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THE SCIENTIFIC AMERICAN SUPPLEMENT

No. 468,

For the Week ending December 20, 1884.

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THE DECISION IN THE BELL-DRAWBAUGH TELEPHONE SUIT.

The opinion of the United States Circuit Court in the great telephone suit has been rendered by Judge Wallace, the judge before whom the argument on the final hearing of the case took place. In a former number of this journal (October 4) we gave some account of the cause of action, and of the eminent array of counsel and of experts engaged therein. When the immense mass of testimony is taken into account, it will appear that Judge Wallace has been very diligent indeed in rendering his decision. In one part of his opinion he alludes to the difficulty of disposing of so much testimony. After noting that on a single collateral issue the testimony of seventy-five witnesses is produced, he says that it is hopeless to review satisfactorily or analyze minutely the testimony of the five hundred witnesses contained in a record of over six thousand pages. It is evident from the short space of time that the court took to render its decision that the briefs of the opposing counsel were the foundations for it. The high character of these documents was assured by the names of the counsel for the respective parties.

They are anything but brief in the number of their pages. Taking the successful complainant's brief as an example, it forms a large octavo volume of five hundred and thirty-six pages, without counting the index and contents table. It begins with a table of contents occupying fifteen pages. This is so well arranged as to present a summary of the whole case for the complainants. In it may be read the abbreviation of the five hundred pages of argument that follow it in full detail. Even the table of contents is in two divisions, one a summary of the other—the first division giving in some twenty lines the main branches. A short index follows, and then the text commences.

A summary of the whole case occupying thirty pages comes first, constituting in itself a brief of about the average length of such documents in patent cases. Next in order the regular argument appears, and fills up the rest of the volume. Thus as an aid to the reading of this last, a short and longer table of contents are given, followed by a general summary.

The text is most interesting. In it are described Bell's early struggles and experiments, his progress from doubt to certainty, and the bases on which he founded his structure of invention. The story reads like a novel. An interesting explanation of the theory of sounds, and of the subjects of pitch and *timbre* or quality, is given. The endeavor is to show that Bell followed, as far as was consistent with the new path that he was treading, a logical method in his experiments. His indefatigability is well portrayed. He consulted Professor Henry about his work, complaining that he had not the necessary knowledge of electricity. Professor Henry gave him the laconic answer, "Get it." The inventor renewed his experiments, and within a year presented his completed specification for a speaking telephone to the Patent Office. Throughout the period of labor Mr. Bell was very poor. For a part of the time he taught classes, devoting his days to them and giving his evenings to his experiments. At last, as the light of his discovery began to grow brighter, he gave up his classes, and borrowed money to live on. The death of Professor Henry is alluded to, which deprived the complainants of his testimony as to Bell's interview with him.

One of the great points of contest in the suit was as to the operativeness of the telephones of the Bell patent. Their inoperativeness had been testified to in other suits, but where it had been brought to an issue the court had decided in the patent's favor. This applies to former causes. In the present case the defendant's experts contended strongly that instruments constructed on the exact plan and relative scale of the drawings of the patent would not talk. Finally; it was sifted down to this: that the distance of the armature from the magnet was the important thing; and the point was made by, and allowed for, the complainants, that invention was not needed to determine this for each individual instrument.

Mr. Drawbaugh, the rival inventor, has his history minutely analyzed. He made many independent inventions, taking out patents therefor, and one feature of his work is insisted on and utilized by the complainants. In Judge Wallace's brief it is also enlarged upon. It is that the character of his inventions and patents has been that of improvements upon other inventor's productions. Complete originality, it is alleged, cannot be found in his devices. The implication is that he had furnished in his other numerous inventions a gauge of his abilities, and that he had not shown himself sufficiently a pioneer to be the real inventor of the telephone.

But another point against him, and perhaps the strongest, is that he never applied for any patent upon the telephone. This is one of the great centers of dispute. One side claim that poverty prevented him, the other side deny it. Page after page of argument and testimony are devoted by both sides to establishing their view of the matter. Whichever side is right, the lesson to inventors is obvious. It is the old story of diligence. When an invention is perfected, it should at once be patented. The annals of litigation are crowded with verifications of this axiom, but few are so impressive as this one, occurring as it does in the greatest of patent suits, and forming one of the most important issues therein. Too much cannot be said on the duty of early patenting of inventions. Many a meritorious inventor has lost the fruit of his toil from that reluctance to patent which so often is encountered by solicitors. Granting all that the defendants in this suit claim to be true, the failure to patent his invention may be said to have lost the case for Drawbaugh and his supporters.

The opinion of Judge Wallace is unusually long, covering sixty pages of law cap in type writing. In affirming his judgment, he follows to a great extent the views contained in the brief for complainants. A general review of that brief would serve as a synopsis of a great part of the opinion. He rejects the idea that Drawbaugh was too poor to patent his alleged inventions of telephones. He also declares his disbelief in Drawbaugh's capacity to make such an invention, and holds that it is immaterial whether Bell's invention can be traced back of the date of application for his patent. That date—February, 1876—was early enough, in the opinion of the court, to sustain the conclusion reached upon the merits of the issue. The general ground taken as to the burden of proof is contained in Judge Wallace's concluding utterance: "Without regard to other features of the case, it is sufficient to say that the defense is not established so as to remove a fair doubt of its truth, and such doubt is fatal." The decision was rendered December 2, 1884, after the case had been only two months under consideration.

The interlocutory decree was entered in the clerk's office of the United States Circuit Court, December 5, by Dickerson & Dickerson. The Master has been ordered to take and report an account of the gains made by defendants since June 23, 1880.

The recapitulation of the record of the case shows that each side had four volumes, aggregating 1,207 pages of exhibits, 5,239 pages of depositions, giving a total in the record of 6,446 pages. The number of witnesses produced by both sides was 535.

The case has been appealed by the defendants, so the final settlement is in the dim future.

While the case in the United States courts has been decided in favor of the Bell Telephone Company, an attempt has been made to do away with their Canadian patent. Arguments, closing on December 3, on a motion to set aside this patent, have been heard by the Minister of Agriculture of Canada. Three days were occupied, so the case has been very fully argued. The efforts of the disputants have been directed to prove that the patentees violated the Canadian patent law, which includes a number of provisions relative to the exploitation of patents, nothing analogous to which exists in our statutes. Thus it is claimed that telephones were imported into Canada by the Bell Company, that they refused to sell their instruments, and did not place them before the public at a reasonable price. These points, if sufficiently proved, would render a Canadian patent invalid. On the last day of the hearing, evidence was taken to show that the actual cost of manufacturing was $1.87 per instrument only. The defendants claim that they are in some sense entitled to a specially favorable treatment, if they have violated the letter of the law. They have spent enormous sums of money in Canada, and claim that the law should not be too literally applied to them.

The most interesting feature of the case to the United States telephone interest is the effect the decision of the Minister of Agriculture would have on the duration of the American patent had the Canadian patent preceded it in date. If the foreign patent were declared void, it might be construed to render void and invalid the American patent. The important decision rendered by Judge Blatchford some months ago, on the effect of lapsing foreign patents on United States patents, shows the rigorous dealing now awarded to patentees by the Supreme Court. It is among the possibilities that an adverse decision in Canada might thus affect the United States patent very seriously.

In discussing the interests at stake in the Bell-Drawbaugh suit, it is customary to put the sum at $100,000,000. This immense sum is based on the dividends paid by the company. They pay dividends upon such capital, and thus it is assigned as the value of their patents. But this is not a fair deduction. Their capital represents more than a patent right. Their franchises, implied or actual, and their prestige and commercial position, would not be wiped away even if their patent was declared invalid, and the market was thrown open to all competitors.

If any lapse of a foreign patent were to carry with it the American right, it would seem a hardship worthy of any special form of relief that could be granted. This is on the old principle of the meritoriousness and public service of inventors. They should be treated as a class of benefactors, not of monopolists, and should be deemed worthy of special protection. However great Bell's reward already reaped may be, the enormous service done to all humanity by the invention of the telephone should be sufficient to offset it.

HINTS TO INVENTORS.

The long winter evenings are now at hand, and afford an opportunity for those of an inventive turn to put their ideas into practical shape by perfecting devices that they have had in mind, or to cast about for something new on which to exercise their genius. Many manufacturing establishments have reduced their working forces, and railway repair shops have dismissed many ingenious mechanics, who will be idle for some months, and those men can make good use of their time by studying the wants of the people in the way of improvements, and supplying these wants. It is not the easiest matter in the world to know what to invent that would give satisfactory returns for the time and labor expended.

By way of suggestion, we will remark that the list of