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THE SCIENTIFIC AMERICAN SUPPLEMENT,

No. 487,

For the Week Ending May 2, 1885.

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TRADE MARKS AND LABEL REGISTRATION.

In former issues of this paper we have discussed and criticised the action of the Commissioner of Patents, in refusing label registration to what he judged to be proper subjects for protection as trade marks. The case of the Willcox & Gibbs Sewing Machine Co. was then cited by us as the great decision on which the practice of the Office should be based. This decision, together with another unreported case, in which a mandamus was granted, sufficed to change the practice in the days of Mr. Butterworth's predecessor, and we held that it should have been the rule for his action also.

The Commissioner named above held that the opposite interpretation of the statutes was the true one, and believed that the Patent Office authorities should act as judges of the character of the device submitted for registration. To sustain this position, the text of the statute was appealed to. The refusal to comply with the rulings laid down by the Supreme Court decisions in the Willcox & Gibbs and Schumacher & Ettinger cases was justified on the grounds that the case had not been fully presented by the former Commissioner, his counsel. This was equivalent to saying that the cases alluded to went by a sort of default. The fallacy of this suggestion of default is shown by the fullness of the opinion rendered in the one now reported, the Willcox & Gibbs Sewing Machine Co.'s application. It was unusually long, and showed how thoroughly the case had been studied by the judges of the court to whom application for the mandamus had been made, the Supreme Court of the District of Columbia.

Thus matters stood during most of the incumbency of the last Commissioner. The views of the Supreme Court, so fully expressed in one case, and confirmed by their action in a second, were of no avail to determine the practice of the Office. This practice could not be justified by either of the cases alluded to.

The subjects of trade mark or label registration, as a rule, are not of the highest importance. They cannot, on the average, compare for interest or value to their movers with cases involving patented structures.

The Bell telephone patents and the barbed wire patents are held to be worth many millions of dollars. No label or trade mark can approximate to such a value. Yet labels and trade marks are of importance and interest enough to render the Commissioner's action in discriminating within the Office between them very annoying to such as believe his action unjustified by law. Considerable friction between applicants for registration of designating designs and the Patent Office has for some time past been in existence. Both counsel and the Commissioner of Patents have doubtless wished that the question were disposed of in one way or the other.

At last a case (Moodie vs. Butterworth) was brought to trial, in which a mandamus was applied for from the Supreme Court of the District of Columbia, and was refused by that tribunal. The decision was rendered but a short time before the change of Commissioners, and to a certain extent stamped with the seal of court approval the existing practice of the Office. That this interpretation was put upon it by the Commissioner is evident from the way in which notice of it was published in the *Gazette*. A report of the decision was printed as a statement in the *Official Gazette* of January 6, 1885. The date of the decision was December 27, 1884. The necessity for thus printing it as a "statement" arose from the fact that the court delivered no written opinion in the matter, and full reports of its voice are not on record. A mandamus was refused. This is all that the "statement" could positively assert about the attitude of the court. Its definite conclusion or opinion is not given. The case seen in this light forms a very imperfect offset to the written opinion rendered in the former suit. The published statement of the decision could not go behind the record, and that was merely a mandamus refused in a particular case. The refusal justifying the Commissioner's action in this suit was cited in the *Gazette* in support of his views as to all cases. But the question, just as before, is open to discussion. We do not see how the arguments stated in the Willcox & Gibbs case can be thus lightly disposed of.

Recognizing the fact that every decision in this vexed question was of importance, and regretting that no expression of the court's opinion was accessible, we have succeeded in obtaining the private expression of several of the District Supreme Court Judges' opinions in relation to trade marks and labels. This interesting record we lay before our readers in the present issue, commending it to their careful reading. It will be seen that it does not by any means make the Moodie case a conclusive one. In this suit a mandamus was refused. In other words, the Court adopted a negative action, owing to the trouble of satisfactorily interpreting the statute. The bench of judges acknowledge a difficulty that the Patent Office authorities profess to have no trouble in disposing of.

Mr. Butterworth, after a full experience of the duties of the Commissionership of Patents, takes his seat in Congress as member of the House of Representatives. It is possible that in this capacity he may try to do something to secure a better expression of the trade-marks and label registration statutes. Such action would be welcomed by all, and the ex-Commissioner's special experience, backed by his legal attainments, would do much toward securing a better state of things. Nothing is so productive of ill in the matter of enactments as uncertainty. The uncertainty of the label and trade-mark statutes apparent on their faces has only been reaffirmed, and in no sense done away with, by the simple decision of the Supreme Court Judges in the Moodie case.

In a recent article on Patent Office examinations of novelty, an allusion was made by us to the departure from the spirit of the opinion in the Wilcox & Gibbs case, in the Patent Office practice in examining labels and trade marks. This has called forth a lengthy and very able communication from the Examiner of Trade Marks. In it the writer cites the Moodie case, and reaffirms the propriety of the Office practice. In considering our article as directed toward his division of the Office he is entirely in error. It is intended to apply, as indicated by its title, to the practice in the Department of Patents. We incidentally remarked that compliance with the views of the Supreme Court was not to be found in the practice followed in label and trade mark registration. His arguments in rebuttal of this statement are based largely on the Moodie case. This should be only regarded as an implied opinion in a single individual case. The communication alluded to will be found printed at length in the SCIENTIFIC AMERICAN SUPPLEMENT of this week, No. 487.

RUST CEMENT.

One of the most adhesive and durable of cements known to mechanics who essay to unite iron surfaces is the oxide of iron itself; with this a joint can be made so perfect and sound that the iron will break before the cement will part. In removing the cast iron pipe of a bilge pump from a ship that had made four Atlantic voyages, it was necessary to take the sections apart. The flanges had been pasted with a cement of cast iron drillings and filings, mixed with sulphur and sal ammoniac, moistened with water. Then the nuts—three in each flange—were set up on the bolts, and the union was completed. The four voyages—going and returning—occupied nearly a year. When the separation of the parts was attempted, even the cold chisel was unable to make a division between the solid castings and the intervening cements. The sulphur and ammoniacal salts are simply means to more rapidly oxidize the iron drillings and filings—the iron rust is really the cement. If time is allowed, ordinary water or salt water would act as a solvent.

All our iron ores are simply oxides, and when they are exposed to the atmosphere they show the ordinary color of iron oxide—red. This oxide gives the red color to the "brownstone" (red sandstone) so much affected for building purposes. These stones are only sand cohered in mass by iron rust. Their formation can be witnessed even now on some of the New England beaches. The narrow and slightly raised windrows of sand thrown up by some heavy storm or some very high tide, so that they are beyond the reach of destroying effects of common tides and ordinary winds, can be noticed slowly solidifying. Fragments may be gathered which are only sand slightly held by the oxide, but others may be found which are embryo stone—if such a term may be allowed—solid to the feeling, and capable of being thrown as missiles. Beyond these are the shingles of the beach and the cliffs that define the shores. In olden time this sand and this iron was mixed, subjected to pressure by outerlying layers, and at length became "solid rock," as we call it. And yet this quarried rock of sand cemented with iron is still somewhat soft, and for building purposes requires seasoning—the gradual reabsorption of the water given by the atmosphere; and this water is essentially salt, or it has the oxidizing effect of salt water, for its effect on iron is similar to that of salt water on iron under similar circumstances.

It is evident that any substance that induces rust in iron is not a safe one to use in connection with permanent structures of iron. Some years ago an instance of iron in connection with red sandstone—brownstone—was noticed, where wrought iron rods were secured into steps of brownstone. The stairway was removed, and the iron in the stone was disintegrated into mere threads. In this instance the holding of the iron balusters was sulphur. And sulphur is much worse than lead; it is impossible to secure iron in stone, or even in iron, by sulphur. Lead is perhaps as safe as any material that is not too expensive to use. In removing an iron fence, the embedment of the palings in lead, lining the holes in the stone, making a superficies of about fourteen inches, was readily overcome by lever action; while the cross section of the same paling through iron rails, iron on iron, the area being less than three and a half inches, necessitated the use of hammer and cold chisel.

TO DISGUISE THE TASTE OF PARALDEHYDE.—Sutter (*Arch. d. Pharm.*) finds rum and tincture of lemon combined with paraldehyde make it palatable.