

VIEWS OF THE DISTRICT OF COLUMBIA JUDGES ON TRADE-MARK AND LABEL REGISTRATION.

The following has been furnished to us for publication by a prominent member of the Washington bar, who personally followed up the matter at our request:

The question of the power of an applicant to the Commissioner of Patents, for the registration of a label, to determine for himself whether the design he presents shall be considered a label or a trade mark, and the further question as to whether the duty of registration involves the exercise of some judicial function or merely a purely ministerial action, has been decided by the Supreme Court of the District of Columbia in a more recent case than the Willcox & Gibbs sewing machine case.

The case referred to is that of the United States ex rel. Schumacher vs. Marble, which will be found in 3 Mackey 32 (not yet published.) The following is a copy of the decision of the Chief Justice, who delivered the opinion of the Court in the latter case, taken from the advanced sheets of said report:

"It is objected in behalf of the Commissioner of Patents that the act of Congress of June 18, 1874, providing for the registration of labels is unconstitutional, and therefore void.

A very elaborate, ingenious, and perhaps, under appropriate circumstances, successful argument has been made to sustain this position.

But we think the point raised has no application to this case. We do not think it lies in the mouth of a government official to call in question the constitutionality of a law directing him to perform a purely ministerial duty.

If the question was raised between other parties, as, for instance, in a suit for infringement in the use of a label, and the constitutional rights of the parties were involved in it, that is to say, whether one man was prohibited from using it because another man had registered it as a label, the argument might be pertinent, but we do not think it is a question which can be raised here.

The next reason assigned by the Commissioner for his refusal to comply with the petitioner's demands is that the design offered for registration is a mere fanciful sketch, which, while it may be used as a trade mark, has none of those descriptive features about it characteristic of a label.

A label, it is contended, consists of a pictorial representation or a written description of the article to which it is affixed; and that a fancy picture, such as this, having no connection with its proposed use or application, cannot be registered as a label. This question has been settled by this Court in the case of the Sewing Machine Company vs. Marble. We decided in that case that the duty of the Commissioner of Patents, on the application to him to register a label, is a purely ministerial one, as much so as the act of a recorder of deeds in placing upon public record a muniment of title. The statute has not defined what shall be considered a label, whether it shall be a picture or a writing; whether it shall be descriptive of the article to which it is affixed, or whether it may be a mere arbitrary design. If the applicant presents it as a label, and appeals to the Commissioner to give it the protection which the law provides for it as a label, the duty of the Commissioner is to register it, and in doing so he gives it only the protection which the statute provides.

It is not protected as a trade mark, nor as a copyright. The public at large may use and enjoy it, but *qua* label it is restricted to the use of the party who has registered it for that purpose and no other; with the character of the device the Commissioner is not at all concerned. His function is as purely ministerial as it is capable of being. The writ will issue.

In reference to the case of U. S. ex rel. Moodie vs. Butterworth, No. 25,748, at law, docket 30, in the same court, it appears from the record that a petition was filed by Moodie for a mandamus to the Commissioner of Patents to require him to register a label, registration having been refused by the Commissioner, after investigation, because the alleged label did not contain subject matter which could be registered under the statute as a label. This petition was filed on the 4th day of November, 1884. On the 10th day of November a rule to show cause why a mandamus should not issue was passed, and on the 8th day of December the answer of the respondent was filed.

Here the record stops; and no decision, as far as the record is concerned, appears to have been made by the court.

An interview with one of the counsel for the relator disclosed the fact that the court had made a decision, and had decided not to issue a mandamus. Counsel stated that Chief Justice Cartter, with Judges McArthur and James, heard the case, and that Judge McArthur delivered the opinion of the court.

Counsel further stated that Judge McArthur took the ground that the device shown was not a label, and that the Commissioner of Patents had the right to determine whether it was a label, and that the other members of the court differed with this view, but said that owing to the uncertainty of the statutes they would in the case before them discharge the rule. Chief Justice

Cartter said that he had no doubt about the law on the subject, and still entertained his former opinion. The Commissioner of Patents had the right to decide that a thing, described as a label or trade mark by an applicant, but really of an entirely foreign nature, as a bomb shell, torpedo, or a battering-ram, could not be registered, but that a man had a right to call a trademark a label if he felt so disposed, and the Commissioner of Patents, when requested, would be bound to register it. The Chief Justice further said that the court sometimes, in matters of writs of mandamus, exercised their discretion and refused the writ, and that in the Moodie case the court had taken that course, but that the court had not reversed its former rulings.

Judge McArthur, who delivered the opinion in the Moodie case, said that he had held in that case that the Commissioner of Patents had the right to inquire, upon an application being made to him for the registration of a label, into the character and design of the label, and that if the Commissioner found that the proposed label contained matter properly registrable as a trade mark, and that the proper fee had not been paid, he would have the discretion to refuse registration of the device offered.

Judge McArthur further said that the Chief Justice had had some difficulty in agreeing to the judgment discharging the rule, owing to a former decision made by him, but that the Chief Justice had finally concurred, although not on the same grounds, with the judgment of the court discharging the rule.

Judge James, who delivered the opinion in the Willcox & Gibbs sewing machine case, said that the whole question was in a cloudy and uncertain state, and that the statutes were not in a condition to admit of a lucid exposition of the law, and that additional legislation was needed on the subject. The Judge said that in the Willcox & Gibbs case he had held that the duties of the Librarian of Congress in the matter of registration of labels had been transferred to the Commissioner of Patents, and that his duties were simply those of the Librarian, but that he had recently changed his views somewhat, owing to the want of clearness in the statutes affecting the subject; and that he was now of the opinion that the Commissioner of Patents had more power than had been vested in the Librarian of Congress, but to what extent the power of the Commissioner of Patents went he was not prepared to say. The judge further said that he did not agree with the views that Judge McArthur had announced in the Moodie case, but that owing to his own change of opinion somewhat, and in view of the difficulties surrounding the case, and also in view of the fact that it was in the discretion of the court whether such a writ as a mandamus should issue, he had concurred in the judgment of the court discharging the rule to show cause.

Compressed Air Power.

At Guinnesec Falls, Michigan, the water power is used to compress air, which is conducted through a 24 inch pipe to the iron mines, a distance of three miles, where it is used for operating pumps, engines, and drills in place of steam. The head of water at the falls is 47 feet, and drives three turbine water wheels, each of which operates a pair of air compressors, and the whole plant has been in satisfactory operation for over a year. One of the earliest instances of the application of air on an extensive scale in the operation of drills was, says *Engineering*, in the excavation of the railway tunnel, 28,081 feet in length, which pierces Hoosac Mountain, situated in western Massachusetts, where a rapid river at the eastern terminus furnished the water power which was used to compress air which actuated the drills, while the exhaust served to ventilate the tunnel. Several years ago the manager of the cordage works at Plymouth, Massachusetts, introduced an air locomotive which took the place of some sixteen horses and an equal number of men employed in transporting material from one department of the establishment to another.

The risk of fire prevented the use of a steam locomotive in these ropewalks and mills. The air passes from the reservoir, which takes the place of a boiler, through a reducing valve into a receiver, where the pressure is maintained at 90 pounds per square inch. Thence to the cylinders, where it is used like steam, except that the refrigeration produced by the expansion of the air is so great that it is necessary to use very limpid oil for lubrication on such places. The compressed air is furnished from a receiver of boiler iron, which supplies a system of underground pipes, with hydrants at convenient places; and when the air supply at the locomotive is becoming low, it is stopped near one of these hydrants, and a hose with a snap coupling attached, and the air supply replenished with little delay. At one of the fairs of the Charitable Mechanics' Association in Boston, the management forbade any fires in the building; and as a consequence, the exhibitors of portable engines considered that they were deprived of opportunities of showing the operation of their class of engines. One exhibitor showed resources equal to the occasion, for he connected the exhaust pipe of one engine in his exhibit to the boiler of another

of his engines, removed the safety valve, and connected the flywheel by belting to the shaft which was kept in motion by the main engine of the exhibition. This method of driving an engine furnished a supply of compressed air into the second boiler, whence it was used for motive purposes. Soon the manager learned that these portable engines were in operation, and assuming that the regulations concerning fire were necessarily violated, sent a worthy colored messenger to examine and report the facts to him. After looking these engines over very carefully, he reported that they were running the engines in question with the "northwest wind or something or other." A group of laborers were examining the engine, and one of them gave his opinion that "cold steam and no fire was the greatest invention yet."

The Education of the Artisan.

Professor Huxley says: For myself, I look upon simple knowledge by itself as of far less importance to the artisan in his career in life than a number of other qualities. I do not say that knowledge is not an extremely good thing; but if a man is to make a good workman, or to do anything in practical life, you must give him an education that fits him for the conditions of life with which he has to deal, and you will not give him that education by filling his head with a number of intellectual abstractions, or even by giving him the largest acquaintance with scientific principles. And I think it is a profound mistake, considering the career to which the majority of artisans or persons in that class of life are necessarily bound, ever to take them out of the wholesome discipline of practical contact with the realities of life, for the mere sake of giving them a greater or less amount of knowledge. A man who is inclined to do so may always pick up knowledge, and he may do so at the same time that he is getting his education, in the highest sense of the word, out of his contact with the realities of his daily life; but if you make a bookworm of him, if you take him away from all that contact with reality and turn him back afterward into it, he has lost touch of life.

I speak with the greatest hesitation, because I have nothing to do with industrial pursuits; but I have had to do with mankind in many stations in life, and it seems to me that what is wanted in a foreman is a man of energy, punctuality, business habits, and power of dealing with men, all of which things are not to be got out of books or laboratory work. These qualifications are the most essential qualifications in a foreman, and what you want besides in such a man is not book learning, but an intelligence sufficiently trained to be able to deal with new conditions, and an amount of knowledge sufficient to enable him to know where to go to find more if he wants it.

Columbus, Ga., Waterworks.

At a recent meeting of the Engineers' Club of Philadelphia, the secretary presented, for Mr. Jacob H. Yocum, an illustrated description of the recently constructed waterworks at Columbus, Ga., which city has a population of 25,000. The Chattahoochee River was investigated as a source of supply, but on account of the expense of filtering after its frequent freshets, and of pumpage, it was abandoned, and a gravity system adopted. Among the adjacent hills was found a pure and soft water, delivered through the gravel beds, and a gathering ground of 12 square miles, which would yield, after allowing 50 per cent for absorption and evaporation, a daily supply of 15,000,000 gallons. The water is impounded in successive dams, respectively 130½ and 115½ feet above the center of the city. The upper dam is 266 feet long by 21 feet high; area, 20 acres; capacity, 100,000,000 gallons. The lower dam is 250 feet long by 21 feet high; capacity, 20,000,000 gallons. The forest ground they occupy was carefully cleared, grubbed, and surface removed to the gravel and clay. The discharge of upper into lower dam is arranged with reference to aeration of the water.

The water is conveyed to the city by 18,000 feet of 12 inch main, which divides at the river into two 9 inch wrought iron pipes laid under the floor girders of a bridge 800 feet long. These pipes unite in a 12 inch main again upon the city side. It is intended to substitute a submerged main for this double pipe. The distribution consists of 10, 8, 6, and 4 inch cast iron pipes, fitted with the Cassin double fire-hydrant and the necessary valves. A 1 inch jet can be thrown 85 feet. At the opening test seven streams were thrown 75 feet simultaneously. The works provided abundance of pure, good water during a four months' drought, and have generally exceeded expectations. An additional 400,000,000 gallon reservoir is, however, contemplated to meet prospective requirements.

The Inventions Exhibition, London.

The forthcoming exhibition, which opens May 4, is to be magnificently illuminated at night by means of electricity. Ten thousand lamps are to be employed. Of these, 464 are arc lamps and 5,530 incandescent lamps for the exhibition proper, the remainder for the grounds. Eighteen steam boilers will be employed, capable of evaporating 110,000 lb. of water per hour.