things are about right, because they have done things so for many years, and are loth to try any new-fangled device; and the progressive men, with restless brains, who are never satisfied with things as they are, believe that in almost every railway device and appliance there is room for and need of improvement, and are all the time inspired with the desire to work out in practical form some of the many ideas with which their heads are teeming. There is perhaps a middle ground between these two, occupied by men who, while aware that there is room for improvement in their ways of doing things, are yet able to keep on the safe side, and, while progressive, never become impracticable; but heads thus perfectly balanced are rare if indeed they exist. Now between the old fogey who never wants to, and the active brained thinker, who sometimes attempts improvements that do not succeed, we believe that the latter is far more useful, indeed he is absolutely indispensable in this day when improvements are imperatively demanded.

But the inventive genius is generally made very uncomfortable in the exercise of his talents. Railway managers and directors are apt to look with disfavor upon men in charge of their rolling stock who are inclined to experiment much with new devices of their own or others, and it is often as much as a man's official head is worth to be known as an experimenter. Thus invention is discouraged from lack of opportunity of putting apparently valuable ideas to the test of practice, and many gifted men in the service are to-day hiding in their breasts discoveries which they firmly believe might be of great value to the company which they serve and to the world, through fear that if they attempt to put them to test in the shops they will be declared visionary and will lose their positions.

We are inclined to think, too, that the organizations of railway companies known as the Eastern and Western Railroad associations, while designed to protect the companies from imposition and extortion on the part of patentees, and doing a very important work in this respect, are sometimes the means not only of unduly repressing worthy inventors, but of preventing the railway interest from receiving the benefit of really important improvements. Inventors as a rule are men of small means, and few of them are able to pay hundreds of dollars for the privilege of bringing their devices before the notice of the companies, in addition to the heavy legal and other expenses attending the obtaining of patents.

Now the question which we wish to raise is this: Would it not only be just but profitable for the railroad associations to encourage improvements themselves, assuming the expense of testing all that are offered, instead of raising a prohibitory barrier of fees and costs in the face of every inventor? If a device applicable to the operation of railways is really valuable, the railways will be benefited more than the patentee. Thus the two most successful of modern railway appliances, the air brake and the Miller platform and coupler, now in almost general use, are of vastly more benefit to the entire railway system than they are to the fortunate originators.

Suppose the railroad associations should take this course of encouraging inventors by furnishing the means of proving the value of all devices that they considered to have real merit, protecting themselves as carefully as they pleased against any unfair advantage, and contracting that if an invention is adopted the cost of the experiments shall eventually come out of the patentee. Would not this course secure a much more rapid improvement in railway appliances, many of which are manifestly defective and unsatisfactory, than the present practice of warning off the possessors of ideas from the machine shop and the manager's office?—*Railway Age*.

## French Railway Traveling.

The distance from Paris to Marseilles is 600 miles, and by a recent arrangement a train of the Paris, Lyons, and Mediterranean Railway makes this long journey in fifteen hours, leaving the capital at 8 A.M., and reaching the shores of the Mediterranean at 11 P.M., an average continuous speed of 40 miles per hour.

THE Bank of England was incorporated in 1694. It covers five acres of ground and employs 900 clerks. There are no windows on the street; light is admitted through open courts. No mob could take the bank, therefore, without cannon to batter the immense walls. The clock in the center of the bank has fifty dials attached to it. Large cisterns are sunk in the courts, and engines in perfect order are always in readiness in case of fire.