

# DIGEST

OF

## Patent and Trade-Mark Cases

DECIDED BY THE

### Court of Appeals of the District of Columbia

on appeal from the Commissioner of Patents

AND OF

### Copyright Cases

on appeal from the Supreme Court of the District of Columbia from the date of the organization of the Court of Appeals in 1893 to June 18, 1908, and reported in the official reports of the court, volumes 1 to 31, inclusive; together with cases on those subjects in which the opinions of the Supreme Court of the District of Columbia have been reported in the Washington Law Reporter, volumes 25 to 35 inclusive; and cases decided by the Supreme Court of the United States on appeal from the Court of Appeals.

WALF LAWS  
COMPILED BY  
**WM. S. TORBERT**  
OF THE DISTRICT OF COLUMBIA BAR

Published under the direction of the Bar Association of the District of Columbia.

JOHN BYRNE & COMPANY  
WASHINGTON, D. C.

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3v. 25-00

## P R E F A C E .

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The Court of Appeals of the District of Columbia, organized in 1893 by act of Congress, has jurisdiction of appeals from the Commissioner of Patents in interference cases. That this right of appeal has been largely availed of is evidenced by the more than four hundred reported cases involving patents and trademarks decided by the court during the fifteen years of its existence. The importance of its decisions cannot be over-estimated.

This digest, in presenting which the compiler claims credit for little other than the arrangement of matter, covers these decisions and also cases involving the law of copyrights; also reported decisions of the Supreme Court of the District of Columbia in cases where it has been sought to control by mandamus the action of the Commissioner of Patents and other executive officers. Decisions of the Supreme Court of the United States on appeal from the Court of Appeals are also included, as are recent important decisions of that court involving the law of copyrights in cases brought up from other jurisdictions, notably those of *White-Smith Music Co. v. Apollo Co.*, *Scribner v. Straus*, and *Werckmeister v. American Tobacco Co.*

Reference to cases has been made to the place of report in the official reports of the court, Official Gazette of the Patent Office and the Commissioners Decisions.

W. S. T.

January 1, 1909.

## **JUSTICES OF THE COURT OF APPEALS DURING THE TIME COVERED BY THIS DIGEST.**

---

Richard H. Alvey, Chief Justice; commissioned April 15, 1893; retired Dec., 1904.

Seth Shepard, Chief Justice; commissioned Jan. 5, 1905.

Martin F. Morris, Associate Justice; commissioned April 15, 1893; retired June, 1905.

Seth Shepard, Associate Justice; commissioned April 15, 1893; became Chief Justice Jan. 10, 1905.

Charles H. Duell, Associate Justice; commissioned Jan. 5, 1905; resigned Aug., 1906.

Louis E. McComas, Associate Justice; commissioned June 26, 1905; died Nov. 10, 1907.

Charles H. Robb, Associate Justice, commissioned Oct. 5, 1906.

Josiah A. Van Orsdel, Associate Justice; commissioned Dec. 12, 1907.

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## **COMMISSIONERS OF PATENTS DURING THE PERIOD COVERED BY THIS DIGEST.**

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John S. Seymour, appointed March 31, 1893, resigned April 12, 1897.

Benjamin Butterworth, appointed April 7, 1897, died January 16, 1898.

Charles H. Duell, appointed February 3, 1898, resigned March 31, 1901.

Frederick I. Allen, appointed March 25, 1901, resigned May 31, 1907

Edward B. Moore, appointed May 10, 1907.

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**EXPLANATION OF ABBREVIATIONS USED IN THE FOLLOWING TABLE OF CASES AND THROUGHOUT THE WORK.**

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**App. D. C.**, Appeal Cases, District of Columbia.

**C. D.**, Commissioners Decisions.

**O. G.**, Official Gazette of the Patent Office.

**U. S.**, United States Reports.

**W. L. R.**, Washington Law Reporter.

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**TABLE OF CASES DIGESTED.**

**With Notation of Citation.\***

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Adams, Glenn *v.*, 12 App. D. C. 175; 83 O. G. 158; 1898 C. D. 407.

Adams, In re, 24 App. D. C. 275; 114 O. G. 2093; 1905 C. D. 602.

Adams *v.* Murphy, 18 App. D. C. 172; 96 O. G. 845; 1901 C. D. 401.

Adams Manuf. Co., Andrew McLean Co. *v.*, 31 App. D. C. 509; 136 O. G. 440.

Aglar, Pickles *v.*, 13 App. D. C. 556; 86 O. G. 346; 1899 C. D. 268.

A. G. Spalding Bros., In re, 27 App. D. C. 314; 123 O. G. 321; 1906 C. D. 674.

Albert, Wickers *v.*, 29 App. D. C. 23; 129 O. G. 1268; 1907 C. D. 599.

Alexander *v.* Blackman, 26 App. D. C. 541; 121 O. G. 1979; 1906 C. D. 602.

Allen, Millett *v.*, 27 App. D. C. 70; 124 O. G. 1524; 1906 C. D. 752.

Allen, Newcomb Motor Co. *v.*, 30 App. D. C. 464; 130 O. G. 302.

Allen, Rosell *v.*, 16 App. D. C. 559; 92 O. G. 1036; 1900 C. D. 333.

Allen, Steinmetz *v.*, 22 App. D. C. 56; 31 W. L. R. 358; 102 O. G. 231; 1903 C. D. 632.

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\*Citations are given only after direct title of case.

- Allen v. United States ex rel. Lowry, 26 App. D. C. 8; 33 W. L. R. 354. Cited in 26 App. D. C. 399; 28 *Ib.* 69, 79, 81; 29 *Ib.* 66. Affirmed in 203 U. S. 476.
- Allen v. United States ex rel. Regina Music Box Co., 22 App. D. C. 271; 31 W. L. R. 476, 114; 105 O. G. 747; 1903 C. D. 615.
- Allen, United States ex rel. Tuttle v., 35 W. L. R. 50.
- Allen, United States ex rel. Steinmetz v., 22 App. D. C. 56; 31 W. L. R. 358; 102 O. G. 231; 1903 C. D. 632. Reversed in 192 U. S. 543.
- American Circular Loom Co., In re, 28 App. D. C. 446, 450; 127 O. G. 393.
- American Glue Co., In re, 27 App. D. C. 391; 123 O. G. 999; 1906 C. D. 695.
- American Stove Co. v. Detroit Stove Works, 31 App. D. C. 304; 134 O. G. 2245; Cited in 31 App. D. C. 585.
- Ams, In re, 29 App. D. C. 91; 127 O. G. 3644; 1907 C. D. 532.
- Anderson v. Wells, 27 App. D. C. 115; 122 O. G. 3014; 1906 C. D. 667.
- Andrew McLean Co. v. Adams Manuf. Co., 31 App. D. C. 509; 136 O. G. 440.
- Andrews v. Nilson, 27 App. D. C. 451; 123 O. G. 1667; 1906 C. D. 717. Cited in 29 App. D. C. 484.
- Antidel, Foster v., 14 App. D. C. 552; 88 O. G. 1527; 1899 C. D. 413.
- Antidel, Lloyd v., 17 App. D. C. 490; 95 O. G. 1645; 1901 C. D. 371.
- Appeal of Cheneau, 5 App. D. C. 197; 23 W. L. R. 107; 70 O. G. 924; 1895 C. D. 188.
- Appeal of Drawbaugh, 3 App. D. C. 236; 22 W. L. R. 352; 67 O. G. 929; 1894 C. D. 297.
- Appeal of Forg, 2 App. D. C. 58; 22 W. L. R. 116; 66 O. G. 515; 1894 C. D. 138.
- Appeal of Heroult, 5 App. D. C. 90; 23 W. L. R. 72; 70 O. G. 784; 1895 C. D. 177.
- Appeal of Messinger, 12 App. D. C. 532; 26 W. L. R. 562; 83 O. G. 1995; 1898 C. D. 506.
- Appeal of Schaeffer, 2 App. D. C. 1; 22 W. L. R. 81; 66 O. G. 514; 1894 C. D. 134.
- Appert, Parker v., 8 App. D. C. 270; 24 W. L. R. 550; 75 O. G. 1201; 1896 C. D. 371.

- Appert v. Schmertz, 13 App. D. C. 117; 84 O. G. 508; 1898 C. D. 524. Cited in 17 App. D. C. 344, 470; 19 Ib. 378; 27 Ib. 296.
- Armat, Latham v., 17 App. D. C. 345; 95 O. G. 232; 1901 C. D. 337.
- Armstrong, Whitworth Co. v. Norton, 15 App. D. C. 223; 27 W. L. R. 414.
- Arnold v. Tyler, 10 App. D. C. 175; 25 W. L. R. 250; 79 O. G. 156; 1897 C. D. 349. Cited in 14 App. D. C. 53; 19 Ib. 384.
- Asencio v. Russell, 24 App. D. C. 105; 112 O. G. 955; 1904 C. D. 676.
- Ashworth, Munster v., 29 App. D. C. 84; 128 O. G. 2088; 1907 C. D. 556.
- Atkins & Co., In re, 29 App. D. C. 385.
- Atterbury, Croskey v., 9 App. D. C. 207; 24 W. L. R. 490; 76 O. G. 163; 1896 C. D. 437.
- Austin v. Johnson, 18 App. D. C. 83; 95 O. G. 2685; 1901 C. D. 391. Cited in 21 App. D. C. 201, 205; 23 Ib. 194.
- Austin, Winslow v., 14 App. D. C. 137; 86 O. G. 2171; 1899 C. D. 301.
- Automatic Scale Co., Computing Scale Co. v., 26 App. D. C. 238; 33 W. L. R. 789; 119 O. G. 1586; 1905 C. D. 704. Affirmed in 204 U. S. 609.
- Backus Portable Steam Heater Co. v. Simonds, 2 App. D. C. 290; 22 W. L. R. 137; 66 O. G. 1893; 1894 C. D. 211.
- Bader v. Vajen, 14 App. D. C. 241; 87 O. G. 1235; 1899 C. D. 329. Cited in 23 App. D. C. 194; 24 Ib. 473; 27 Ib. 522; 28 Ib. 8.
- Baker, In re, 26 App. D. C. 363; 121 O. G. 1352; 1906 C. D. 594.
- Ball v. Flora, 26 App. D. C. 394; 121 O. G. 2668; 1906 C. D. 618.
- Barnett, Couch v., 23 App. D. C. 446; 110 O. G. 1431; 1904 C. D. 650.
- Barratt, In re, 11 App. D. C. 177; 25 W. L. R. 532; 79 O. G. 2020; 1897 C. D. 506.
- Barratt, In re, 14 App. D. C. 255; 87 O. G. 1075; 1899 C. D. 320.
- Barrett, Harter v., 24 App. D. C. 300; 114 O. G. 975; 1905 C. D. 578.

- Barstow Stove Co. v. Detroit Stove Works, 31 App. D. C. 304; 134 O. G. 2245.
- Basch, Hammond v., 24 App. D. C. 469; 115 O. G. 804; 1905 C. D. 615.
- Battle Creek Sanitarium Co. v. Fuller, 30 App. D. C. 411; 134 O. G. 1299.
- Bauer v. Crone, 26 App. D. C. 352; 120 O. G. 1824; 1906 C. D. 545.
- Beal (U. S. ex rel.) v. Cox, 14 App. D. C. 368; 27 W. L. R. 230.
- Beall, Shuman v., 27 App. D. C. 324, 329; 123 O. G. 1664; 1906 C. D. 710.
- Beals v. Finkenbiner, 12 App. D. C. 23; 82 O. G. 598; 1898 C. D. 326. Cited in 14 App. D. C. 41, 54; 15 *Ib.* 27, 572; 17 *Ib.* 470; 18 *Ib.* 147; 21 *Ib.* 96; 26 *Ib.* 541.
- Bechman v. Southgate, 28 App. D. C. 405; 127 O. G. 1254; 1907 C. D. 489.
- Bechman v. Wood, 15 App. D. C. 484; 89 O. G. 2459; 1899 C. D. 453. Cited in 16 App. D. C. 138, 572; 17 *Ib.* 38, 556, 559; 18 *Ib.* 134; 21 *Ib.* 201, 205, 206; 24 *Ib.* 280, 481; 25 *Ib.* 307; 26 *Ib.* 394; 28 *Ib.* 407; 29 *Ib.* 428; 31 *Ib.* 210.
- Bedford, *In re*, 14 App. D. C. 376; 87 O. G. 1611; 1899 C. D. 257.
- Beech Hill Distilling Co. v. Brown-Forman Co., 30 App. D. C. 485; 134 O. G. 1565.
- Bentley, Burton v., 14 App. D. C. 471; 87 O. G. 2326; 1899 C. D. 393.
- Bernard, Huebel v., 15 App. D. C. 510; 90 O. G. 751; 1900 C. D. 223.
- Bernardin (U. S. ex rel.) v. Butterworth, 169 U. S. 600; 42 L. Ed. 873; 18 S. Ct. 441; 82 O. G. 1991; 1898 C. D. 403. Reversing 10 App. D. C. 294.
- Bernardin, Northall v., 7 App. D. C. 452; 24 W. L. R. 103; 114 O. G. 764; 1896 C. D. 183.
- Bernardin (U. S. ex rel.) v. Duell, 13 App. D. C. 379. Affirmed in 172 U. S. 576.
- Bernardin (U. S. ex rel.) v. Seymour, 11 App. D. C. 91; 25 W. L. R. 513; 79 O. G. 1190; 1897 C. D. 428.
- Bernardin (U. S. ex rel.) v. Seymour, 10 App. D. C. 294; 25 W. L. R. 515; 79 O. G. 1190; 1897 C. D. 428. Reversed in 169 U. S. 600.

- Beswick's Appeal, In re, 16 App. D. C. 345; 91 O. G. 1436; 1900 C. D. 294. Cited in 19 App. D. C. 400.
- Bigbie Bros. & Co., Bluthenthal & Bickart v., 30 App. D. C. 118; 130 O. G. 2068.
- Blackford v. Wilder, 21 App. D. C. 1; 104 O. G. 578; 1903 C. D. 567. Cited in 21 App. D. C. 85; 23 Ib. 254; 25 Ib. 237; 28 Ib. 533, 538; 29 Ib. 174.
- Blackford v. Wilder, 28 App. D. C. 535; 127 O. G. 1255; 1907 C. D. 491. Cited in 29 App. D. C. 425, 426, 428, 430; 31 Ib. 172.
- Blackman, Alexander v., 26 App. D. C. 541; 121 O. G. 1979; 1906 C. D. 602.
- Blake, Fenner v., 30 App. D. C. 507; 134 O. G. 2244.
- Bleistein v. Donaldson Lithographing Co., 188 U. S. 239; 31 W. L. R. 99.
- Bliss v. McElroy, 29 App. D. C. 120; 128 O. G. 458; 1907 C. D. 537. Cited in 31 App. D. C. 625.
- Bliss, United States ex rel. Wedderburn v., 12 App. D. C. 485; 26 W. L. R. 293; 83 O. G. 296; 1898 C. D. 413.
- Blood, Brown v., 22 App. D. C. 216; 105 O. G. 976; 1903 C. D. 617.
- Bluthenthal & Bickart v. Bigbie Bros. & Co., 30 App. D. C. 118; 130 O. G. 2068.
- Boch, Locke v., 17 App. D. C. 75; 93 O. G. 1722; 1900 C. D. 399.
- Bollec, McMulkin v., 30 App. D. C. 112; 130 O. G. 1691.
- Bossart v. Pohl, 31 App. D. C. 218; 135 O. G. 453.
- Bourn v. Hill, 27 App. D. C. 291; 123 O. G. 1284; 1906 C. D. 699.
- Bowes, Howard v., 31 App. D. C. 619; 137 O. G. 733.
- Boyce, Fowler v., 27 App. D. C. 48, 55; 121 O. G. 1014; 1906 C. D. 580.
- Bradshaw, Neilson v., 16 App. D. C. 92; 91 O. G. 644; 1900 C. D. 265.
- Braunstein v. Holmes, 30 App. D. C. 328; 133 O. G. 1937.
- Breen & Kennedy, Buchanan-Anderson-Nelson Co. v., 27 App. D. C. 573; 124 O. G. 322; 1906 C. D. 750.
- Breul v. Smith, 10 App. D. C. 180; 25 W. L. R. 198; 78 O. G. 1906; 1897 C. D. 332. Cited in 14 App. D. C. 135; 16 Ib. 566; 21 Ib. 10; 29 Ib. 70.
- Briede, In re, 27 App. D. C. 298; 123 O. G. 322; 1906 C. D. 677.

- Briggs, *In re*, 9 App. D. C. 478; 25 W. L. R. 75; 78 O. G. 169; 1897 C. D. 211. Cited in 14 App. D. C. 184, 477.
- Brill v. Washington Railway & Electric Co., 30 App. D. C. 255; 36 W. L. R. 55; 134 O. G. 1563.
- Brinkman, *Roberts v.*, 10 App. D. C. 543; 25 W. L. R. 543; 79 O. G. 1190; 1897 C. D. 427.
- Brodie (U. S. ex rel.), *Seymour v.*, 10 App. D. C. 567; 25 W. L. R. 183, 253; 79 O. G. 509; 1897 C. D. 372.
- Bronson Co. (U. S. ex rel.) v. Duell, 17 App. D. C. 471; 29 W. L. R. 126.
- Brooks, *Hillard v.*, 23 App. D. C. 526; 111 O. G. 302; 1904 C. D. 658.
- Brooks, *Smith v.*, 24 App. D. C. 75; 112 O. G. 953; 1904 C. D. 672.
- Brown v. Blood, 22 App. D. C. 216; 105 O. G. 976; 1903 C. D. 617. Cited in 24 App. D. C. 270.
- Brown, *Prindle v.*, 24 App. D. C. 114; 112 O. G. 957; 1904 C. D. 680.
- Brown, *Rousseau v.*, 21 App. D. C. 73; 104 O. G. 1120; 1903 C. D. 587.
- Brown, *Traver v.*, 14 App. D. C. 34; 1899 C. D. 296.
- Brown-Forman Co. v. Beech Hill Distilling Co., 30 App. D. C. 485; 134 O. G. 1565.
- Browning, *Luger v.*, 21 App. D. C. 201; 104 O. G. 1123; 1903 C. D. 593.
- Bryant, *In re*, 9 App. D. C. 447; 24 W. L. R. 826; 77 O. G. 1599; 1896 C. D. 648.
- Buchanan-Anderson-Nelson Co. v. Breen & Kennedy, 27 App. D. C. 573; 1906 C. D. 750; 124 O. G. 322. Cited in 28 App. D. C. 456.
- Buffalo Pitts Co. v. Duell, 28 W. L. R. 789; 93 O. G. 1491; 1900 C. D. 397.
- Buhoup, *Hein v.*, 11 App. D. C. 293; 25 W. L. R. 686; 81 O. G. 2088; 1897 C. D. 772.
- Bulkley v. Butterworth, 81 O. G. 505; 1897 C. D. 685.
- Bundy v. United States ex rel. Darling, 25 App. D. C. 459; 33 W. L. R. 434.
- Burkholder, *Richards v.*, 29 App. D. C. 485; 128 O. G. 2533; 1907 C. D. 563.
- Burr v. Ford, 5 App. D. C. 26; 22 W. L. R. 811; 70 O. G. 275; 1895 C. D. 120. Cited in 15 App. D. C. 27.



- Burson v. Vogel, 29 App. D. C. 388; 131 O. G. 942; 1907 C. D. 669.
- Burt, Matthes v., 24 App. D. C. 265; 114 O. G. 764; 1905 C. D. 574.
- Burton v. Bentley, 14 App. D. C. 471; 87 O. G. 2326; 1899 C. D. 393.
- Busch v. Jones, 16 App. D. C. 23; 28 W. L. R. 535. Reversed in 184 U. S. 598.
- Busch v. Jones, 184 U. S. 598; 46 L. Ed. 707; 22 S. Ct. 511; 99 O. G. 229; 1902 C. D. 585. Cited in 122 Fed. R. 866; 124 Ib. 83.
- Busell, Glidden v., 5 App. D. C. 480; 23 W. L. R. 485.
- Butterfield, In re, 23 App. D. C. 84; 108 O. G. 1589; 1904 C. D. 585.
- Butterworth, Bulkley v., 81 O. G. 505; 1897 C. D. 685.
- Butterworth, Bernardin v., 169 U. S. 600; 82 O. G. 1991; 1898 C. D. 403.
- Cain v. Park, 14 App. D. C. 42; 86 O. G. 797; 1899 C. D. 278. Cited in 15 App. D. C. 109; 23 Ib. 375; 25 Ib. 237; 28 Ib. 435; 31 Ib. 276, 303.
- Cahn, Belt & Co., In re, 27 App. D. C. 173; 122 O. G. 354; 1906 C. D. 627.
- Carlton Importation Co., Gaines v., 27 App. D. C. 571; 123 O. G. 1994; 190 C. D. 731.
- Carpenter, In re, 24 App. D. C. 110; 112 O. G. 503; 1904 C. D. 669.
- Carroli v. Hallwood, 31 App. D. C. 165; 135 O. G. 896.
- Carty v. Kellogg, 7 App. D. C. 542; 24 W. L. R. 106; 74 O. G. 657; 1896 C. D. 188. Cited in 14 App. D. C. 46; 17 Ib. 561; 19 Ib. 384.
- Case v. Murphey, 31 App. D. C. 245; 136 O. G. 228.
- Chase, La Flare v., 8 App. D. C. 83; 24 W. L. R. 232; 80 O. G. 83; 1896 C. D. 285.
- Chase and McKenzie, In re, 31 App. D. C. 154; 135 O. G. 895.
- Cheneau, Appeal of, In re, 5 App. D. C. 197; 23 W. L. R. 107; 70 O. G. 924; 1895 C. D. 188.
- Cherney v. Clauss, 25 App. D. C. 15; 116 O. G. 597; 1905 C. D. 635. Cited in 27 App. D. C. 291.
- Christensen v. Ellis, 17 App. D. C. 498; 94 O. G. 2561; 1901 C. D. 326. Cited in 18 App. D. C. 401; 21 Ib. 64; 27 Ib. 567.

- Christensen v. Noyes, 15 App. D. C. 94; 90 O. G. 227; 1900 C. D. 212. Cited in 24 App. D. C. 270; 31 Ib. 301.
- Clark, Dancy v., 24 App. D. C. 487; 33 W. L. R. 18.
- Clark Publishing Co., United States Playing Card Co. v., 30 App. D. C. 208; 132 O. G. 681.
- Clauss v. Cherney, 25 App. D. C. 15; 116 O. G. 597; 1905 C. D. 635.
- Cleal, McCormick v., 12 App. D. C. 335; 83 O. G. 1514; 1898 C. D. 492.
- Cleaveland v. Wright, 79 O. G. 866; 1897 C. D. 413.
- Cleveland v. Wilkin, 27 App. D. C. 311; 123 O. G. 1286; 1908 C. D. 703.
- Clifford v. Newell, 31 App. D. C. 195; 135 O. G. 1361.
- Clifford v. Rose, 31 App. D. C. 195; 135 O. G. 1361.
- Clunies, In re, 28 App. D. C. 18; 123 O. G. 2631; 1906 C. D. 740.
- Cobb v. Goebel, 23 App. D. C. 75; 108 O. G. 1591; 1904 C. D. 589.
- Coffee v. Guerrant, 3 App. D. C. 497; 22 W. L. R. 461; 68 O. G. 279; 1894 C. D. 384. Cited in 14 App. D. C. 41; 17 Ib. 343; 18 Ib. 138; 24 Ib. 141; 29 Ib. 394.
- Colhoun v. Hodgson, 5 App. D. C. 21; 22 W. L. R. 810; 70 O. G. 276; 1895 C. D. 122. Cited in 10 App. D. C. 155; 14 Ib. 231; 27 Ib. 319.
- Colton, In re, 21 App. D. C. 17; 104 O. G. 577; 1903 C. D. 566.
- Columbia National Sand Dredging Co. v. Miller, 20 App. D. C. 245; 30 W. L. R. 469.
- Columbia Phonograph Co., Whitson v., 18 App. D. C. 565; 29 W. L. R. 804; 98 O. G. 418; 1902 C. D. 497.
- Computing Scale Co. of America v. Automatic Scale Co., 26 App. D. C. 238; 33 W. L. R. 789; 119 O. G. 1586; 1905 C. D. 704. Affirmed in 204 U. S. 609.
- Cook, McBerty v., 16 App. D. C. 133; 90 O. G. 2295; 1900 C. D. 248.
- Cooke, Jones v., 25 App. D. C. 529; 117 O. G. 1493; 1905 C. D. 689.
- Copeland, Robinson v., 24 App. D. C. 68; 112 O. G. 501; 1904 C. D. 664.
- Corner v. Kyle, 24 App. D. C. 291; 114 O. G. 2092; 1905 C. D. 599.
- Corry v. McDermott, 25 App. D. C. 305; 117 O. G. 279; 1905 C. D. 668.

- Couch v. Barnett, 23 App. D. C. 446; 110 O. G. 1431; 1904 C. D. 650. Cited in 24 App. D. C. 466.
- Cowan, Feinberg v., 29 App. D. C. 80; 128 O. G. 889; 1907 C. D. 546.
- Crescent Typewriter Supply Co., In re, 30 App. D. C. 324; 133 O. G. 231.
- Creveling, In re, 25 App. D. C. 530; 117 O. G. 1167; 1905 C. D. 684.
- Cromwell, Gedge v., 19 App. D. C. 1902; 98 O. G. 1486; 1902 C. D. 514.
- Crone, Bauer v., 26 App. D. C. 352; 120 O. G. 1824; 1906 C. D. 545.
- Cronemeyer, Lewis v., 29 App. D. C. 174; 130 O. G. 300; 1907 C. D. 638.
- Croskey v. Atterbury, 9 App. D. C. 207; 24 W. L. R. 490; 76 O. G. 163; 1896 C. D. 437. Cited in 13 App. D. C. 564.
- Cross v. Phillips, 14 App. D. C. 228; 87 O. G. 1399; 1899 C. D. 342. Cited in 24 App. D. C. 305, 469; 24 Ib. 310, 472; 26 Ib. 64, 354; 27 Ib. 522; 28 Ib. 8; 29 Ib. 139.
- Cummings, McKenzie v., 24 App. D. C. 137; 112 O. G. 148; 1904 C. D. 683.
- Cummings, Viele v., 30 App. D. C. 455; 134 O. G. 777.
- Cunningham, In re, 21 App. D. C. 29; 102 O. G. 824; 1903 C. D. 524.
- Curtis, Turnbull v., 27 App. D. C. 567; 123 O. G. 2312; 1906 C. D. 732.
- Cushman v. Lines, 10 App. D. C. 156; 25 W. L. R. 204; 78 O. G. 2051; 1897 C. D. 346. Cited in 14 App. D. C. 135; 16 Ib. 566; 17 Ib. 554.
- Cutler v. Leonard, 31 App. D. C. 297; 136 O. G. 438.
- Dale, Weeks v., 30 App. D. C. 498; 135 O. G. 218.
- Dancy v. Clark, 24 App. D. C. 487; 33 W. L. R. 18. Cited in 25 App. D. C. 459.
- Darling, Bundy v., 25 App. D. C. 459; 33 W. L. R. 434.
- Darnell v. Grant, 16 App. D. C. 589; 92 O. G. 557; 1900 C. D. 329.
- Dashiell v. Tasker, 21 App. D. C. 64; 103 O. G. 2174; 1903 C. D. 551. Cited in 24 App. D. C. 285; 29 Ib. 179.
- Davenport, In re. 23 App. D. C. 370; 110 O. G. 2017; 1904 C. D. 653.

- Davis v. Garrett, 28 App. D. C. 9; 123 O. G. 1991; 1906 C. D. 724.
- Davis v. Horton, 31 App. D. C. 601; 136 O. G. 1768.
- Davis, Mead v., 31 App. D. C. 590; 136 O. G. 2001.
- Dean, Furman v., 24 App. D. C. 277; 114 O. G. 1552; 1905 C. D. 582.
- Dean, Hansen v., 29 App. D. C. 112; 129 O. G. 483; 1907 C. D. 583.
- Dean, Lattig v., 25 App. D. C. 591; 117 O. G. 1798; 1905 C. D. 698.
- Decker, Marvel v., 13 App. D. C. 562; 86 O. G. 348; 1899 C. D. 271.
- De Ferranti v. Lyndmark, 30 App. D. C. 417; 134 O. G. 515.
- Denton, In re, 12 App. D. C. 504; 83 O. G. 1347; 1898 C. D. 483.
- De Schweinitz, Petrie v., 19 App. D. C. 386; 99 O. G. 1387; 1902 C. D. 534.
- Detroit Stove Works, American Stove Co. v., 31 App. D. C. 304; 134 O. G. 2245.
- Detroit Stove Works, Barstow Stove Co. v., 31 App. D. C. 304; 134 O. G. 2245.
- De Wallace v. Scott, 15 App. D. C. 157; 88 O. G. 1704; 1899 C. D. 416. Cited in 17 App. D. C. 504; 19 Ib. 389; 21 Ib. 212.
- Dickey v. Fleming, 12 App. D. C. 509; 83 O. G. 1348; 1898 C. D. 487. Cited in 14 App. D. C. 54.
- Dickinson, Jenner v., 25 App. D. C. 316; 117 O. G. 600; 1905 C. D. 672.
- Dickinson, Thibodeau v., 25 App. D. C. 316; 117 O. G. 600; 1905 C. D. 672.
- Dilg, In re, 25 App. D. C. 9; 115 O. G. 1067; 1905 C. D. 620.
- Doble, Henry v., 27 App. D. C. 33; 122 O. G. 1398; 1906 C. D. 654.
- Dodge v. Fowler, 11 App. D. C. 592; 24 W. L. R. 477; 82 O. G. 595; 1898 C. D. 320. Cited in 12 App. D. C. 341; 14 Ib. 240; 17 Ib. 555; 19 Ib. 390; 24 Ib. 485; 26 Ib. 354; 28 Ib. 429.
- Dodge, Fowler v., 14 App. D. C. 477; 87 O. G. 895; 1899 C. D. 316.
- Dodge, Seeberger v., 24 App. D. C. 476; 114 O. G. 2382; 1905 C. D. 603.

- Dolan, Shaffer v., 23 App. D. C. 79; 108 O. G. 2146; 1904 C. D. 592.
- Donaldson Lithographing Co., Bleistein v., 188 U. S. 239; 31 W. L. R. 99.
- Donnelly, Wyman v., 21 App. D. C. 81; 104 O. G. 310; 1903 C. D. 556.
- Dover, Greenwood v., 23 App. D. C. 251; 109 O. G. 2172; 1904 C. D. 630.
- Downing, Koppel v., 24 W. L. R. 342.
- Downing, Koppel v., 11 App. D. C. 93; 25 W. L. R. 511.
- Doyle v. McRoberts, 10 App. D. C. 445; 25 W. L. R. 574; 79 O. G. 1029; 1897 C. D. 413. Cited in 12 App. D. C. 529; 14 Ib. 53; 15 Ib. 504; 16 Ib. 572; 17 Ib. 38, 351, 555; 21 Ib. 205; 27 Ib. 228; 28 Ib. 77; 29 Ib. 65.
- Draper, In re, 10 App. D. C. 545; 25 W. L. R. 531; 79 O. G. 864; 1897 C. D. 407.
- Drawbaugh, Ex parte, 2 App. D. C. 404; 66 O. G. 1451; 1894 C. D. 192.
- Drawbaugh, Appeal of, 3 App. D. C. 236; 22 W. L. R. 352; 67 O. G. 929; 1894 C. D. 297.
- Drawbaugh, In re, 9 App. D. C. 219; 24 W. L. R. 694; 77 O. G. 313; 1896 C. D. 527.
- Drewson, Sherwood v., 29 App. D. C. 161; 130 O. G. 657; 1907 C. D. 642.
- Dries, Ex parte, 3 App. D. C. 165; 22 W. L. R. 301.
- Droop, In re, 30 App. D. C. 334; 133 O. G. 517.
- Duell, United States ex rel. Barnardin v., 13 App. D. C. 379. Affirmed in 172 U. S. 576.
- Duell, United States ex rel. Bronson Co. v., 17 App. D. C. 471; 29 W. L. R. 126.
- Duell, United States ex rel. Buffalo Pitts Co. v., 28 W. L. R. 789; 93 O. G. 1491; 1900 C. D. 397.
- Duell, United States ex rel. New York Condensed Milk Co. v., 28 W. L. R. 789.
- Duell, United States ex rel. Stapleton v., 17 App. D. C. 575; 29 W. L. R. 156; 95 O. G. 1049; 1901 C. D. 359.
- Duff v. Latshaw, 31 App. D. C. 255; 136 O. G. 658.
- Dunbar v. Schellenger, 29 App. D. C. 129; 128 O. G. 2837; 1907 C. D. 567.
- Duncan, In re, 28 App. D. C. 457; 126 O. G. 2592; 1907 C. D. 460.

- Duncan, Westinghouse v., 2 App. D. C. 131; 22 W. L. R. 83; 66 O. G. 1009; 1894 C. D. 170.
- Durham v. Seymour, 6 App. D. C. 79; 23 W. L. R. 273; 71 O. G. 601; 1895 C. D. 307. Dismissed in 161 U. S. 235. Cited in 8 App. D. C. 275; 9 Ib. 482; 10 Ib. 170, 185; 12 Ib. 218; 14 Ib. 184; 20 Ib. 298; 26 Ib. 315; 27 Ib. 19, 70.
- Durham v. Seymour, 161 U. S. 235; 40 L. Ed. 682; 16 S. Ct. 452. Cited in 123 Fed. R. 19; 163 U. S. 321; 168 U. S. 435.
- Durham v. Seymour, 10 App. D. C. 274; 25 W. L. R. 9.
- Durkee v. Winquist, 31 App. D. C. 248; 136 O. G. 229.
- Duryea v. Rice, 28 App. D. C. 423; 126 O. G. 1357; 1907 C. D. 443. Cited in 31 App. D. C. 209, 275, 302.
- Dyson, Fowler v., 27 App. D. C. 52; 121 O. G. 1015; 1906 C. D. 583.
- Eastman v. Houston, 18 App. D. C. 135; 95 O. G. 2064; 1901 C. D. 386.
- Eclipse Bicycle Co. v. Farrow, 16 App. D. C. 468; 28 W. L. R. 551; 93 O. G. 1312; 1900 C. D. 389. Cited in 23 App. D. C. 412; 199 U. S. 582, 584.
- Eclipse Bicycle Co., Farrow v., 18 App. D. C. 101; 29 W. L. R. 218. Cited in 23 App. D. C. 412.
- Eclipse Bicycle Co. v. Farrow, 23 App. D. C. 411; 32 W. L. R. 265. Reversed in 199 U. S. 581.
- Eclipse Bicycle Co. v. Farrow, 24 App. D. C. 311; 32 W. L. R. 265.
- Edison, In re, 30 App. D. C. 321; 133 O. G. 1190.
- Edison, Macdonald v., 21 App. D. C. 527; 105 O. G. 1263; 1903 C. D. 622.
- Edna Smelting & Refining Co. v. Nathan Manuf. Co., 30 App. D. C. 487; 135 O. G. 664.
- Ehret v. Star Brewing Co., 31 App. D. C. 507; 136 C. D. 1533.
- Einstein v. Sawhill, 2 App. D. C. 10; 22 W. L. R. 89; 65 O. G. 1918; 1893 C. D. 677.
- Electrolibration Co., Sanche v., 4 App. D. C. 453; 22 W. L. R. 769.
- Ellis, Christensen v., 17 App. D. C. 498; 94 O. G. 2561; 1901 C. D. 326.
- Elwell, Ruete v., 15 App. D. C. 21; 87 O. G. 2119; 1899 C. D. 379.
- Esty v. Newton, 14 App. D. C. 50; 86 O. G. 799; 1899 C. D. 284. Cited in 16 App. D. C. 139; 17 Ib. 470; 18 Ib. 146,

- 147; 19 *Ib.* 380; 20 *Ib.* 261; 22 *Ib.* 218; 24 *Ib.* 80; 25 *Ib.* 313; 27 *Ib.* 291.
- Evered, Pelton v., 77 O. G. 1600; 1896 C. D. 651.
- Everson (U. S. ex rel.) v. Young, 26 W. L. R. 546.
- Ex parte Drawbaugh, 2 App. D. C. 404; 66 O. G. 1451; 1894 C. D. 192.
- Ex parte Dries, 3 App. D. C. 165; 22 W. L. R. 301.
- Ex parte Frasch, 192 U. S. 566; 109 O. G. 554; 1904 C. D. 716.
- Faber, In re, 31 App. D. C. 531; 136 O. G. 229.
- Farrow, Eclipse Bicycle Co. v., 16 App. D. C. 468; 28 W. L. R. 551.
- Farrow v. Eclipse Bicycle Co., 18 App. D. C. 101; 29 W. L. R. 218. Cited in 199 U. S. 585.
- Farrow, Eclipse Bicycle Co. v., 23 App. D. C. 411; 32 W. L. R. 265. Reversed in 199 U. S. 581.
- Farrow, Eclipse Bicycle Co. v., 24 App. D. C. 311; 32 W. L. R. 265.
- Fay, In re, 15 App. D. C. 515; 90 O. G. 1157; 1900 C. D. 232.
- Fefel v. Stocker, 17 App. D. C. 317; 94 O. G. 433; 1901 C. D. 269. Cited in 18 App. D. C. 141-7; 19 *Ib.* 378, 380; 24 *Ib.* 468; 26 *Ib.* 409.
- Feinberg v. Cowan, 29 App. D. C. 80; 128 O. G. 889; 1907 C. D. 546.
- Felbel, Oliver v., 20 App. D. C. 255; 100 O. G. 2384; 1902 C. D. 565.
- Fenner v. Blake, 30 App. D. C. 507; 134 O. G. 2244.
- Fenton Metallic Manuf. Co. v. Office Specialty Manuf. Co., 12 App. D. C. 201. Reversed in 174 U. S. 492. Cited in 14 App. D. C. 185.
- Fetzer, McKillop v., 31 App. D. C. 586; 136 O. G. 1770.
- Finkenbiner, Beals v., 12 App. D. C. 23; 82 O. G. 598; 1898 C. D. 326.
- Fitzgerald v. Wiley, 22 App. D. C. 329; 31 W. L. R. 491.
- Flather v. Weber, 21 App. D. C. 179; 104 O. G. 712; 1903 C. D. 561. Cited in 28 App. D. C. 440; 29 *Ib.* 109.
- Fleming, Dickey v., 12 App. D. C. 509; 83 O. G. 1348; 1898 C. D. 487.
- Flora, Ball v., 26 App. D. C. 394; 121 O. G. 2668; 1906 C. D. 621.
- Flora v. Powrie, 23 App. D. C. 195; 109 O. G. 2443; 1904 C. D. 636. Cited in 26 App. D. C. 541; 27 *Ib.* 228; 28 *Ib.* 6.

- Ford, *Burr v.*, 5 App. D. C. 26; 22 W. L. R. 811; 70 O. G. 275; 1895 C. D. 120.
- Forg, *Appeal of*, 2 App. D. C. 58; 22 W. L. R. 116; 66 O. G. 515; 1894 C. D. 138.
- Foster *v. Antisdel*, 14 App. D. C. 552; 88 O. G. 1527; 1899 C. D. 413. Cited in 15 App. D. C. 504; 17 *Ib.* 491; 21 *Ib.* 205, 211; 22 *Ib.* 219; 24 *Ib.* 117; 29 *Ib.* 136.
- Foster, *In re*, 19 App. D. C. 391.
- Fowler *v. Boyce*, 27 App. D. C. 48, 55; 121 O. G. 1014; 122 O. G. 1726; 1906 C. D. 580, 659. Cited in 28 App. D. C. 8.
- Fowler *v. Commissioner of Patents*, 62 O. G. 1968; 1893 C. D. 268.
- Fowler, *Dodge v.*, 11 App. D. C. 592; 24 W. L. R. 477; 82 O. G. 595; 1898 C. D. 320. Cited in 13 App. D. C. 565.
- Fowler *v. Dodge*, 14 App. D. C. 477; 87 O. G. 895. Cited in 16 App. D. C. 565; 28 *Ib.* 429.
- Fowler *v. Dyson*, 27 App. D. C. 52; 121 O. G. 1015; 1906 C. D. 583.
- Fowler *v. McBerty*, 27 App. D. C. 41, 46; 121 O. G. 1015; 1906 C. D. 585. Cited in 27 App. D. C. 52.
- Frasch, *Ex parte*, 192 U. S. 566; 109 O. G. 554; 1904 C. D. 716.
- Frasch, *In re*, 20 App. D. C. 298; 100 O. G. 1977; 1902 C. D. 560.
- Frasch, *In re*, 27 App. D. C. 25; 122 O. G. 1048; 1906 C. D. 648. Dismissed in 211 U. S. 1.
- Frasch *v. Moore*, 211 U. S. 1; 137 O. G. 230.
- Freeman, *Garrels v.*, 21 App. D. C. 207; 103 O. G. 1683; 1903 C. D. 542.
- Freeman, *In re*, 23 App. D. C. 226; 109 O. G. 1339; 1904 C. D. 619. Cited in 26 App. D. C. 366.
- French *v. Halcomb*, 26 App. D. C. 307; 120 O. G. 1824; 1906 C. D. 547.
- Fuller, *Battle Creek Sanitarium Co. v.*, 30 App. D. C. 411; 134 O. G. 1299.
- Fullman, *Herman v.*, 23 App. D. C. 259; 109 O. G. 1888; 1904 C. D. 625.
- Funk *v. Haines*, 20 App. D. C. 293; 100 O. G. 1766; 1902 C. D. 559.
- Funk *v. Haines and Matteson*, 20 App. D. C. 285; 100 O. G. 1764; 1902 C. D. 553. Cited in 26 App. D. C. 409; 29 *Ib.* 395.



- Funk v. Whitely, 25 App. D. C. 313; 117 O. G. 280; 1905 C. D. 670. Cited in 28 App. D. C. 28.
- Furman v. Dean, 24 App. D. C. 277; 114 O. G. 1552; 1905 C. D. 582. Cited in 31 App. D. C. 211.
- Fynn, Kelly v., 16 App. D. C. 573; 92 O. G. 1237; 1900 C. D. 339.
- Gaines v. Carlton Importation Co., 27 App. D. C. 571; 123 O. G. 1994; 1906 C. D. 731. Cited in 27 App. D. C. 573; 28 *Ib.* 456.
- Gaines v. Knecht, 27 App. D. C. 530; 123 O. G. 657; 1906 C. D. 690. Cited in 27 App. D. C. 571.
- Gallagher v. Hastings, 21 App. D. C. 88; 103 O. G. 1165; 1903 C. D. 531. Cited in 21 App. D. C. 211; 23 *Ib.* 258; 25 *Ib.* 305; 26 *Ib.* 541; 27 *Ib.* 228; 28 *Ib.* 440, 482; 29 *Ib.* 109.
- Gallagher v. Hein, 25 App. D. C. 77; 115 O. G. 1330; 1905 C. D. 624. Cited in 25 App. D. C. 90; 26 *Ib.* 336; 27 *Ib.* 451; 29 *Ib.* 14, 141, 394.
- Gallagher v. Hein. See *Ocuppaugh v. Norton*.
- Garrels v. Freeman, 21 App. D. C. 207; 103 O. G. 1683; 1903 C. D. 542. Cited in 26 App. D. C. 307; 27 *Ib.* 527.
- Garrett, Davis v., 28 App. D. C. 9; 123 O. G. 1991; 1906 C. D. 724.
- Garrett, *In re*, 27 App. D. C. 19; 122 O. G. 1047; 1906 C. D. 645.
- Geen, Kreag v., 28 App. D. C. 437; 127 O. G. 1581; 1907 C. D. 502.
- Gedge v. Cromwell, 19 App. D. C. 192; 98 O. G. 1486; 1902 C. D. 514. Cited in 21 App. D. C. 208; 27 *Ib.* 228; 28 *Ib.* 440, 478; 29 *Ib.* 108.
- Getz, Jackson v., 16 App. D. C. 343; 91 O. G. 1036; 1900 C. D. 284.
- Gibbons v. Peller, 28 App. D. C. 530; 127 O. G. 3643; 1907 C. D. 529.
- Giles, Giles Remedy Co. v., 26 App. D. C. 375; 120 O. G. 1826; 1906 C. D. 552.
- Giles Remedy Co. v. Giles, 26 App. D. C. 375; 120 O. G. 1826; 1906 C. D. 552.
- Gillette, Sendelbach v., 22 App. D. C. 168; 109 O. G. 276; 1904 C. D. 597.
- Gilman v. Hinson, 26 App. D. C. 409; 122 O. G. 731; 1906 C. D. 634. Cited in 29 App. D. C. 13.

- Glenn v. Adams, 12 App. D. C. 175; 83 O. G. 158; 1898 C. D. 407. Cited in 18 App. D. C. 146.
- Glidden v. Busell, 5 App. D. C. 480; 23 W. L. R. 485.
- Glidden v. Noble, 5 App. D. C. 480; 23 W. L. R. 485; 71 O. G. 141; 1895 C. D. 273.
- Goebel, Cobb v., 23 App. D. C. 75; 108 O. G. 1591; 1904 C. D. 589.
- Goolman v. Hobart, 31 App. D. C. 286; 135 O. G. 1123.
- Gordon v. Wentworth, 31 App. D. C. 150; 135 O. G. 1125.
- Grant, Darnell v., 16 App. D. C. 589; 92 O. G. 557; 1900 C. D. 329.
- Greenwood v. Dover, 23 App. D. C. 251; 109 O. G. 2172; 1904 C. D. 630. Cited in 24 App. D. C. 304; 26 *Ib.* 541.
- Griffin v. Swenson, 15 App. D. C. 135; 89 O. G. 919; 1899 C. D. 440. Cited in 17 App. D. C. 504; 19 *Ib.* 390; 29 *Ib.* 403.
- Griswold, *In re*, 9 App. D. C. 496; 25 W. L. R. 84; 78 O. G. 482; 1897 C. D. 248.
- Guerrant, Coffee v., 3 App. D. C. 497; 68 O. G. 279; 1894 C. D. 384.
- Guilbert v. Killinger, 13 App. D. C. 107; 84 O. G. 313; 1898 C. D. 522. Cited in 29 App. D. C. 179.
- Gueniffet v. Wictorsohn, 30 App. D. C. 432; 134 O. G. 779.
- Haines, Funk v., 20 App. D. C. 293; 100 O. G. 1766; 1902 C. D. 559.
- Haines & Matteson, Funk v., 20 App. D. C. 285; 100 O. G. 1764; 1902 C. D. 553.
- Halcomb, French v., 26 App. D. C. 307; 120 O. G. 1824; 1906 C. D. 547.
- Hall & Ruckel v. Ingram, 28 App. D. C. 454; 126 O. G. 759; 1907 C. D. 441.
- Halle, Slaughter v., 21 App. D. C. 19; 102 O. G. 469; 1903 C. D. 519.
- Hall's Safe Co. v. Herring-Hall-Marvin Safe Co., 31 App. D. C. 498; 135 O. G. 1804. Cited in 31 App. D. C. 506.
- Hallwood v. Carroll, 31 App. D. C. 165; 135 O. G. 896.
- Hallwood v. Lalor, 21 App. D. C. 61; 103 O. G. 2173; 1903 C. D. 549. Cited in 24 App. D. C. 290.
- Hallwood, McCormick v., 30 App. D. C. 106; 130 O. G. 1487; 1907 C. D. 656.

- Hammond v. Basch, 24 App. D. C. 469; 115 O. G. 804; 1905 C. D. 615. Cited in 27 App. D. C. 48, 55, 77, 522; 28 *Ib.* 8; 29 *Ib.* 139, 392.
- Hansen v. Dean, 29 App. D. C. 112; 129 O. G. 483; 1907 C. D. 583.
- Hanson, Lotterhand v., 23 App. D. C. 372; 110 O. G. 861; 1904 C. D. 646.
- Hanson, Roe v., 19 App. D. C. 559; 99 O. G. 2550; 1902 C. D. 546.
- Harrington, Wurts v., 10 App. D. C. 149; 25 W. L. R. 266; 79 O. G. 337; 1897 C. D. 359.
- Harris v. Stern, 22 App. D. C. 164; 105 O. G. 746; 1903 C. D. 612.
- Harter v. Barrett, 24 App. D. C. 300; 114 O. G. 975; 1905 C. D. 578.
- Hastings, Gallagher v., 21 App. D. C. 88; 103 O. G. 1165; 1903 C. D. 531.
- Hauser, Loomis v., 19 App. D. C. 401; 99 O. G. 1172; 1902 C. D. 530.
- Hawley, *In re*, 26 App. D. C. 324; 121 O. G. 691; 1906 C. D. 576.
- Hay, Holzendorf v., 20 App. D. C. 576; 30 W. L. R. 825.
- Hayes, *In re*, 27 App. D. C. 393; 123 O. G. 1000; 1906 C. D. 697.
- Hebbard, Soley v., 5 App. D. C. 99; 23 W. L. R. 56; 70 O. G. 921; 1895 C. D. 182.
- Hein v. Buhoup, 11 App. D. C. 293; 25 W. L. R. 686; 81 O. G. 2088; 1897 C. D. 772. Cited in 18 App. D. C. 146.
- Hein v. Pungs, 9 App. D. C. 492; 77 O. G. 1600; 1896 C. D. 649.
- Hendrickson, Silverman v., 19 App. D. C. 381; 99 O. G. 1171; 1902 C. D. 527.
- Henry v. Doble, 27 App. D. C. 33; 122 O. G. 1398; 1906 C. D. 654.
- Hepburn, Mason v., 13 App. D. C. 86; 84 O. G. 147; 1898 C. D. 510.
- Herbst Importing Co., *In re*, 30 App. D. C. 297; 134 O. G. 1565.
- Herman v. Fullman, 23 App. D. C. 259; 109 O. G. 1888; 1904 C. D. 625. Cited in 24 App. D. C. 259, 481; 28 *Ib.* 409.
- Heroult, *In re*, 5 App. D. C. 90; 23 W. L. R. 72; 70 O. G. 784; 1895 C. D. 177.
- Heroult, *In re*, 29 App. D. C. 42; 127 O. G. 3217; 1907 C. D. 521.

- Herring-Hall-Marvin Safe Co., Hall's Safe Co. v., 31 App. D. C. 498; 135 O. G. 1804.
- Hess, Howell v., 28 App. D. C. 167; 34 W. L. R. 639; 132 O. G. 1074.
- Hess, Howell v., 30 App. D. C. 194.
- Hess, Paul v., 24 App. D. C. 462; 115 O. G. 251; 1905 C. D. 610.
- Hewitt, Moore v. 31 App. D. C. 577; 136 O. G. 1535.
- Hey, Howard v., 18 App. D. C. 142; 95 O. G. 1647; 1901 C. D. 375.
- Hien, Gallagher v., 25 App. D. C. 77; 115 O. G. 1330; 1905 C. D. 624. See *Ocuppaugh v. Norton*.
- Hien, In re, 79 O. G. 507; 1897 C. D. 367.
- Hildreth, Thibodeau v., 25 App. D. C. 320; 117 O. G. 601; 1905 C. D. 675.
- Hill, Bourn v., 27 App. D. C. 291; 123 O. G. 1284; 1906 C. D. 699.
- Hill v. Hodge, 12 App. D. C. 528; 83 O. G. 1211; 1898 C. D. 480. Cited in 15 App. D. C. 28; 16 *Ib.* 567; 17 *Ib.* 555.
- Hill, In re, 26 App. D. C. 318; 121 O. G. 340; 1906 C. D. 572.
- Hill v. Parmelee, 9 App. D. C. 503; 25 W. L. R. 3; 78 O. G. 170; 1897 C. D. 214.
- Hillard v. Brooks, 23 App. D. C. 526; 111 O. G. 302; 1904 C. D. 658.
- Hinson, Gilman v., 26 App. D. C. 409; 122 O. G. 731; 1906 C. D. 634.
- Hirner, Kilbourn v., 29 App. D. C. 54; 128 O. G. 1689; 1907 C. D. 552.
- Hisey v. Peters, 6 App. D. C. 68; 23 W. L. R. 297; 71 O. G. 892; 1895 C. D. 349. Cited in 10 App. D. C. 153, 179, 183, 467; 11 *Ib.* 279, 596; 12 *Ib.* 529; 14 *Ib.* 53, 135; 15 *Ib.* 504; 16 *Ib.* 566, 572; 17 *Ib.* 38, 351, 555; 18 *Ib.* 146; 21 *Ib.* 205, 212; 27 *Ib.* 234, 293; 28 *Ib.* 76, 514; 29 *Ib.* 64.
- Hitchcock, Riverside Oil Co. v., 21 App. D. C. 252; 31 W. L. R. 174. Affirmed in 190 U. S. 316.
- Hitchcock, West v., 19 App. D. C. 333; 30 W. L. R. 136.
- Hobart, Goolman v., 31 App. D. C. 286; 135 O. G. 1123.
- Hodge, Hill v., 12 App. D. C. 528; 83 O. G. 1211; 1898 C. D. 480.
- Hodges, In re, 28 App. D. C. 525; 128 O. G. 887; 1907 C. D. 543.
- Hodgins v. Simpson, 82 O. G. 190; 1898 C. D. 296.

- Hodgkinson, Lindmark v., 31 App. D. C. 612; 137 O. G. 228.
- Hodgson, Colhoun v., 5 App. D. C. 21; 22 W. L. R. 810; 70 O. G. 276; 1895 C. D. 122.
- Hoey, In re, 28 App. D. C. 416; 127 O. G. 2817; 1907 C. D. 516.
- Hoffman, Lindemyer v., 18 App. D. C. 1; 95 O. G. 838; 1901 C. D. 353.
- Hoffman, Rolfe v., 26 App. D. C. 336; 121 O. G. 1350; 1906 C. D. 588.
- Holmes, Braunstein v., 30 App. D. C. 328; 133 O. G. 1937.
- Holsclaw, Sobey v., 28 App. D. C. 65; 126 O. G. 3041; 1907 C. D. 465.
- Holt, Ingersoll v., 15 App. D. C. 519; 90 O. G. 2507; 1900 C. D. 253.
- Holzendorf (U. S. ex rel.) v. Hay, 20 App. D. C. 576; 30 W. L. R. 825.
- Hope v. Voight, 25 App. D. C. 22; 115 O. G. 1585; 1905 C. D. 629.
- Hopkins, In re, 29 App. D. C. 118; 128 O. G. 890; 1907 C. D. 549.
- Hopkins v. Newman, 30 App. D. C. 402; 134 O. G. 2028.
- Horine v. Wende, 29 App. D. C. 415; 129 O. G. 2858; 1907 C. D. 615.
- Horton, Davis v., 31 App. D. C. 603; 136 O. G. 1768.
- Houghton v. Payne, 31 W. L. R. 172. Cited in 194 U. S. 88.
- Houston, Eastman v., 18 App. D. C. 135; 95 O. G. 2064; 1901 C. D. 386.
- Howard v. Bowes, 31 App. D. C. 619; 137 O. G. 733.
- Howard v. Hey, 18 App. D. C. 142; 95 O. G. 1647; 1901 C. D. 375. Cited in 21 App. D. C. 64, 529; 23 *Ib.* 74; 27 *Ib.* 293.
- Howard, Whitney v., 21 App. D. C. 218; 104 O. G. 1659; 1903 C. D. 597.
- Howell v. Hess, 28 App. D. C. 167; 34 W. L. R. 639; 132 O. G. 1074.
- Howell v. Hess, 30 App. D. C. 194.
- Huebel v. Bernard, 15 App. D. C. 510; 90 O. G. 751; 1900 C. D. 223. Cited in 29 App. D. C. 108.
- Hulett v. Long, 15 App. D. C. 284; 89 O. G. 1141; 1899 C. D. 446. Cited in 17 App. D. C. 555; 24 *Ib.* 483; 26 *Ib.* 69.
- Hundhausen, Sachs v., 21 App. D. C. 511; 105 O. G. 1534; 1903 C. D. 625.

- Hunt v. McCaslin, 10 App. D. C. 527; 25 W. L. R. 528; 79 O. G. 861; 1897 C. D. 401. Cited in 14 App. D. C. 52.
- Hunter v. Stikeman, 13 App. D. C. 214; 85 O. G. 610; 1898 C. D. 564. Cited in 15 App. D. C. 161; 17 *Ib.* 336; 29 *Ib.* 173.
- Huson, Yates v., 8 App. D. C. 93; 24 W. L. R. 214; 74 O. G. 1732; 1896 C. D. 278.
- Indian Portland Cement Co., *In re*, 30 App. D. C. 463; 134 O. G. 518.
- Ingersoll v. Holt, 15 App. D. C. 519; 90 O. G. 2507; 1900 C. D. 253.
- Ingram, Hall & Ruckel v., 28 App. D. C. 454; 126 O. G. 759; 1907 C. D. 441.
- In re* Adams, 24 App. D. C. 275; 114 O. G. 2093; 1905 C. D. 602. Cited in 27 App. D. C. 228; 28 *Ib.* 6, 22.
- In re* A. G. Spalding & Bros., 27 App. D. C. 314; 123 O. G. 321; 1906 C. D. 674.
- In re* American Circular Loom Co., 28 App. D. C. 446; 126 O. G. 2191; 1907 C. D. 452-481. Cited in 30 App. D. C. 119, 144.
- In re* American Glue Co., 27 App. D. C. 391; 123 O. G. 999; 1906 C. D. 695.
- In re* Ams, 29 App. D. C. 91; 127 O. G. 3644; 1907 C. D. 532.
- In re* Appeal of Cheneau, 5 App. D. C. 197; 70 O. G. 924; 1895 C. D. 188.
- In re* Appeal of Förg, 2 App. D. C. 58; 66 O. G. 515; 1894 C. D. 138.
- In re* Appeal of Drawbaugh, 3 App. D. C. 236; 67 O. G. 929; 1894 C. D. 297.
- In re* Appeal of Heroult, 5 App. D. C. 90; 23 W. L. R. 72; 70 O. G. 784; 1895 C. D. 177.
- In re* Appeal of Schaeffer, 2 App. D. C. 1; 66 O. G. 514; 1894 C. D. 134.
- In re* Atkins & Co., 29 App. D. C. 385. Cited in 31 App. D. C. 585.
- In re* Baker, 26 App. D. C. 363; 121 O. G. 1352; 1906 C. D. 594.
- In re* Barratt, 11 App. D. C. 177; 25 W. L. R. 532; 79 O. G. 2020; 1897 C. D. 506. Cited in 16 App. D. C. 350, 565.
- In re* Barratt, 14 App. D. C. 255; 87 O. G. 1075; 1899 C. D. 320.

- In re Bedford, 14 App. D. C. 376; 87 O. G. 1611; 1899 C. D. 257.
- In re Beswick, 16 App. D. C. 345; 91 O. G. 1436; 1900 C. D. 294. Cited in 19 App. D. C. 400.
- In re Briede, 27 App. D. C. 298; 123 O. G. 322; 1906 C. D. 677. Cited in 30 App. D. C. 47, 53.
- In re Briggs, 9 App. D. C. 478; 25 W. L. R. 75; 78 O. G. 169; 1897 C. D. 211.
- In re Bryant, 9 App. D. C. 447; 24 W. L. R. 826; 77 O. G. 1599; 1896 C. D. 648.
- In re Butterfield, 23 App. D. C. 84; 108 O. G. 1589; 1904 C. D. 585.
- In re Cahn, Belt & Co., 27 App. D. C. 173; 122 O. G. 354; 1906 C. D. 627. Cited in 27 App. D. C. 391.
- In re Carpenter, 24 App. D. C. 110; 112 O. G. 503; 1904 C. D. 669.
- In re Chase and McKenzie, 31 App. D. C. 154; 135 O. G. 895.
- In re Cheneau, 5 App. D. C. 197; 70 O. G. 924; 1895 C. D. 188.
- In re Clunies, 28 App. D. C. 18; 123 O. G. 2631; 1906 C. D. 740.
- In re Colton, 21 App. D. C. 17; 104 O. G. 577; 1903 C. D. 566.
- In re Crescent Typewriter Supply Co., 30 App. D. C. 324; 133 O. G. 231.
- In re Creveling, 25 App. D. C. 530; 117 O. G. 1167; 1905 C. D. 684.
- In re Cunningham, 21 App. D. C. 29; 102 O. G. 824; 1903 C. D. 524.
- In re Davenport, 23 App. D. C. 370; 110 O. G. 2017; 1904 C. D. 653. Cited in 23 App. D. C. 379.
- In re Denton, 12 App. D. C. 504; 83 O. G. 1347; 1898 C. D. 483.
- In re Dilg, 25 App. D. C. 9; 115 O. G. 1067; 1905 C. D. 620. Cited in 28 App. D. C. 423.
- In re Draper, 10 App. D. C. 545; 25 W. L. R. 531; 79 O. G. 864; 1897 C. D. 407. Cited in 14 App. D. C. 184, 477; 15 Ib. 519.
- In re Drawbaugh, 9 App. D. C. 219; 24 W. L. R. 694; 77 O. G. 313; 1896 C. D. 527. Cited in 14 App. D. C. 46.
- In re Droop, 30 App. D. C. 334; 133 O. G. 517.
- In re Duncan, 28 App. D. C. 457; 126 O. G. 2592.
- In re Edison, 30 App. D. C. 321; 133 O. G. 1190.
- In re Faber, 31 App. D. C. 531; 136 O. G. 229.
- In re Fay, 15 App. D. C. 515; 90 O. G. 1157; 1900 C. D. 232.

- In re Forg, 2 App. D. C. 58; 66 O. G. 515; 1894 C. D. 138.
- In re Foster, 19 App. D. C. 391.
- In re Frasch, 20 App. D. C. 298; 100 O. G. 1977; 1902 C. D. 560.  
Cited in 28 App. D. C. 15; 31 *Ib.* 165.
- In re Frasch, 27 App. D. C. 25; 122 O. G. 1048; 1906 C. D. 648.  
Dismissed in 211 U. S. 1.
- In re Freeman, 23 App. D. C. 226; 109 O. G. 1339; 1904 C. D. 619.
- In re Garrett, 27 App. D. C. 19; 122 O. G. 1047; 1906 C. D. 645.  
Cited in 27 App. D. C. 77.
- In re Griswold, 9 App. D. C. 496; 25 W. L. R. 84; 78 O. G. 482;  
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- In re Hawley, 26 App. D. C. 324; 121 O. G. 691; 1906 C. D. 576.
- In re Hayes, 27 App. D. C. 393; 123 O. G. 1000; 1906 C. D. 697.
- In re Hein, 79 O. G. 507; 1897 C. D. 367.
- In re Herault, 5 App. D. C. 90; 70 O. G. 784; 1895 C. D. 177; 29  
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- In re Herbst Importing Co., 30 App. D. C. 297; 134 O. G. 1565.  
Cited in 31 App. D. C. 228.
- In re Hill, 26 App. D. C. 318; 121 O. G. 340; 1906 C. D. 572.
- In re Hodges, 28 App. D. C. 525; 128 O. G. 887; 1907 C. D. 543.
- In re Hoey, 28 App. D. C. 416; 127 O. G. 2817; 1907 C. D. 516.
- In re Hopkins, 29 App. D. C. 118; 128 O. G. 890; 1907 C. D. 549.
- In re Indian Portland Cement Co., 30 App. D. C. 463; 134 O. G. 518. Cited in 31 App. D. C. 509.
- In re Iwan, 17 App. D. C. 566; 95 O. G. 441; 1901 C. D. 344.
- In re Key, 189 U. S. 84.
- In re Klemm, 21 App. D. C. 186; 103 O. G. 1682; 1903 C. D. 540.
- In re Lacroix, 30 App. D. C. 299; 133 O. G. 2181.
- In re Locke, 17 App. D. C. 314; 94 O. G. 432; 1901 C. D. 267.
- In re Lowry, 14 App. D. C. 473; 88 O. G. 717; 1899 C. D. 410.
- In re McCreery, 12 App. D. C. 517; 79 O. G. 1684; 1897 C. D. 480.
- In re McNeill, 20 App. D. C. 294; 100 O. G. 2178; 1902 C. D. 563.
- In re McNiel, 28 App. D. C. 461; 126 O. G. 3425; 1907 C. D. 478.
- In re Mark Cross Company, 26 App. D. C. 101; 116 O. G. 2534;  
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- In re Marshutz, 13 App. D. C. 228; 85 O. G. 778; 1898 C. D. 578. Cited in 20 App. D. C. 301; 31 *Ib.* 165.



- In re Marsden, 14 App. D. C. 223; 87 O. G. 1239; 1899 C. D. 339.
- In re Mason, 31 App. D. C. 539; 136 O. G. 441.
- In re Mergenthaler Linotype Co., 66 O. G. 1311; 1894 C. D. 186.
- In re Messinger, 12 App. D. C. 532; 83 O. G. 1995; 1898 C. D. 506.
- In re Milans, 31 App. D. C. 269; 135 O. G. 1126.
- In re Millett, 18 App. D. C. 186; 96 O. G. 1241; 1901 C. D. 410.
- In re Mills, 25 App. D. C. 377; 117 O. G. 904; 1905 C. D. 677.
- In re Moeser, 27 App. D. C. 307; 123 O. G. 655; 1906 C. D. 685.
- In re Mond's Appeal, 16 App. D. C. 351; 91 O. G. 1437; 1900 C. D. 298.
- In re Mower, 15 App. D. C. 144; 88 O. G. 191; 1899 C. D. 395.  
Cited in 17 App. D. C. 343; 19 Ib. 380; 24 Ib. 270; 26 Ib. 418.
- In re Musgrave, 10 App. D. C. 164; 25 W. L. R. 285; 78 O. G. 2047; 1897 C. D. 336. Cited in 11 App. D. C. 590.
- In re Mygatt, 26 App. D. C. 366; 121 O. G. 1676; 1906 C. D. 596.
- In re National Phonograph Co., 29 App. D. C. 142; 128 O. G. 1295; 1907 C. D. 550.
- In re Neill, 11 App. D. C. 584; 100 O. G. 1976; 1902 C. D. 313.  
Cited in 13 App. D. C. 236; 14 Ib. 237; 16 Ib. 565; 20 Ib. 301; 28 Ib. 15.
- In re Nimmy, 13 App. D. C. 565; 86 O. G. 345; 1899 C. D. 265.
- In re Pearsall, 31 App. D. C. 265; 135 O. G. 221.
- In re Schaeffer, 2 App. D. C. 1; 66 O. G. 514; 1894 O. G. 134.
- In re Schraubstadter, 26 App. D. C. 331; 120 O. G. 1167; 1906 C. D. 541.
- In re Scott, 25 App. D. C. 307; 117 O. G. 278; 1905 C. D. 665.
- In re Seabury, 23 App. D. C. 377; 110 O. G. 2238; 1904 C. D. 655.
- In re Sheldon, 31 App. D. C. 201; 135 O. G. 1585.
- In re Smith, 14 App. D. C. 181; 87 O. G. 893; 1899 C. D. 313.  
Cited in 15 App. D. C. 519.
- In re Snyder, 10 App. D. C. 140; 25 W. L. R. 142; 78 O. G. 485; 1897 C. D. 254. Cited in 12 App. D. C. 520.
- In re Spitteler, 31 App. D. C. 271; 134 O. G. 1301.
- In re Standard Underground Cable Co., 27 App. D. C. 320; 123 O. G. 656, 1906 C. D. 687.

- In re Starkey, 21 App. D. C. 519; 104 O. G. 2150; 1903 C. D. 607. Cited in 30 App. D. C. 97.
- In re Swinburne, 19 App. D. C. 565; 99 O. G. 1625; 1902 C. D. 537.
- In re Taylor, 31 App. D. C. 529; 136 O. G. 1767.
- In re Thomson, 26 App. D. C. 419; 120 O. G. 2756; 1906 C. D. 566. Cited in 30 App. D. C. 54.
- In re Thurston, 26 App. D. C. 315; 120 O. G. 1166; 1906 C. D. 539.
- In re Tournier, 17 App. D. C. 481; 94 O. G. 2166; 1901 C. D. 306.
- In re Verley, 19 App. D. C. 597; 99 O. G. 2323; 1902 C. D. 543.
- In re Volkmann, 28 App. D. C. 441; 126 O. G. 2593.
- In re Wagner, 22 App. D. C. 267; 105 O. G. 1783; 1903 C. D. 629. Cited in 31 App. D. C. 275.
- In re Warren, 30 App. D. C. 308; 134 O. G. 258.
- In re Weber, 26 App. D. C. 29; 117 O. G. 1494; 1905 C. D. 693.
- In re Weiss, 21 App. D. C. 214; 103 O. G. 1918; 1903 C. D. 546.
- In re Welch, 28 App. D. C. 362; 125 O. G. 2767; 1906 C. D. 758.
- In re Weston, 17 App. D. C. 431; 94 O. G. 1786; 1901 C. D. 290.  
Cited in 21 App. D. C. 31.
- In re White, 31 App. D. C. 607; 136 O. G. 1771.
- In re Wickers & Furlong, 29 App. D. C. 71; 129 O. G. 2074; 1907 C. D. 608.
- In re William Connors Paint Manuf. Co., 27 App. D. C. 389; 123 O. G. 999; 1906 C. D. 696. Cited in 27 App. D. C. 391.
- In re Williams, 30 App. D. C. 117; 130 O. G. 1692; 1907 C. D. 664.
- International Silverware Co., Rogers v., 30 App. D. C. 97; 129 O. G. 3503.
- Iwan, In re, 17 App. D. C. 566; 95 O. G. 441; 1901 C. D. 344.
- Jackson v. Getz, 16 App. D. C. 343; 91 O. G. 1036; 1900 C. D. 284.
- Jackson v. Knapp, 16 App. D. C. 338; 91 O. G. 1034; 1900 C. D. 281.
- Jansson v. Larsson, 30 App. D. C. 203; 132 O. G. 477.
- Jenner v. Dickinson, 25 App. D. C. 316; 117 O. G. 600; 1905 C. D. 672. Cited in 25 App. D. C. 320.
- Johnson, Austin v., 18 App. D. C. 83; 95 O. G. 2685; 1901 C. D. 391.

- Johnson v. Mueser, 29 App. D. C. 61. Cited in 29 App. D. C. 140.
- Johnson, Paul v., 23 App. D. C. 187; 109 O. G. 807; 1904 C. D. 610.
- Jones, Busch v., 16 App. D. C. 23; 28 W. L. R. 535. Reversed in 184 U. S. 598.
- Jones v. Cooke, 25 App. D. C. 524, 529; 117 O. G. 1493; 1905 C. D. 694. Cited in 25 App. D. C. 529.
- Jones v. Starr, 26 App. D. C. 64; 117 O. G. 1495; 1905 C. D. 694.
- Kelch, Tyler v., 19 App. D. C. 180; 98 O. G. 1282; 1902 C. D. 506.
- Kelley, Miller v., 18 App. D. C. 163; 96 O. G. 1038; 1901 C. D. 405.
- Kelley, Richenbach v., 17 App. D. C. 333; 94 O. G. 1185; 1901 C. D. 282.
- Kellogg, Carty v., 7 App. D. C. 542; 24 W. L. R. 106; 74 O. G. 657; 1896 C. D. 188.
- Kelly v. Fynn, 16 App. D. C. 573; 92 O. G. 1237; 1900 C. D. 339. Cited in 21 App. D. C. 527, 530; 24 *Ib.* 285; 27 *Ib.* 293; 29 *Ib.* 179.
- Kempshall v. Royce, 29 App. D. C. 181; 129 O. G. 3162; 1907 C. D. 626.
- Kenneweg Co., Michigan Condensed Milk Co., 30 App. D. C. 491; 135 O. G. 451.
- Kenny, Lotz v., 31 App. D. C. 205; 135 O. G. 1801.
- Kentucky Distilleries & W. Co. v. Old Lexington Club Distilling Co., 31 App. D. C. 223; 135 O. G. 220.
- Key, *In re*, 189 U. S. 84.
- Kilbourn v. Hirner, 29 App. D. C. 54; 128 O. G. 1689; 1907 C. D. 552.
- Killinger, Guilbert v., 13 App. D. C. 107; 84 O. G. 313; 1898 C. D. 522.
- Kingsley, Milton v., 7 App. D. C. 531; 24 W. L. R. 18, 129; 75 O. G. 2193; 1896 C. D. 420.
- Kinney, Stapleton v., 18 App. D. C. 394; 96 O. G. 1432; 1901 C. D. 414.
- Kinsman v. Kinter, 31 App. D. C. 293; 136 O. G. 1532.
- Kinsman v. Strohm, 31 App. D. C. 581; 136 O. G. 1769.
- Kirkegaard, Ries v., 30 App. D. C. 199; 132 O. G. 845.
- Klemm, *In re*, 21 App. D. C. 186; 103 O. G. 1682; 1903 C. D. 540.

- Knapp, Jackson v., 16 App. D. C. 338; 91 O. G. 1034; 1900 C. D. 281.
- Knecht, Gaines v., 27 App. D. C. 530; 123 O. G. 657; 1906 C. D. 690.
- Koppel v. Downing, 24 W. L. R. 342.
- Koppel v. Downing, 11 App. D. C. 93; 25 W. L. R. 511.
- Krakau, Ritter v., 24 App. D. C. 271; 114 O. G. 1553; 1905 C. D. 585.
- Kreag v. Geen, 28 App. D. C. 437; 127 O. G. 1581; 1907 C. D. 502. Cited in 29 App. D. C. 65; 31 *Ib.* 589.
- Kyle, Corner v., 24 App. D. C. 291; 114 O. G. 2092; 1905 C. D. 599.
- Laas v. Scott, 26 App. D. C. 354; 122 O. G. 352; 1906 C. D. 621. Cited in 27 App. D. C. 526; 31 *Ib.* 599.
- Lacroix, *In re*, 30 App. D. C. 299; 133 O. G. 2181.
- LaFlare v. Chase, 8 App. D. C. 83; 24 W. L. R. 232; 80 O. G. 83; 1896 C. D. 285.
- Lalor, Hallwood v., 21 App. D. C. 61; 103 O. G. 2173; 1903 C. D. 549.
- Lane v. Levi, 21 App. D. C. 168; 31 W. L. R. 131; 104 O. G. 1898; 1903 C. D. 601.
- Larkin v. Richardson, 28 App. D. C. 471; 127 O. G. 2394; 1907 C. D. 508.
- Larsson, Jansson v., 30 App. D. C. 203; 132 O. G. 477.
- Latham v. Armat, 17 App. D. C. 345; 95 O. G. 232; 1901 C. D. 337. Cited in 19 App. D. C. 378; 21 *Ib.* 201, 205; 24 *Ib.* 468; 27 *Ib.* 234.
- Latshaw, Duff v., 31 App. D. C. 235; 136 O. G. 658.
- Lattig v. Dean, 25 App. D. C. 591; 117 O. G. 1798; 1905 C. D. 698.
- Lemp v. Mudge, 24 App. D. C. 283; 114 O. G. 763; 1905 C. D. 571.
- Leonard, Cutler v., 31 App. D. C. 297; 136 O. G. 438.
- Leslie, Tracy v., 14 App. D. C. 126; 87 O. G. 891; 1899 C. D. 306.
- Levi, Lane v., 21 App. D. C. 168; 31 W. L. R. 131; 104 O. G. 1898; 1903 C. D. 601.
- Levy & Co. v. Uri, 31 App. D. C. 441; 135 O. G. 1363.
- Lewis v. Cronemeyer, 29 App. D. C. 174; 130 O. G. 300; 1907 C. D. 638.

- Lewis, Parkes v., 28 App. D. C. 1; 123 O. G. 2313; 1906 C. D. 735.
- Liberman v. Williams, 23 App. D. C. 223; 109 O. G. 1610; 1904 C. D. 623.
- Linde, Tripler v., 21 App. D. C. 32; 102 O. G. 1297; 1903 C. D. 526.
- Lindemeyer v. Hoffman, 18 App. D. C. 1; 95 O. G. 838; 1901 C. D. 353. Cited in 19 App. D. C. 404, 564; 23 *Ib.* 449; 24 *Ib.* 466.
- Lindmark, De Ferranti v., 30 App. D. C. 417; 134 O. G. 515.
- Lindmark v. Hodgkinson, 31 App. D. C. 612; 137 O. G. 228.
- Lines, Cushman v., 10 App. D. C. 156; 25 W. L. R. 204; 78 O. G. 2051; 1897 C. D. 346.
- Lloyd v. Antidel, 17 App. D. C. 490; 95 O. G. 1645; 1901 C. D. 371.
- Lochren v. United States ex rel. Long, 6 App. D. C. 486; 23 W. L. R. 358.
- Locke v. Boch, 17 App. D. C. 75; 93 O. G. 1722; 1900 C. D. 399.
- Locke, In re, 17 App. D. C. 314; 94 O. G. 432; 1901 C. D. 267.
- Loewer, Ross v., 9 App. D. C. 563; 24 W. L. R. 827; 77 O. G. 2141; 1896 C. D. 665.
- Long, Hulett v., 15 App. D. C. 284; 89 O. G. 1141; 1899 C. D. 446.
- Long, Lochren v., 6 App. D. C. 486; 23 W. L. R. 358.
- Loomis v. Hauser, 19 App. D. C. 401; 99 O. G. 1172; 1902 C. D. 530. Cited in 21 App. D. C. 529; 23 *Ib.* 449; 24 *Ib.* 466.
- Lotterhand v. Hanson, 23 App. D. C. 372; 110 O. G. 861; 1904 C. D. 646.
- Lotz v. Kenny, 31 App. D. C. 205; 135 O. G. 1801. Cited in 31 App. D. C. 275.
- Louden, Porter v., 7 App. D. C. 64; 23 W. L. R. 689; 73 O. G. 1551; 1895 C. D. 707.
- Lowrie v. Taylor, 27 App. D. C. 522; 123 O. G. 1665; 1906 C. D. 713. Cited in 27 App. D. C. 527; 29 *Ib.* 392, 394.
- Lowrie, Taylor v., 27 App. D. C. 527; 123 O. G. 1991; 1906 C. D. 722.
- Lowry, Allen v., 26 App. D. C. 8; 33 W. L. R. 354.
- Lowry, In re, 14 App. D. C. 473; 88 O. G. 717; 1899 C. D. 410.
- Luger v. Browning, 21 App. D. C. 201; 104 O. G. 1123; 1903 C. D. 593. Cited in 24 App. D. C. 481; 27 *Ib.* 234; 28 *Ib.* 4, 78, 409; 31 *Ib.* 164, 210.
- Lyndmark, De Ferranti v., 30 App. D. C. 417.

- McArthur v. Mygatt, 31 App. D. C. 514; 136 O. G. 661.
- McBerty v. Cook, 16 App. D. C. 133; 90 O. G. 2295; 1900 C. D. 248. Cited in 17 App. D. C. 561; 19 Ib. 380; 20 Ib. 261; 21 Ib. 202, 207; 22 Ib. 218; 24 Ib. 80, 270, 281, 483; 26 Ib. 341, 394; 31 Ib. 164, 210.
- McBerty, Fowler v., 27 App. D. C. 41, 46; 121 O. G. 1015; 1906 C. D. 585.
- McCaslin, Hunt v., 10 App. D. C. 527; 25 W. L. R. 528; 79 O. G. 861; 1897 C. D. 401.
- McCormick v. Cleal, 12 App. D. C. 335; 83 O. G. 1514; 1898 C. D. 492. Cited in 15 App. D. C. 164; 17 App. D. C. 401; 21 Ib. 64; 24 Ib. 484; 27 Ib. 570; 29 Ib. 185.
- McCormick v. Hallwood, 30 App. D. C. 106; 130 O. G. 1487; 1907 C. D. 656.
- McCormick, Robinson v., 29 App. D. C. 98; 128 O. G. 3289; 1907 C. D. 574.
- McCreery, In re, 12 App. D. C. 517; 79 O. G. 1684; 1897 C. D. 480.
- McDermott, Corry v., 25 App. D. C. 305; 117 O. G. 279; 1905 C. D. 668.
- Macdonald v. Edison, 21 App. D. C. 527; 105 O. G. 1263; 1903 C. D. 622. Cited in 24 App. D. C. 467; 26 Ib. 336; 29 Ib. 141.
- McDonald, Orcutt v., 27 App. D. C. 228; 123 O. G. 1287; 1906 C. D. 705.
- McElroy, Bliss v., 29 App. D. C. 120; 128 O. G. 458; 1907 C. D. 537.
- McHenry, Sharer v., 19 App. D. C. 158; 98 O. G. 585; 1902 C. D. 503.
- McIlhenny's Son v. New Iberia Extract Co., 30 App. D. C. 337; 133 O. G. 995.
- McInnerney, Podlesak v., 26 App. D. C. 399; 120 O. G. 2127; 1906 C. D. 558.
- McIntosh, Potter v., 28 App. D. C. 510; 127 O. G. 1995; 1907 C. D. 505.
- McKee, Wickers v., 29 App. D. C. 4, 21, 25, 28; 129 O. G. 1269; 1907 C. D. 587, 600, 601, 603.
- McKenzie v. Cummings, 24 App. D. C. 137; 112 O. G. 1481; 1904 C. D. 683. Cited in 29 App. D. C. 13, 173.
- McKillop v. Fetzer, 31 App. D. C. 586; 136 O. G. 1770.
- McKnight v. Pohle, 22 App. D. C. 219; 105 O. G. 977; 1903 C. D. 619.

- McKnight v. Pohle, 30 App. D. C. 92; 130 O. G. 2069; 1907 C. D. 666.
- McLean Co. v. Adams Manuf. Co., 31 App. D. C. 509; 136 O. G. 440.
- McMulkin v. Bollee, 30 App. D. C. 112; 130 O. G. 1691.
- McNeill, In re, 20 App. D. C. 294; 100 O. G. 2178; 1902 C. D. 563. Cited in 26 App. D. C. 330.
- McNeil, In re, 28 App. D. C. 461; 126 O. G. 3425; 1907 C. D. 478.
- McRoberts, Doyle v., 10 App. D. C. 445; 25 W. L. R. 574; 79 O. G. 1029; 1897 C. D. 413.
- Maltine Co., Peter Schoenhofen Brewing Co. v., 30 App. D. C. 340, 346; 134 O. G. 1805.
- Mark Cross Company, In re, 26 App. D. C. 101; 116 O. G. 2534; 1905 C. D. 658.
- Marsden, In re, 14 App. D. C. 223; 87 O. G. 1239; 1899 C. D. 339.
- Marshutz, In re, 13 App. D. C. 228; 85 O. G. 778; 1898 C. D. 578.
- Martin v. Martin & Bowne Co., 27 App. D. C. 59; 122 O. G. 734; 1906 C. D. 642. Cited in 31 App. D. C. 505.
- Martin & Bowne Co., Martin v., 27 App. D. C. 59.
- Marvel v. Decker, 13 App. D. C. 562; 86 O. G. 348; 1899 C. D. 271. Cited in 19 App. D. C. 384; 24 Ib. 485; 26 Ib. 363.
- Mason v. Hepburn, 13 App. D. C. 86; 84 O. G. 147; 1898 C. D. 510. Cited in 14 App. D. C. 49, 53; 15 Ib. 27, 163; 16 Ib. 139; 17 Ib. 322, 343; 18 Ib. 5, 138; 19 Ib. 380, 404, 564; 20 Ib. 261; 21 Ib. 29, 87, 529; 22 Ib. 218; 23 Ib. 449; 24 Ib. 80, 466, 474; 25 Ib. 77; 26 Ib. 340; 29 Ib. 126, 128, 129, 396; 31 Ib. 625.
- Mason, In re, 31 App. D. C. 539; 136 O. G. 441.
- Matthes v. Burt, 24 App. D. C. 265; 114 O. G. 764; 1905 C. D. 574. Cited in 29 App. D. C. 127; 31 Ib. 625.
- Mauldin, Swihart v., 19 App. D. C. 570; 99 O. G. 2322; 1902 C. D. 540.
- Mead v. Davis, 31 App. D. C. 601; 136 O. G. 2001.
- Meissner, Murphy v., 24 App. D. C. 260; 114 O. G. 1830; 1905 C. D. 592.
- Meissner, Richards v., 24 App. D. C. 305; 114 O. G. 1831; 1905 C. D. 595.
- Mell v. Midgley, 31 App. D. C. 534; 136 O. G. 1534.

- Mergenthaler v. Scudder, 11 App. D. C. 264; 25 W. L. R. 654; 81 O. G. 1417; 1897 C. D. 724. Cited in 14 App. D. C. 141; 15 *Ib.* 161; 17 *Ib.* 336; 21 *Ib.* 212; 19 *Ib.* 163, 389; 29 *Ib.* 395.
- Mergenthaler Linotype Co., *In re*, 66 O. G. 1311; 1894 C. D. 186.
- Messinger, *In re*, 12 App. D. C. 532; 26 W. L. R. 562; 83 O. G. 1995; 1898 C. D. 506.
- Meyer v. Rothe, 13 App. D. C. 97; 84 O. G. 649; 1898 C. D. 534.
- Meyer v. Sarfert, 21 App. D. C. 26; 102 O. G. 1555; 1903 C. D. 529.
- Michigan Condensed Milk Co. v. Kenneweg Co., 30 App. D. C. 491; 135 O. G. 451.
- Midgley, Mell v., 31 App. D. C. 534; 136 O. G. 1534.
- Miehle v. Read, 18 App. D. C. 128; 96 O. G. 426; 1901 C. D. 396. Cited in 24 App. D. C. 281.
- Miel v. Young, 29 App. D. C. 481; 128 O. G. 2532; 1907 C. D. 561.
- Milans, *In re*, 31 App. D. C. 269; 135 O. G. 1126.
- Miller, Columbia National Sand Dredging Co. v., 20 App. D. C. 245; 30 W. L. R. 469.
- Miller v. Kelley, 18 App. D. C. 163; 96 O. G. 1038; 1901 C. D. 405. Cited in 21 App. D. C. 99; 28 *Ib.* 440.
- Millett v. Allen, 27 App. D. C. 70; 124 O. G. 1524; 1906 C. D. 752.
- Millett, *In re*, 18 App. D. C. 186; 96 O. G. 1241; 1901 C. D. 410.
- Mills, *In re*, 25 App. D. C. 377; 117 O. G. 904; 1905 C. D. 677.
- Milton v. Kingsley, 7 App. D. C. 531; 24 W. L. R. 18, 129; 75 O. G. 2193; 1896 C. D. 420. Cited in 10 App. D. C. 534; 15 *Ib.* 514; 17 *Ib.* 496; 19 *Ib.* 198; 21 *Ib.* 99, 211; 27 *Ib.* 234; 28 *Ib.* 440, 478; 29 *Ib.* 106, 108.
- Moeser, *In re*, 27 App. D. C. 307; 123 O. G. 655; 1906 C. D. 685.
- Mond's Appeal, *In re*, 16 App. D. C. 351; 91 O. G. 1437; 1900 C. D. 298.
- Monell, Talbot v., 23 App. D. C. 108; 109 O. G. 280; 1904 C. D. 606.
- Monell, Talbot v., 23 App. D. C. 112; 109 O. G. 554; 1904 C. D. 609.
- Moore, Frasch v., 211 U. S. 1; 137 O. G. 230.
- Moore v. Hewitt, 31 App. D. C. 577; 136 O. G. 1535.



- Moore, United States ex rel. Newcomb Motor Co., v. 30 App. D. C. 464; 133 O. G. 1680.
- Mower, Appeal of, In re, 15 App. D. C. 144; 88 O. G. 191; 1899 C. D. 395. Cited in 17 App. D. C. 343; 19 Ib. 380.
- Mudge, Lemp v., 24 App. D. C. 282; 114 O. G. 763; 1905 C. D. 571.
- Mueser, Johnson v., 29 App. D. C. 61.
- Muller, Schuster & Co. v., 28 App. D. C. 409; 126 O. G. 2192; 1907 C. D. 455.
- Munster v. Ashworth, 29 App. D. C. 84; 128 O. G. 2088; 1907 C. D. 556.
- Murphey, Case v., 31 App. D. C. 245; 136 O. G. 228.
- Murphy, Adams v., 18 App. D. C. 172; 96 O. G. 845; 1901 C. D. 401.
- Murphy v. Meissner, 24 App. D. C. 260; 114 O. G. 1830; 1905 C. D. 592. Cited in 24 App. D. C. 308.
- Musgrave, In re, 10 App. D. C. 164; 25 W. L. R. 285; 78 O. G. 2047; 1897 C. D. 336.
- Mutual District Messenger Co. v. Wight, 15 App. D. C. 463; 28 W. L. R. 57.
- Mygatt, In re, 26 App. D. C. 366; 121 O. G. 1676; 1906 C. D. 596.
- Mygatt, McArthur v., 31 App. D. C. 514; 136 O. G. 661.
- Nathan Manuf. Co., Edna Smelting & Refining Co. v., 30 App. D. C. 487; 135 O. G. 664.
- National Phonograph Co. v. Allen, 101 O. G. 1133; 1902 C. D. 571.
- National Phonograph Co., In re, 29 App. D. C. 142; 128 O. G. 1295; 1907 C. D. 550.
- National Railway Publishing Co., Payne v., 20 App. D. C. 581; 30 W. L. R. 791.
- Natural Food Co. v. Williams, 30 App. D. C. 348; 133 O. G. 232.
- Neill, In re, 11 App. D. C. 584; 100 O. G. 1976; 1902 C. D. 313.
- Nelson, Seymour v., 11 App. D. C. 58; 25 W. L. R. 542; 79 O. F. 1522; 1897 C. D. 471.
- Neth v. Ohmer, 27 App. D. C. 319; 123 O. G. 998; 1906 C. D. 693.
- Neth v. Ohmer, 30 App. D. C. 478; 135 O. G. 662.
- Newcomb Motor Co. v. Allen, 130 O. G. 302.
- Newcomb Motor Co. v. Moore, 30 App. D. C. 464; 133 O. G. 1680.

- Newell, Clifford v., 31 App. D. C. 195; 135 O. G. 1361.  
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 Newman, Hopkins v., 30 App. D. C. 402; 134 O. G. 2028.  
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 Newton, Esty v., 14 App. D. C. 50; 86 O. G. 799; 1899 C. D.  
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- O'Connell v. Schmidt, 27 App. D. C. 77; 122 O. G. 2065; 1906  
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- Ocumpaugh v. Norton, 24 App. D. C. 296; 32 W. L. R. 846.  
 Ocumpaugh v. Norton, 25 App. D. C. 90; 115 O. G. 1850; 1905  
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- Office Specialty & Manuf. Co. v. Fenton Metallic Manuf. Co.,  
 174 U. S. 492; 43 L. Ed. 1058; 19 S. Ct. 541; reversing 12  
 App. D. C. 201. Cited in 116 Fed. R. 369; 122 Ib. 648; 133  
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- Ogle, Williams v., 14 App. D. C. 145; 87 O. G. 1958; 1899 C. D. 367.
- Ohmer, Neth v., 27 App. D. C. 319; 123 O. G. 998; 1906 C. D. 693.
- Ohmer, Neth v., 30 App. D. C. 478; 135 O. G. 662.
- Ohmer v. Ohmer, 30 App. D. C. 478; 135 O. G. 662.
- Old Lexington Club Distilling Co., Kentucky Distilleries & W. Co. v., 31 App. D. C. 223; 135 O. G. 220.
- Oliver v. Felbel, 20 App. D. C. 255; 100 O. G. 2384; 1902 C. D. 565. Cited in 21 App. D. C. 23, 202, 205; 22 Ib. 218; 24 Ib. 80, 270; 25 Ib. 591; 26 Ib. 341; 28 Ib. 78, 79, 531.
- Onderdonk v. Parkes, 31 App. D. C. 214; 135 O. G. 665.
- Orcutt v. McDonald, 27 App. D. C. 228; 123 O. G. 1287; 1906 C. D. 705. Cited in 29 App. D. C. 489.
- Ostergren v. Tripler, 17 App. D. C. 557; 95 O. G. 837; 1901 C. D. 350. Cited in 19 App. D. C. 400; 24 Ib. 481; 28 Ib. 409.
- Ostrom, Quist v., 23 App. D. C. 69; 108 O. G. 2147; 1904 C. D. 594.
- Park, Cain v., 14 App. D. C. 42; 86 O. G. 797; 1899 C. D. 278.
- Parker v. Appert, 8 App. D. C. 270; 24 W. L. R. 550; 75 O. G. 1201; 1896 C. D. 371.
- Parkes v. Lewis, 28 App. D. C. 1; 123 O. G. 2313; 1906 C. D. 735. Cited in 28 App. D. C. 81.
- Parkes, Onderdonk v., 31 App. D. C. 214; 135 O. G. 665.
- Parmelee, Hill v., 9 App. D. C. 503; 25 W. L. R. 3; 78 O. G. 170; 1897 C. D. 214.
- Paul v. Hess, 24 App. D. C. 462; 115 O. G. 251; 1905 C. D. 610. Cited in 24 App. D. C. 485; 25 Ib. 313; 26 Ib. 362, 415, 418; 29 Ib. 15, 141; 31 Ib. 581.
- Paul v. Johnson, 23 App. D. C. 187; 109 O. G. 807; 1904 C. D. 610. Cited in 28 App. D. C. 8.
- Payne v. United States ex rel. National Railway Pub. Co., 20 App. D. C. 581; 30 W. L. R. 791. Cited in 194 U. S. 97; 22 App. D. C. 244.
- Pearsall, In re, 31 App. D. C. 265; 135 O. G. 221.
- Peckham v. Price, 26 App. D. C. 556.
- Peller, Gibbons v., 28 App. D. C. 530; 127 O. G. 3643; 1907 C. D. 529.
- Peter Schoenhofen Brewing Co., Maltine Co. v., 30 App. D. C. 340, 346.

- Peters, Hisey v., 6 App. D. C. 68; 23 W. L. R. 297; 71 O. G. 892; 1895 C. D. 349.
- Peters Cartridge Co., Winchester Repeating Arms Co. v., 30 App. D. C. 505; 134 O. G. 2030.
- Petrie v. De Schweinitz, 19 App. D. C. 386; 99 O. G. 1387; 1902 C. D. 534. Cited in 21 App. D. C. 212.
- Phillips, Cross v., 14 App. D. C. 228; 87 O. G. 1399; 1899 C. D. 342.
- Phillips v. Sensenich, 31 App. D. C. 159; 134 O. G. 1806. Cited in 31 App. D. C. 209.
- Pickles v. Aglar, 13 App. D. C. 556; 86 O. G. 346; 1899 C. D. 268.
- Platt v. Shipley, 11 App. D. C. 576; 82 O. G. 461; 1898 C. D. 307. Cited in 15 App. D. C. 142; 19 *Ib.* 384, 390; 24 *Ib.* 484; 26 *Ib.* 363; 31 *Ib.* 601.
- Podlesak v. McInnerney, 26 App. D. C. 399; 120 O. G. 2127; 1906 C. D. 558. Cited in 28 App. D. C. 4, 89, 514; 29 *Ib.* 19, 57, 70, 484; 31 *Ib.* 614.
- Pohl, Bossart v., 31 App. D. C. 218; 135 O. G. 453.
- Pohle, McKnight v., 22 App. D. C. 219; 105 O. G. 977; 1903 C. D. 619.
- Pohle, McKnight v., 30 App. D. C. 92; 130 O. G. 2069; 1907 C. D. 666.
- Poor, Woods v., 29 App. D. C. 397; 130 O. G. 1313; 1907 C. D. 651.
- Porter v. Loudon, 7 App. D. C. 64; 23 W. L. R. 689; 73 O. G. 1551; 1895 C. D. 707. Cited in 9 App. D. C. 212; 10 *Ib.* 179; 11 *Ib.* 269; 13 *Ib.* 89, 564; 14 *Ib.* 50; 19 *Ib.* 384; 28 *Ib.* 545.
- Potter v. McIntosh, 28 App. D. C. 510; 127 O. G. 1995; 1907 C. D. 505.
- Powrie, Flora v., 23 App. D. C. 195; 109 O. G. 2443; 1904 C. D. 636.
- Price, Peckham v., 26 App. D. C. 556.
- Prindle v. Brown, 24 App. D. C. 114; 112 O. G. 957; 1904 C. D. 680. Cited in 29 App. D. C. 136; 31 *Ib.* 222.
- Pungs, Hein v., 9 App. D. C. 492; 77 O. G. 1600; 1896 C. D. 649.
- Pupin, Stone v., 19 App. D. C. 396; 100 O. G. 1113; 1902 C. D. 550.

- Quist v. Ostrom, 23 App. D. C. 69; 108 O. G. 2147; 1904 C. D. 594. Cited in 25 App. D. C. 315.
- Read, Miehle v., 18 App. D. C. 128; 96 O. G. 426; 1901 C. D. 396.
- Regina Music Box Co. (U. S. ex rel.), Allen v., 22 App. D. C. 271; 31 W. L. R. 476; 105 O. G. 747; 1903 C. D. 615.
- Reichenbach v. Kelly, 17 App. D. C. 333; 94 O. G. 1185; 1901 C. D. 282. Cited in 18 App. D. C. 147; 19 Ib. 378, 380; 21 Ib. 64; 24 Ib. 270, 468.
- Reynolds, Wells v., 4 App. D. C. 43; 22 W. L. R. 723; 69 O. G. 1507; 1894 C. D. 664.
- Reynolds, Wells v., 5 App. D. C. 20; 22 W. L. R. 781.
- Rice, Duryea v., 28 App. D. C. 423; 126 O. G. 1357; 1907 C. D. 443.
- Richards v. Burkholder, 29 App. D. C. 485; 128 O. G. 2533; 1907 C. D. 563. Cited in 31 App. D. C. 625.
- Richards v. Meissner, 24 App. D. C. 305; 114 O. G. 1831; 1905 C. D. 595. Cited in 27 App. D. C. 320; 29 Ib. 138; 31 Ib. 307, 585.
- Richardson, Larkin v., 28 App. D. C. 471; 127 O. G. 2394; 1907 C. D. 508.
- Ries v. Kirkegaard, 30 App. D. C. 199; 132 O. G. 845.
- Riordan v. Stout, 17 App. D. C., 397; 29 W. L. R. 141.
- Ritter v. Krakau, 24 App. D. C. 271; 114 O. G. 1553; 1905 C. D. 585.
- Riverside Oil Co. v. Hitchcock, 21 App. D. C. 252; 31 W. L. R. 174.
- Roberts v. Brinkman, 10 App. D. C. 543; 25 W. L. R. 543; 79 O. G. 1190; 1897 C. D. 427.
- Roberts v. United States ex rel. Valentine, 13 App. D. C. 38; 26 W. L. R. 375. Affirmed in 176 U. S. 221. Cited in 18 App. D. C. 564; 20 Ib. 603; 24 Ib. 562; 25 Ib. 123.
- Robinson v. Copeland, 24 App. D. C. 68; 112 O. G. 501; 1904 C. D. 664. Cited in 28 App. D. C. 7.
- Robinson v. McCormick, 29 App. D. C. 98; 128 O. G. 3289; 1907 C. D. 574.
- Robinson v. Seelinger, 25 App. D. C. 237; 116 O. G. 1735; 1905 C. D. 640. Cited in 29 App. D. C. 174.
- Robinson v. Thresher, 28 App. D. C. 22; 123 O. G. 2976; 1906 C. D. 743.

- Roe v. Hanson, 19 App. D. C. 559; 99 O. G. 2550; 1902 C. D. 546. Cited in 20 App. D. C. 261; 21 *Ib.* 87; 24 *Ib.* 80, 270.
- Rogers v. International Silverware Co., 30 App. D. C. 97; 129 O. G. 3503.
- Rolfe v. Hoffman, 26 App. D. C. 336; 121 O. G. 1350; 1906 C. D. 588. Cited in 31 App. D. C. 200.
- Rose v. Clifford, 31 App. D. C. 195; 135 O. G. 1361.
- Rose v. Newell, 31 App. D. C. 195; 135 O. G. 1361.
- Rose Shoe Manuf. Co. v. Rosenbush, 28 App. D. C. 465; 127 O. G. 394; 1907 C. D. 484.
- Rosenbush, Rose Shoe Manuf. Co. v., 28 App. D. C. 465.
- Rosell v. Allen, 16 App. D. C. 559; 92 O. G. 1036; 1900 C. D. 333.
- Rosey, Stern v., 17 App. D. C. 562; 29 W. L. R. 159.
- Ross v. Loewer, 9 App. D. C. 563; 24 W. L. R. 827; 77 O. G. 2141; 1896 C. D. 665.
- Rothe, Meyer v., 13 App. D. C. 97; 84 O. G. 649; 1898 C. D. 534.
- Rousseau v. Brown, 21 App. D. C. 73; 104 O. G. 1120; 1903 C. D. 587.
- Royce, Kempshall v., 29 App. D. C. 181; 129 O. G. 3162; 1907 C. D. 626.
- Ruete v. Elwell, 15 App. D. C. 21; 87 O. G. 2119; 1899 C. D. 379. Cited in 25 App. D. C. 316; 26 *Ib.* 407, 551; 29 *Ib.* 70.
- Rueter & Co., Worster Brewing Corporation, 30 App. D. C. 428; 133 O. G. 1190.
- Russel, Asencio v., 24 App. D. C. 105; 112 O. G. 955; 1904 C. D. 676.
- Russell, Seeberger v., 26 App. D. C. 344; 121 O. G. 2328; 1906 C. D. 612.
- Sachs v. Hundhausen, 21 App. D. C. 511; 105 O. G. 1534; 1903 C. D. 625.
- Sanche v. Electrolibration Co., 4 App. D. C. 453; 22 W. L. R. 769.
- Sarfert, Meyer v., 21 App. D. C. 26; 102 O. G. 1555; 1903 C. D. 529.
- Sawhill, Einstein v., 2 App. D. C. 10; 22 W. L. R. 89; 65 O. G. 1918; 1893 C. D. 677.
- Schaeffer, Appeal of, 2 App. D. C. 1; 22 W. L. R. 81.
- Schellenger, Dunbar v., 29 App. D. C. 129; 128 O. G. 2837; 1907 C. D. 567.

- Schmertz, Appert v., 13 App. D. C. 117; 84 O. G. 508; 1898 C. D. 524.
- Schmidt, O'Connell v., 27 App. D. C. 77; 122 O. G. 2065; 1906 C. D. 662.
- Schnabel, Shellaberger v., 10 App. D. C. 145; 25 W. L. R. 269; 79 O. G. 339; 1897 C. D. 364.
- Schneider, Union Distilling Co. v., 29 App. D. C. 1; 129 O. G. 2503; 1907 C. D. 613.
- Schoenhofen Brewing Co., Maltine Co. v., 30 App. D. C. 340, 346; 134 O. G. 1805.
- Schraubstradter, In re, 26 App. D. C. 331; 120 O. G. 1167; 1906 C. D. 541.
- Schupphaus v. Stevens, 17 App. D. C. 548; 95 O. G. 1452; 1901 C. D. 365. Cited in 19 App. D. C. 400; 24 Ib. 481; 28 Ib. 409.
- Schuster Co. v. Muller, 28 App. D. C. 409; 126 O. G. 2192; 1907 C. D. 455.
- Scott, DeWallace v., 15 App. D. C. 157; 88 O. G. 1704; 1899 C. D. 416.
- Scott, In re, 25 App. D. C. 307; 117 O. G. 278; 1905 C. D. 665.
- Scott, Laas v., 26 App. D. C. 354; 122 O. G. 352; 1906 C. D. 621.
- Scott v. Scott, 18 App. D. C. 420; 96 O. G. 1650; 1901 C. D. 419.
- Scudder, Mergenthaler v., 11 App. D. C. 264; 25 W. L. R. 654; 81 O. G. 1417; 1897 C. D. 724.
- Seabury, In re, 23 App. D. C. 377; 110 O. G. 2238; 1904 C. D. 655.
- Seeberger v. Dodge, 24 App. D. C. 476; 114 O. G. 2382; 1905 C. D. 603. Cited in 26 App. D. C. 362, 408; 28 Ib. 6, 22, 409; 29 Ib. 57; 31 Ib. 581, 600.
- Seeberger v. Russel, 26 App. D. C. 344; 121 O. G. 2328; 1906 C. D. 612.
- Seelinger, Robinson v., 25 App. D. C. 237; 116 O. G. 1735; 1905 C. D. 640.
- Seher, Stevens v., 11 App. D. C. 245; 81 O. G. 1932; 1897 C. D. 761.
- Sendelbach v. Gillette, 22 App. D. C. 168; 109 O. G. 276; 1904 C. D. 597. Cited in 27 App. D. C. 123, 234; 29 Ib. 109.
- Sensenich, Phillips v., 31 App. D. C. 159; 134 O. G. 1806.
- Seymour, Durham v., 6 App. D. C. 78; 23 W. L. R. 273; 71 O. G. 601; 1895 C. D. 307. Dismissed in 161 U. S. 235.
- Seymour, Durham v., 10 App. D. C. 274; 25 W. L. R. 9.

- Seymour v. Nelson, 11 App. D. C. 58; 25 W. L. R. 542; 79 O. G. 1522; 1897 C. D. 471.
- Seymour, Southall v., 79 O. G. 1624; 1897 C. D. 480.
- Seymour v. South Carolina, 2 App. D. C. 240; 21 W. L. R. 675; 66 O. G. 1167; 1894 C. D. 174. Dismissed in 153 U. S. 353.
- Seymour, United States ex rel. Bernardin v., 10 App. D. C. 294; 25 W. L. R. 513; 79 O. G. 1190; 1897 C. D. 428. Reversed in 169 U. S. 600.
- Seymour, United States ex rel. Bernardin v., 11 App. D. C. 91; 25 W. L. R. 513; 79 O. G. 1190; 1897 C. D. 428.
- Seymour, United States ex rel. Brodie v., 10 App. D. C. 567; 25 W. L. R. 183, 253; 79 O. G. 509; 1897 C. D. 372. Cited in 17 App. D. C. 554.
- Seymour v. United ex rel. South Carolina, 2 App. D. C. 240; 21 W. L. R. 675. Dismissed in 153 U. S. 353. Cited in 15 App. D. C. 469; 155 U. S. 509; 161 Ib. 32; 163 Ib. 321; 166 Ib. 311; 168 Ib. 435; 72 Fed. R. 659.
- Shaffer v. Dolan, 23 App. D. C. 79; 108 O. G. 2146; 1904 C. D. 592.
- Sharer v. McHenry, 19 App. D. C. 158; 98 O. G. 585; 1902 C. D. 503. Cited in 21 App. D. C. 212, 527, 530.
- Sheldon, In re, 31 App. D. C. 201; 135 O. G. 1585.
- Shellaberger v. Schnabel, 10 App. D. C. 145; 25 W. L. R. 269; 79 O. G. 339; 1897 C. D. 364.
- Shellaberger v. Sommer, 8 App. D. C. 3; 24 W. L. R. 136; 74 O. G. 1897; 1896 C. D. 292. Cited in 10 App. D. C. 155.
- Sherwood v. Drewson, 29 App. D. C. 161; 130 O. G. 657; 1907 C. D. 642.
- Shipley, Platt v., 11 App. D. C. 576; 82 O. G. 461; 1898 C. D. 307.
- Shuman v. Beall, 27 App. D. C. 324, 329; 123 O. G. 1664; 1906 C. D. 710.
- Silverman v. Hendrickson, 19 App. D. C. 381; 99 O. G. 1171; 1902 C. D. 527.
- Simonds, Backus Portable Steam Heater Co. v., 2 App. D. C. 290; 22 W. L. R. 137; 66 O. G. 1893; 1894 C. D. 211.
- Simpson, Hodgins v., 82 O. G. 190; 1898 C. D. 296.
- Sir W. G. Armstrong Whitworth & Co. v. Norton, 15 App. D. C. 223; 27 W. L. R. 414.
- Slaughter v. Halle, 21 App. D. C. 19; 102 O. G. 469; 1903 C. D. 519. Cited in 24 App. D. C. 304; 29 Ib. 106.



- Smith's Appeal, In re, 14 App. D. C. 181; 87 O. G. 893; 1899 C. D. 313.
- Smith, Breul v., 10 App. D. C. 180; 25 W. L. R. 198; 78 O. G. 1906; 1897 C. D. 332.
- Smith v. Brooks, 24 App. D. C. 75; 112 O. G. 953; 1904 C. D. 672.
- Smith v. Smith, 31 App. D. C. 518; 136 O. G. 850.
- Smith, Warner v., 13 App. D. C. 111; 84 O. G. 311; 1898 C. D. 517.
- Snyder, In re, 10 App. D. C. 140; 25 W. L. R. 142; 78 O. G. 485; 1897 C. D. 254.
- Sobey v. Holsclaw, 28 App. D. C. 65; 126 O. G. 3041; 1907 C. D. 465. Cited in 28 App. D. C. 513, 514; 29 *Ib.* 65.
- Soley v. Hebbard, 5 App. D. C. 99; 23 W. L. R. 56; 70 O. G. 921; 1895 C. D. 182. Cited in 11 App. D. C. 269; 19 *Ib.* 384.
- Somers & Co. v. Newman, 31 App. D. C. 193; 134 O. G. 2031.
- Sommer, Shellaberger v., 8 App. D. C. 3; 24 W. L. R. 136; 74 O. G. 1897; 1896 C. D. 292.
- South Carolina, Seymour v., 2 App. D. C. 240; 21 W. L. R. 675; 66 O. G. 1167; 1894 C. D. 174. Dismissed in 153 U. S. 353; 67 O. G. 1191; 1894 C. D. 318.
- Southgate, Bechman v., 28 App. D. C. 405; 127 O. G. 1254; 1907 C. D. 489.
- Spalding, In re, 27 App. D. C. 314; 123 O. G. 321; 1906 C. D. 674.
- Spaulding, Norden v., 24 App. D. C. 286; 114 O. G. 1828; 1905 C. D. 588.
- Spitteler and Krische, In re, 31 App. D. C. 271; 134 O. G. 1301.
- St. Amand, Tyler v., 17 App. D. C. 464; 94 O. G. 1969; 1901 C. D. 301.
- Standard Underground Cable Co., In re, 27 App. D. C. 320; 123 O. G. 656; 1906 C. D. 687.
- Stapleton v. Duell, 17 App. D. C. 575; 29 W. L. R. 156; 95 O. G. 1049; 1901 C. D. 359.
- Stapleton v. Kinney, 18 App. D. C. 394; 96 O. G. 1432; 1901 C. D. 414.
- Star Brewing Co., Ehret v., 31 App. D. C. 507; 136 O. G. 1533.
- Starkey, In re, 21 App. D. C. 519; 104 O. G. 2150; 1903 C. D. 607.
- Starr, Jones v., 26 App. D. C. 64; 117 O. G. 1495; 1905 C. D. 694.

- Steinmetz v. Thomas, 31 App. D. C. 574; 137 O. G. 479.
- Steinmetz (U. S. ex rel.) v. Allen, 22 App. D. C. 56; 31 W. L. R. 358; 102 O. G. 231; 1903 C. D. 632. Reversed in 192 U. S. 543; 32 W. L. R. 147; 109 O. G. 549; 1904 C. D. 703.
- Stern, Harris v., 22 App. D. C. 164; 105 O. G. 746; 1903 C. D. 612.
- Stern v. Rosey, 17 App. D. C. 562; 29 W. L. R. 159. Cited in 209 U. S. 12.
- Stevens, Schupphaus v., 17 App. D. C. 548; 95 O. G. 1452; 1901 C. D. 365.
- Stevens v. Scher, 11 App. D. C. 245; 81 O. G. 1932; 1897 C. D. 761. Cited in 14 App. D. C. 236; 17 *Ib.* 556; 24 *Ib.* 473; 26 *Ib.* 28; 27 *Ib.* 522; 28 *Ib.* 8.
- Stikeman, Hunter v., 13 App. D. C. 214; 85 O. G. 610; 1898 C. D. 564.
- Stocker, Fefel v., 17 App. D. C. 317; 94 O. G. 433; 1901 C. D. 269.
- Stone v. Pupin, 19 App. D. C. 396; 100 O. G. 1113; 1902 C. D. 550. Cited in 24 App. D. C. 481; 28 *Ib.* 409.
- Stout, Riordan v., 17 App. D. C. 397; 29 W. L. R. 141.
- Strohm, Kinsman v., 31 App. D. C. 581; 136 O. G. 1769.
- Swenson, Griffin v., 15 App. D. C. 135; 89 O. G. 919; 1899 C. D. 440.
- Swihart v. Mauldin, 19 App. D. C. 570; 99 O. G. 2322; 1902 C. D. 540. Cited in 21 App. D. C. 201, 205; 24 *Ib.* 481; 26 *Ib.* 408; 27 *Ib.* 233; 28 *Ib.* 408.
- Swinburne, *In re*, 19 App. D. C. 565; 99 O. G. 1625; 1902 C. D. 537.
- Talbot v. Monell, 23 App. D. C. 108; 109 O. G. 280; 1904 C. D. 606. Cited in 23 App. D. C. 112.
- Talbot v. Monell, 23 App. D. C. 112; 109 O. G. 554; 1904 C. D. 609.
- Tasker, Dashiell v., 21 App. D. C. 64; 103 O. G. 2174; 1903 C. D. 551.
- Taylor, *In re*, 31 App. D. C. 529; 136 O. G. 1767.
- Taylor, Lowrie v., 27 App. D. C. 522; 123 O. G. 1665; 1906 C. D. 713.
- Taylor v. Lowrie, 27 App. D. C. 527; 123 O. G. 1991; 1906 C. D. 722.
- Thibodeau v. Dickinson, 25 App. D. C. 316; 117 O. G. 600; 1905 C. D. 672. Cited in 25 App. D. C. 320.

- Thibodeau v. Hildreth, 25 App. D. C. 320; 117 O. G. 601; 1905 C. D. 675.
- Thomas, Steinmetz v., 31 App. D. C. 574; 137 O. G. 479.
- Thomas, Trissel v., 23 App. D. C. 219; 109 O. G. 809; 1904 C. D. 616.
- Thomas, Watson v., 23 App. D. C. 65; 108 O. G. 1590; 1904 C. D. 587.
- Thomson, In re, 26 App. D. C. 419; 120 O. G. 2756; 1906 C. D. 566. Cited in 27 App. D. C. 24.
- Thomson v. Weston, 19 App. D. C. 373; 99 O. G. 864; 1902 C. D. 521. Cited in 24 App. D. C. 270; 29 *Ib.* 127; 31 *Ib.* 625.
- Thresher, Robinson v., 28 App. D. C. 22; 123 O. G. 2976; 1906 C. D. 743.
- Thurston, In re, 26 App. D. C. 315; 120 O. G. 1166; 1906 C. D. 539.
- Tournier, In re, 17 App. D. C. 481; 94 O. G. 2166; 1901 C. D. 306.
- Tracy v. Leslie, 14 App. D. C. 126; 87 O. G. 891; 1899 C. D. 306. Cited in 15 App. D. C. 25; 16 *Ib.* 566; 17 *Ib.* 555; 21 *Ib.* 10; 25 *Ib.* 316; 26 *Ib.* 407; 29 *Ib.* 70.
- Traver v. Brown, 14 App. D. C. 34; 1899 C. D. Cited in 15 App. D. C. 27; 17 *Ib.* 344, 470; 18 *Ib.* 147; 19 *Ib.* 377; 21 *Ib.* 64; 23 *Ib.* 74; 24 *Ib.* 468; 25 *Ib.* 313.
- Tripler v. Linde, 21 App. D. C. 32; 95 O. G. 837; 1901 C. D. 350.
- Tripler, Ostergren v., 17 App. D. C. 557; 95 O. G. 837; 1901 C. D. 350.
- Trissel v. Thomas, 23 App. D. C. 219; 109 O. G. 809; 1904 C. D. 616. Cited in 29 App. D. C. 396.
- Turnbull v. Curtis, 27 App. D. C. 567; 123 O. G. 2312; 1906 C. D. 732.
- Tuttle v. Allen, 35 W. L. R. 50.
- Tyler, Arnold v., 10 App. D. C. 175; 25 W. L. R. 250; 79 O. G. 156; 1897 C. D. 349.
- Tyler v. Kelch, 19 App. D. C. 180; 98 O. G. 1282; 1902 C. D. 506.
- Tyler v. St. Amand, 17 App. D. C. 464; 94 O. G. 1969; 1901 C. D. 301. Cited in 19 App. D. C. 389.
- Union Distilling Co. v. Schneider, 29 App. D. C. 1; 129 O. G. 2503; 1907 C. D. 613.
- United States ex rel. Bernardin v. Butterworth, 169 U. S. 600.

- United States ex rel. Bernardin v. Duell, 13 App. D. C. 379; affirmed in 172 U. S. 576.
- United States ex rel. Bernardin v. Seymour, 10 App. D. C. 294; 25 W. L. R. 515; 79 O. G. 1190; 1897 C. D. 428. Reversed in 169 U. S. 600. Cited in 13 App. D. C. 380; 169 U. S. 601.
- United States ex rel. Bernardin v. Seymour, 11 App. D. C. 91; 25 W. L. R. 513; 79 O. G. 1190; 1897 C. D. 428.
- United States ex rel. Brodie v. Seymour, 25 W. L. R. 182.
- United States ex rel. Brodie, Seymour v., 10 App. D. C. 567; 25 W. L. R. 183, 253; 79 O. G. 509; 1897 C. D. 372.
- United States ex rel. Bronson Co. v. Duell, 17 App. D. C. 471; 29 W. L. R. 126.
- United States ex rel. Darling, Bundy v., 25 App. D. C. 459; 33 W. L. R. 434.
- United States ex rel. Everson v. Young, 26 W. L. R. 546.
- United States ex rel. Holzendorf v. Hay, 20 App. D. C. 576; 30 W. L. R. 825.
- United States ex rel. Long, Lochren v., 6 App. D. C. 486; 23 W. L. R. 358.
- United States ex rel. Lowry, Allen v., 26 App. D. C. 8; 33 W. L. R. 354. Affirmed in 203 U. S. 476; 125 O. G. 2365; 1906 C. D. 765.
- United States ex rel. Mutual District Messenger Co. v. Wight, 15 App. D. C. 463; 28 W. L. R. 57.
- United States ex rel. National Railway Pub. Co., Payne v., 20 App. D. C. 581; 30 W. L. R. 791.
- United States ex rel. Newcomb Motor Co. v. Moore, 30 App. D. C. 464; 133 O. G. 1680. Cited in 31 App. D. C. 614.
- United States ex rel. Regina Music Box Co., Allen v. 22 App. D. C. 271; 31 W. L. R. 476; 105 O. G. 747; 1903 C. D. 615.
- United States ex rel. Riverside Oil Co. v. Hitchcock, 21 App. D. C. 252.
- United States ex rel. South Carolina, Seymour v., 2 App. D. C. 240; 21 W. L. R. 675; 66 O. G. 1167; 1894 C. D. 174. Cited in 13 App. D. C. 48; 17 *Ib.* 473.
- United States, ex rel. Stapleton v. Duell, 17 App. D. C. 575; 29 W. L. R. 156; 95 O. G. 1049; 1901 C. D. 359.
- United States ex rel. Steinmetz v. Allen, 22 App. D. C. 56; 31 W. L. R. 358; 102 O. G. 231; 1903 C. D. 632. Reversed in 192 U. S. 543.

- United States ex rel. Tuttle v. Allen, 35 W. L. R. 50.
- United States ex rel. Valentine, Roberts v., 13 App. D. C. 38; 26 W. L. R. 375.
- United States ex rel. Wedderburn v. Bliss, 12 App. D. C. 495; 83 O. G. 296; 1898 C. D. 413. Cited in 27 App. D. C. 465.
- United States Playing Card Co. v. Clark, 30 App. D. C. 208; 132 O. G. 681.
- Upham, Wickers v., 29 App. D. C. 30; 139 O. G. 1612; 1907 C. D. 605.
- Uri, Levy & Co. v., 31 App. D. C. 441; 135 O. G. 1363.
- Vajen, Bader v., 14 App. D. C. 241; 87 O. G. 1235; 1899 C. D. 329.
- Valentine (U. S. ex rel.), Roberts v., 13 App. D. C. 38; 26 W. L. R. 375.
- Verley, In re, 19 App. D. C. 577; 99 O. G. 2323; 1902 C. D. 543.
- Viele v. Cummings, 30 App. D. C. 455; 134 O. G. 777.
- Vogel, Burson v., 29 App. D. C. 388; 131 O. G. 942; 1907 C. D. 669.
- Voight, Hope v., 25 App. D. C. 22; 115 O. G. 1585; 1905 C. D. 629.
- Volkman, In re, 28 App. D. C. 441; 126 O. G. 2593; 1907 C. D. 462.
- Wagner, In re, 22 App. D. C. 267; 31 W. L. R. 487; 105 O. G. 1783; 1903 C. D. 629.
- Warner v. Smith, 13 App. D. C. 111; 84 O. G. 311; 1898 C. D. 517. Cited in 14 App. D. C. 49, 53; 15 Ib. 162; 16 Ib. 139; 17 Ib. 322, 470; 18 Ib. 147, 176; 19 Ib. 377; 20 Ib. 261; 23 Ib. 74; 24 Ib. 80, 270; 26 Ib. 336; 29 Ib. 128, 487.
- Warren, In re, 30 App. D. C. 308; 134 O. G. 258.
- Washington Railway & Electric Co., Brill v., 30 App. D. C. 255; 36 W. L. R. 55; 134 O. G. 1563.
- Watson v. Thomas, 23 App. D. C. 65; 108 O. G. 1590; 1904 C. D. 587. Cited in 27 App. D. C. 83.
- Weber, Flather v., 21 App. D. C. 179; 104 O. G. 312; 1903 C. D. 561.
- Weber, In re, 26 App. D. C. 29; 117 O. G. 1494; 1905 C. D. 693.
- Wedderburn (U. S. ex rel.) v. Bliss, 12 App. D. C. 485; 26 W. L. R. 293; 83 O. G. 296; 1898 C. D. 413.
- Weeks v. Dale, 30 App. D. C. 498; 135 O. G. 218.

- Weiss, *In re*, 21 App. D. C. 214; 103 O. G. 1918; 1903 C. D. 546.
- Welch, *In re*, 28 App. D. C. 362; 125 O. G. 2767; 1906 C. D. 758.
- Wells, *Anderson v.*, 27 App. D. C. 115; 122 O. G. 3014; 1906 C. D. 667.
- Wells v. Reynolds, 4 App. D. C. 43; 22 W. L. R. 723; 69 O. G. 1507; 1894 C. D. 664.
- Wells v. Reynolds, 5 App. D. C. 20; 22 W. L. R. 781.
- Wende, *Horine v.*, 29 App. D. C. 415; 129 O. G. 2858; 1907 C. D. 615.
- Wentworth, *Gordon v.*, 31 App. D. C. 150; 135 O. G. 1125.
- West (U. S. ex rel.) v. Hitchcock, 19 App. D. C. 333; 30 W. L. R. 186.
- Westinghouse v. Duncan, 2 App. D. C. 131; 22 W. L. R. 83.  
Cited in 13 App. D. C. 236; 20 *Ib.* 301; 26 *Ib.* 8, 26, 69; 28 *Ib.* 15.
- Weston, *In re*, 17 App. D. C. 431; 94 O. G. 1786; 1901 C. D. 290.
- Weston, *Thomson v.*, 19 App. D. C. 373; 99 O. G. 864; 1902 C. D. 521.
- White, *In re*, 31 App. D. C. 607; 136 O. G. 1771.
- Whitely, *Funk v.*, 25 App. D. C. 313; 117 O. G. 280; 1905 C. D. 670.
- Whitney v. Howard, 21 App. D. C. 218; 104 O. G. 1659; 1903 C. D. 597.
- Whitson v. Columbia Phonograph Co., 18 App. D. C. 565; 29 W. L. R. 804; 98 O. G. 418; 1902 C. D. 497.
- Wickers v. Albert, 29 App. D. C. 23; 129 O. G. 1268; 1907 C. D. 599.
- Wickers v. McKee, 29 App. D. C. 4, 21, 25, 28; 129 O. G. 869, 1269, 1270; 1907 C. D. 587, 600, 601, 603.
- Wickers v. Upham, 29 App. D. C. 30; 129 O. G. 1612; 1907 C. D. 605.
- Wickers and Furlong, *In re*, 29 App. D. C. 71; 129 O. G. 2074; 1907 C. D. 608.
- Wictorsohn, *Gueniffet v.*, 30 App. D. C. 432; 134 O. G. 779.
- Wight, *Mutual District Messenger Co. v.*, 15 App. D. C. 463; 28 W. L. R. 57.
- Wilder, *Blackford v.*, 21 App. D. C. 1; 104 O. G. 578; 1903 C. D. 567; 28 App. D. C. 535; 127 O. G. 1255.

- Wilkin, Cleveland v., 27 App. D. C. 311; 123 O. G. 1286; 1906 C. D. 703.
- William Conners Paint Manuf. Co. In re, 27 App. D. C. 389; 123 O. G. 999; 1906 C. D. 696.
- Williams, In re, 30 App. D. C. 117; 130 O. G. 1692; 1907 C. D. 664.
- Williams, Liberman v., 23 App. D. C. 223; 109 O. G. 1610; 1904 C. D. 623.
- Williams v. Ogle, 14 App. D. C. 145; 87 O. G. 1958; 1899 C. D. 367.
- Williams, Natural Food Co. v., 30 App. D. C. 348; 133 O. G. 232.
- Winchester Repeating Arms Co. v. Peters Cartridge Co., 30 App. D. C. 505; 134 O. G. 2030.
- Winqvist, Durkee v., 31 App. D. C. 248; 136 O. G. 229.
- Winslow v. Austin, 14 App. D. C. 137; 86 O. G. 2171; 1899 C. D. 301. Cited in 19 App. D. C. 389; 21 *Ib.* 212; 26 *Ib.* 312, 402; 29 *Ib.* 188.
- Wood, Bechman v., 15 App. D. C. 484; 89 O. G. 2459; 1899 C. D. 453.
- Woods v. Poor, 29 App. D. C. 397, 404; 130 O. G. 1313; 1907 C. D. 651. Cited in 31 App. D. C. 606.
- Woodward, Newton v., 16 App. D. C. 568.
- Woodward, Newton v., 17 App. D. C. 34; 93 O. G. 2319; 1900 C. D. 406.
- Worster Brewing Corporation v. Rueter & Co., 30 App. D. C. 428; 133 O. G. 1190. Cited in 31 App. D. C. 228.
- Wright, Cleaveland v., 79 O. G. 866; 1897 C. D. 413.
- Wurts v. Harrington, 10 App. D. C. 149; 25 W. L. R. 266; 79 O. G. 337; 1897 C. D. 359. Cited in 14 App. D. C. 41, 52, 153; 15 *Ib.* 30; 17 *Ib.* 343; 21 *Ib.* 87.
- Wyman v. Donnelly, 21 App. D. C. 81; 104 O. G. 310; 1903 C. D. 556. Cited in 24 App. D. C. 485; 26 *Ib.* 362; 29 *Ib.* 106, 107, 111.
- Yates v. Huson, 8 App. D. C. 93; 24 W. L. R. 214; 74 O. G. 1732; 1896 C. D. 278. Cited in 9 App. D. C. 214; 11 App. D. C. 599; 13 *Ib.* 95, 564; 15 *Ib.* 142, 163; 17 *Ib.* 322; 23 *Ib.* 194; 24 *Ib.* 270, 484.
- Young, Miel v., 29 App. D. C. 481; 128 O. G. 2532; 1907 C. D. 561.
- Young, United States ex rel. Everson v., 26 W. L. R. 546.

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**ABANDONED APPLICATIONS.** See PATENTS, 514.

**ABANDONED EXPERIMENTS.** See PATENTS, III, 3, 4; 919, 930.

**ABANDONMENT OF APPLICATION.** See APPEALS, 14, 158; PATENTS, 220-222.

**ABANDONMENT OF CLAIM.** See PATENTS, 990.

**ABANDONMENT OF COPYRIGHT.** See COPYRIGHTS, 6.

**ABANDONMENT OF INVENTION.** See PATENTS, 59, 185, 621, 917, 973.

**ABANDONMENT OF RIGHT TO PATENT.** See PATENTS, 473-479.

## **ABATEMENT AND REVIVAL.**

By the death of a Commissioner of Patents, a suit to compel him to issue a patent abates and cannot be revived so as to bring in his successor; the act of Maryland of 1785, ch. 80, having no application to such a case. *Bernardin v. Butterworth*, 169 U. S. 600.

See ACTIONS, 3; MANDAMUS, 53—55; PARTIES TO SUIT, 6; PUBLIC OFFICERS, 3.

**ACCIDENT.** See PATENTS, XI.

## **ACCOUNTS AND ACCOUNTING.**

1. In a suit for an accounting by an inventor who had assigned his invention to a company which agreed to manufacture the device with due diligence and pay him royalties on those manufactured, a decree was passed declaring him entitled to royalties not only upon the devices manufactured under his contract, but upon those of a substituted device manufactured by the company, and referring the cause to the auditor to state the account. In



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the hearing before the auditor it was developed that subsequent to the decree defendant had ceased to manufacture both of the devices embraced in the reference to the auditor, and was manufacturing another device styled "Exhibit E 10." *Held*, that defendant company must account to complainant for the manufacture of "Exhibit E 10" as well as for the other devices. *Eclipse Bicycle Co. v. Farrow*, 23 App. D. C. 411; 32 W. L. R. 265.

2. Where a decree in a suit for an accounting affirming the auditor's report fails to in terms adjudge the recovery of the amount found due, the Appellate Court may in affirming the decree modify it by adding a clause that complainant recover the amount. *Ib.*

3. As to right of an inventor to an accounting for royalties under contract for manufacture and sale of invention. See *Eclipse Bicycle Co. v. Farrow*, 16 App. D. C. 468; 28 W. L. R. 551.

4. As to effect of expiration of a patent pending suit for an accounting for infringement. See *Busch v. Jones*, 16 App. D. C. 23; 28 W. L. R. 535.

See CONTRACTS, 7; EQUITY 15.

## ACTIONS.

1. The objection to the form of an action embodied, after verdict, in a motion for a new trial, comes too late to be available in an appellate court. *American Tobacco Co. v. Werckmeister*, 207 U. S. 284; 133 O. G. 1433.

2. A petition for a writ of mandamus to a public officer of the United States, abates by reason of his retirement from office as well after judgment and pending an appeal therefrom as before. *Seymour v. Nelson*, 11 App. D. C. 58; 25 W. L. R. 542.

3. By the death of a Commissioner of Patents, a suit to compel him to issue a patent abates and cannot be revived so as to bring in his successor. The Act of Maryland of 1785, ch. 80, is not applicable to such a case. *Bernardin v. Butterworth*, 169 U. S. 600.

4. The assignee of a patent and of all claims and demands now accrued or which may hereafter accrue for infringement, can not maintain an action in his own name for damages for past infringement—committed prior to the date of the assignment. The patent laws of the United States are not in conflict with the

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common law. *Armstrong Whitworth & Co. v. Norton*, 15 App. D. C. 223; 27 W. L. R. 414.

5. By virtue of §§ 4898 and 4919 of the Revised Statutes, the assignee of a patent may sue in his own name for an infringement committed while he was the legal owner of the right or interest transferred to him by assignment. *Ib.*

See ACCOUNTS AND ACCOUNTING, 4; APPEALS, 55; ATTORNEYS, 11; CLOUD ON TITLE; COPYRIGHTS, 5, 10, 20, 21, 24, 25, 26; PARTIES TO SUIT; PATENTS, 10, 703, 706, VIII, 975.

**AFFIDAVITS.** See APPEALS, 50, 130; PATENTS, 226, 227, 482, 813, 945, 947; TRADE-MARKS, 106, 113.

**AGENCY.** See PATENTS, 337-380.

**AGENTS.** See ATTORNEYS.

**AGGREGATION OF KNOWN ELEMENTS.** See PATENTS, 28, 29, 34, 125.

**AMENDMENT OF APPLICATIONS.** See APPEALS, 112; PATENTS, 205-215; RES ADJUDICATA, 11; TRADE-MARKS, 78-85, 120.

**AMENDMENT OF CLAIMS.** See PATENTS, 682, 683.

**AMENDMENTS TO REASONS OF APPEAL.** See APPEALS, 120.

**AMENDMENT OF PRELIMINARY STATEMENTS.**

See APPEALS, 40-42; PATENTS, 794-801.

**AMENDMENT OF PLEADING.** See PLEADING, 1.

**AMOUNT IN CONTROVERSY.** See APPEALS, 4, 5; TRADE-MARKS, 123.

**ANALOGOUS USE.** See PATENTS II, 10, 11.

**ANTICIPATION.** See PATENTS.

**APPARATUS.** See PATENTS, 74, 75, 76, 116.

**APPEALS.**

I. TO THE SUPREME COURT OF THE UNITED STATES.

II. TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

## I. To the Supreme Court of the United States.

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1. Nature of Appeal.
  2. Perfecting.
  3. Time for Taking.
  4. Appealable Rulings, etc.
  5. Scope of Review.
  6. Conclusiveness of Decisions of Patent Office Tribunals.
  7. Right to appeal.
  8. Assignments of Error.
  9. Record on.
  10. Costs on.
  11. Practice.
  12. Rehearings.
  13. Conclusiveness of Judgment on.
  14. In General.

## III. TO COMMISSIONER OF PATENTS.

## IV. TO EXAMINERS IN CHIEF.

## I. TO THE SUPREME COURT OF THE UNITED STATES.

1. An appeal will not lie to the Supreme Court of the United States from a decree of the Supreme Court of the District of Columbia dismissing a bill to obtain a patent, the money value of the patent not being ascertainable and the validity of the patent not involved. *Durham v. Seymour*, 161 U. S. 235; 74 O. G. 1731; 1896 C. D. 274.

2. No writ of error or appeal to the Supreme Court will be allowed from the decision of the Court of Appeals of the District of Columbia on an appeal from the Patent Office. *Rousseau v. Brown*, 21 App. D. C. 73; 104 O. G. 1122; 1903 C. D. 592.

3. The statutes relating to appeals from the Patent Office do not provide for the entry of final judgments, and the right of appeal to the Supreme Court exists only where final judgments are entered. *Ib.*

4. In order to bring a case by appeal or writ of error from the Court of Appeals of the District of Columbia within the jurisdiction of the Supreme Court of the United States under this alternative, the matter in dispute must be money or some right the value of which can be estimated and ascertained in money and which appears by the record to be of the requisite pecuniary value. *South Carolina v. Seymour*, 153 U. S. 353; 67 O. G. 1191; 1894 C. D. 318.

## I. To the Supreme Court of the United States.

5. In order that a case may come within this clause, the validity and not the construction only of an authority exercised under the United States must be directly drawn in question. *Ib.*

6. Neither the question whether the Commissioner rightly decided upon the presumptive lawfulness of the right of the State of South Carolina to the trademark sought to be registered nor the question whether his duty was of such a character that a writ of mandamus would lie to compel its performance involved a question of the validity of the authority exercised by him under the United States. *Ib.*

7. The Supreme Court of the United States will not take jurisdiction on appeal of applications for patents, in view of the provisions in relation to appeals from the Circuit Courts of Appeals under the act of March 3, 1891, as the right to apply for a patent and the invention cannot be regarded for jurisdictional purposes as in itself property or a right of property having an actual value susceptible of estimation in money. *Durham v. Seymour*, 161 U. S. 235; 74 O. G. 1731; 1896 C. D. 274.

7½. A decision of the Court of Appeals of the District of Columbia on an appeal from the Commissioner of Patents is not "final" within the meaning of § 8 of the Act of February 9, 1893, (27 Stat. 434, 436, c. 74.) and therefore is not appealable to the Supreme Court of the United States. *Frasch v. Moore*, 211 U. S. 1; 137 O. G. 230.

8. A proceeding involving the validity of a rule of practice of the Patent Office established by the Commissioner under the power conferred by § 483, R. S., is one in which is drawn in question the validity of "an authority exercised under the United States," within the meaning of the act of Feb. 9, 1893, giving an appeal to this court from final judgments and decrees of the Court of Appeals of the District of Columbia in such cases. *Steinmetz v. Allen*, 192 U. S. 543; 32 W. L. R. 147; 109 O. G. 549; 1904 C. D. 703.

9. Without a hard and fixed rule the action of the Patent Office upon the question of dividing applications for patents can be accommodated to the character of invention and discretion can be exercised, and when exercised the courts will not review it except in cases of clear abuse. *Ib.*

II. To Court of Appeals. 1. Nature. 2. Perfecting. 3. Time for taking.

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## II. TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

### 1. Nature of Appeal.

10. An appeal to the Court of Appeals of the District of Columbia in an interference case is not a proceeding in equity and the provisions of Rev. Stat. § 4915, do not apply. It is a proceeding at law, and hence a decision of the Supreme Court of the United States as to the statute referred to does not apply in this case. *Doyle v. McRoberts*, 10 App. D. C. 445; 79 O. G. 1029; 1897 C. D. 413.

11. The act of Congress approved February 9, 1893, which gave the Court of Appeals of the District of Columbia the power to review the decisions of the Commissioner of Patents, is such an act as Congress was authorized to pass under the Constitution, and in the matter of such appeal no encroachments of the judicial department of the Government on the domain of the executive department are found to justify the courts in holding that the act in question is unconstitutional. *Bernardin v. Duell*, 13 App. D. C. 379; 86 O. G. 995; 1899 C. D. 287.

### 2. Perfecting.

12. Where an appellant fails to have his cause filed and docketed, it will, on motion of appellee, be docketed and the appeal dismissed. *In re McCreevy*, 12 App. D. C. 517; 79 O. G. 1684; 1897 C. D. 480. *Cleveland v. Wright*, 79 O. G. 866; 1897 C. D. 413. *Southall v. Seymour*, 79 O. G. 1624; 1897 C. D. 480. *Morrissey v. Seymour*, 79 O. G. 1684; 1897 C. D. 481.

13. Where the decision appealed from was filed January 16, 1905, the appeal filed March 3, 1905, and the record filed in the court April 18, 1905, or, in other words, the appellant availed himself of all the time allowed by the rules for taking and perfecting his appeal, though by so doing he necessarily prevented the hearing of the appeal until next November, *Held* that in so doing he was within his legal rights, and the court would not on that ground alone, feel justified in dismissing his appeal. *Jones v. Starr*, 26 App. D. C. 64; 117 O. G. 1495; 1905 C. D. 694.

### 3. Time for Taking.

14. The Court of Appeals of the District of Columbia has au-

thority to limit the time for taking appeals, and there is no restriction by reason of section 4894, Revised Statutes, which has reference solely to the abandonment of an application by failure to prosecute. *In re Hien*, 166 U. S. 432; 79 O. G. 507; 1897 C. D. 367. Affirming 9 App. D. C. 492.

15. Apart from the general rule that courts have power to make reasonable rules not conflicting with express statutes, the Court of Appeals was duly authorized by statute to make rules limiting the time of appeals from the decisions of the Commissioner of Patents. *Ib.*

16. The fact that a rule of the Court of Appeals relating to the time in which an appeal must be taken was promulgated after the decision appealed from is not controlling as to the appeal, since the right of appeal is not a vested right, but one which may be altered by statute or by rule of court. *Ib.*

17. The decision of the Supreme Court in *Gandy v. Marble*, in which it was held that a bill in equity under section 4915, Revised Statutes, was *sub modo* a branch of the application and governed as to laches by section 4894, Revised Statutes, had nothing to do with the time in which an appeal from the decision of the Commissioner of Patents must be taken. *Ib.*

18. Even if there were no rules at the time the right of appeal accrued, after the promulgation of a rule regulating the time for taking appeals the appellant became bound by it. *Hein v. Pungs*, 9 App. D. C. 492; 77 O. G. 1600; 1896 C. D. 649.

19. There is no justification for the theory that, since § 4894 Rev. Stat. gives an applicant a possible two years in which to prosecute his application, he has two years in which to take an appeal to the Court of Appeals of the District of Columbia. *Ib.*

20. The rule limiting the time of appeal from the decision of the Commissioner to the court has no reference to the notice of the decision given to appellant. It is from the date of the decision that the time for taking the appeal must be reckoned, and not from the time of sending notice of the decision to the party against whom it is made. *Burton v. Bentley*, 14 App. D. C. 471; 87 O. G. 2326; 1899 C. D. 393.

21. The terms of the rule must be allowed their ordinary meaning and import, and they plainly limit the commencement of the period of forty days within which an appeal can be taken from

## II. To Court of Appeals. 3. Time for taking.

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the date of the decision appealed from, excluding the day of the date. *Ib.*

22. Where the decision of the Commissioner of Patents appealed from to the Court of Appeals of the District of Columbia was dated December 10, 1898, but entry was not made on the file-wrapper until December 12, 1898, when the notice of the decision was sent to appellant, and appeal was taken to the court on January 20, 1899, *Held*, that the appeal was taken too late under Rule XX of the court, which requires an appeal to be taken within forty days from the date of the decision of the Commissioner, and not afterward. *Ib.*

23. The rule that all appeals taken from the Commissioner of Patents shall be taken within forty days from the date of the ruling appealed from, and not afterward, is a positive law to the court and to the suitors therein. *Ross v. Loewer*, 9 App. D. C. 563; 77 O. G. 2141; 1896 C. D. 665.

24. Appeal from the decision of the Commissioner of Patents, nearly a year after such decision, is brought in violation of Rule XX of the rules of this court, and should not be entertained, especially when no excuse for the delay is urged. *In re Bryant*, 9 App. D. C. 447 ; 77 O. G. 1599; 1896 C. D. 648.

25. The contention that a motion for rehearing in the Patent Office should operate as a stay of the running of the time for the prosecution of appeal to this court till after the motion for rehearing has been determined cannot be admitted. *Ross v. Loewer*, 9 App. D. C. 563; 77 O. G. 2141; 1896 C. D. 665.

26. The ruling that the time for prosecuting appeals from decrees in equity or writs of error from a judgment at law is stayed by a motion for rehearing or for new trial and only begins to run from the refusal of such motion is founded upon the principle that the judgment is not complete until the rehearing is disposed of; but the proceedings of the Patent Office are not controlled by the ordinary rules of practice that obtain in the courts of the country, but are controlled by statutory provisions and a code of rules made in pursuance of statutory provisions wholly unlike the rules of practice enforced in the courts. *Ib.*

27. Rule 123 of the Patent Office, which provides that in order to obtain a stay of proceedings motion must be made specifically to that effect, applies in reason and analogy to this case. The

## II. To Court of Appeals. 4. Appealable Rulings, etc.

running of the time for appeal was not arrested by filing the motion for rehearing. *Ib.*

28. Where it is not pretended that appellant has been surprised or in any manner prejudiced by computing the time of taking the appeal, as he has had ample time within which to appeal, and as he has thought proper to delay the appeal until after the time for taking it had elapsed, *Held* that he has no one to blame but himself, and the appeal must be dismissed. *Burton v. Bentley*, 14 App. D. C. 471; 87 O. G. 2326; 1899 C. D. 393.

29. Under § 1389, Code D. C., every Saturday, after 12 o'clock noon, is a half holiday in this District for all purposes; and in computing the time within which an appeal to this court from a decision of the Commissioner of Patents, under the rule requiring that such appeals shall be taken within forty days from the date of the ruling or order appealed from, exclusive of Sundays and legal holidays, one-half of each Saturday must be excluded from the computation. *Ocumpaugh v. Norton*, 24 App. D. C. 296; 32 W. L. R. 846.

30. As to time for taking appeal from Commissioner of Patents. See *Hien v. Pungs*, 9 App. D. C. 492; 25 W. L. R. 8.

#### 4. Appealable Rulings, etc. .

31. An appeal will not lie from a mere interlocutory or preliminary order or ruling of the Commissioner of Patents in an interference case. *Westinghouse v. Duncan*, 2 App. D. C. 131; 22 W. L. R. 83.

32. The Court of Appeals has no jurisdiction to consider an appeal from a decision of the Commissioner of Patents which is not a final order, and such an appeal will be dismissed. *Union Distilling Co. v. Schneider*, 29 App D. C. 1; 1907 C. D. 613; 129 O. G. 2503.

33. A decision of the Commissioner of Patents dissolving an interference is not a final order. *Ib.*

34. If all collateral and interlocutory proceedings in the Patent Office were subjects of appeal to the Court of Appeals, the proceedings for patents might be made almost interminable, to say nothing of the enormous costs that would be incurred in prosecuting and defending against such appeals. *Hulett v. Long*, 15 App. D. C. 284; 89 O. G. 1141; 1899 C. D. 446.

35. A motion by one of the parties to an interference to dissolve



the interference before the final hearing of the question of priority of invention, and before the case is ready for such hearing, is an interlocutory proceeding, and is not appealable unless made so by statute or rule of court. *Allen v. U. S. ex rel. Lowry*, 26 App. D. C. 8; 33 W. L. R. 354.

36. The requirement for division between process and apparatus is not a refusal of a patent, but is a mere interlocutory order from which there can be no appeal. *In re Frusch*, 20 App. D. C. 298, 100 O. G. 1977; 1902 C. D. 560.

37. After an adverse decision by the Primary Examiner upon a motion to dissolve decisions on priority were rendered by the Examiner of Interferences and the Examiners-in-Chief and appeal was taken to the Commissioner of Patents from the latter decision. Pending this appeal a successor of the Primary Examiner requested jurisdiction of the interference for the purpose of considering the patentability of the issue. Such request was granted, and the Primary Examiner dissolved the interference upon the ground that the issue was not patentable. Upon petition to the Commissioner the decision of the Primary Examiner was set aside and the interference was restored to its prior condition of appeal to the Commissioner on priority. On appeal to the Court of Appeals from the decision of the Commissioner, *Held* that the regularity of the action of the Commissioner in setting aside the decision of the Primary Examiner dissolving the interference is not a question for the consideration of the court. *Mell v. Midgley*, 31 App. D. C. 534; 136 O. G. 1534.

38. The right of a party to make a claim goes to the foundation of an interference, and a judgment of a Primary Examiner denying that right may be appealed to the Court of Appeals of the District of Columbia and that court will take jurisdiction to determine that question as an ancillary question to be considered in awarding priority of invention. *U. S. ex rel. Newcomb Motor Co. v. Moore*, 30 App. D. C. 464; 133 O. G. 1680.

39. The statutes limit the declaration of interferences to the question of priority of invention, and the appeals provided by the statutes relating to interferences are only those upon the question of priority of invention. Appeals upon other questions, and particularly those taken from decisions of the Primary Examiners upon motion affirming the patentability of claims, are left to the

## II. To Court of Appeals. 4. Appealable Rulings, etc.

regulation of the Patent Office under the grant of power contained in section 483. *Lozery v. Allen*, 1906 C. D. 765; 125 O. G. 2365.

40. Whether an amendment to preliminary statement shall be allowed in an interference proceeding under the rules of practice of the Patent Office calls for the exercise of a wide latitude of discretion by the Commissioner, and certainly nothing less than an abuse of that discretion, causing a palpable miscarriage of justice, would warrant the review and reversal of his action. *Hammond v. Basch*, 24 App D. C. 469; 115 O. G. 804; 1905 C. D. 615.

41. Where the Commissioner of Patents has refused to reopen an interference for the purpose of permitting the introduction of alleged newly-discovered evidence and has also refused to allow the amendment of a preliminary statement, the Court of Appeals will not remand the case nor review the decision of the Commissioner on these questions where no abuse of discretion is found. *Richards v. Meissner*, 24 App. D. C. 305; 114 O. G. 1831; 1905 C. D. 595.

42. Whether leave shall be given to amend a preliminary statement is a matter within the discretion of the Commissioner and is not reviewable, save possibly in a case of palpable abuse of that discretion. *Neth v. Ohmer*, 27 App. D. C. 319; 1906 C. D. 693; 123 O. G. 998.

43. Where the tribunals of the Patent Office in the exercise of their discretion have refused to reopen a case for the introduction of newly-discovered evidence, their conclusions will be reviewed by the Court of Appeals only in case of an abuse of discretion. *Dunbar v. Schellenger*, 29 App. D. C. 129; 128 O. G. 2837; 1907 C. D. 567.

44. The reopening of a cause for the introduction of newly-discovered evidence is always a matter for the trial court and is in its discretion, and that discretion is not subject to review by a purely appellate tribunal. *Richards v. Meissner*, 24 App. D. C. 305; 114 O. G. 1831; 1905 C. D. 595.

45. The court will not entertain a reason of appeal founded upon a motion for rehearing in the Patent Office. *Greenwood v. Dover*, 23 App. D. C. 251; 109 O. G. 2172; 1904 C. D. 630.

46. Where the Commissioner on appeal reversed the decision of the Examiner of Interferences granting a motion to retake testi-

mony which had been suppressed for gross irregularities in taking, the grant or refusal of the motion was within the lawful discretion of the Commissioner and is not such a decision as the court can review. *Jones v. Starr*, 26 App. D. C. 64; 117 O. G. 1495; 1905 C. D. 694.

47. Rules of practice in interference cases are necessary and should not be disregarded and the court does not sit to review the rulings of the Commissioner of Patents in discretionary matters or to review decisions made by the Examiner of Interferences not lawfully appealed from. *Ib.*

48. Where during interference proceedings between applicant and patentee the patentee applies for and obtains reissue of the patent in interference and the interfering claims are omitted from the reissue and thereafter decisions awarding priority in said interference proceedings are rendered in the Patent Office and appeal is taken to the Court of Appeals, *Held* that the court, equally with the various tribunals of the Patent Office, is without legal authority to render any judgment for the relief of either party and that the appeal must be dismissed. *Lattig v. Dean*, 25 App. D. C. 591; 117 O. G. 1798; 1905 C. D. 698.

49. The grant or denial of a request for permission to inspect an affidavit filed under Rule 75 by the opposing party in an interference rests within the discretion of the Commissioner of Patents and will not be disturbed unless clearly shown to have worked a material injury to the applicant. The mere possibility that such an affidavit might contain some contradiction of the testimony given in the interference held insufficient to warrant a review of the decision of the Commissioner of Patents. *Davis v. Garrett*, 28 App. D. C. 9; 1906 C. D. 724; 123 O. G. 1991.

50. Where an applicant involved in an interference had previously filed an affidavit under Rule 75 for the purpose of antedating certain references cited against claims not included in the interference issue and where there is nothing in the record tending to show any connection between said affidavit and the interference issue, *Held* that the decision of the Commissioner of Patents refusing to permit the other party to the interference to inspect the affidavit was of an interlocutory nature and not the subject of review. *Ib.*

51. The question of striking an application from the files of the Patent Office rests largely within the discretion of the Commis-

## II. To Court of Appeals. 5. Scope of Review.

sioner of Patents, and his rulings will not be disturbed save when that discretion has been palpably abused. *Ib.*

52. The question whether the description in a design case is a proper one is not reviewable by the Court of Appeals except in an extraordinary case. *In re Mygatt*, 26 App. D. C. 366; 1906 C. D. 596; 121 O. G. 1676.

53. Where a party to an interference did not appeal from the adverse decision of the Examiners-in-Chief upon priority, so that under Rule 132 of the Patent Office the claims which were involved in that interference stand finally rejected, *Held* that such party has no standing before the court in the interference as to those claims. *Fowler v. Boyce*, 27 App. D. C. 48; 1906 C. D. 580; 121 O. G. 1014.

54. The action of the Commissioner of Patents in rejecting a claim for the striker plate in another application by the same inventor, but which rejection was acquiesced in by the applicant, *Held* not to be reviewable on appeal from a decision of the Commissioner rejecting a claim in this application for the combination of the striker-plate and door or casing. *In re Forg*, 2 App. D. C. 58; 66 O. G. 515; 1894 C. D. 138.

55. The exercise by a court of equity of its discretion in retaining a cause brought to enjoin the infringement of a patent and for an accounting, where pending suit the patent has expired, is not reviewable on appeal unless shown to have been clearly illegal. *Busch v. Jones*, 16 App. D. C. 23; 28 W. L. R. 535.

56. No appeal lies from a decision of the Commissioner of Patents in a controversy between rival applicants for the registration of a trade-mark. *Einstein v. Sawhill*, 2 App. D. C. 10; 22 W. L. R. 89; 65 O. G. 1918; 1893 C. D. 677.

57. In the absence of gross abuse of discretion on the part of the Commissioner of Patents in requiring an applicant for a trade-mark to strike out a description from his petition and refer only to the accompanying drawings, his action will not be reviewed by the Court of Appeals. *In re Atkins & Co.*, 29 App. D. C. 385.

### 5. Scope of Review.

58. The appeal allowed to the Court of Appeals for the District of Columbia by the Act of Congress of February 9, 1893, in case of interferences is for the purpose of having the final deci-

sion of the Commissioner of Patents on the question of priority of invention reviewed and determined as that question is contemplated and provided for in Section 4904, Rev. Stat. and not for the purpose of having decisions upon collateral or interlocutory questions reviewed and decided. *Hulett v. Long*, 15 App. D. C. 284; 89 O. G. 1141; 1899 C. D. 446.

59. As a general proposition, the power of the Court of Appeals in interference cases is limited to the determination of the question of priority of invention as between the parties to the interference, and neither the question of patentability of the invention nor the propriety of the declaration of interference is open to consideration. *Bechman v. Wood*, 15 App. D. C. 484; 89 O. G. 2459; 1899 C. D. 459.

60. It is not competent for the Court of Appeals of the District of Columbia, in an interference proceeding, to abandon the question of priority and pass upon the patentability of the alleged invention. *Doyle v. McRoberts*, 10 App. D. C. 445; 79 O. G. 1029; 1897 C. D. 413.

61. The patentability of the claims of the contesting parties in an interference case is not involved in an appeal on the question of priority of invention and will not be determined by the court. *Mell v. Midgley*, 31 App. D. C. 534; 136 O. G. 1534. *Schupphaus v. Stevens*, 17 App. D. C. 548; 95 O. G. 1452; 1901 C. D. 365. *Hisey v. Peters*, 6 App. D. C. 68; 71 O. G. 892; 1895 C. D. 349.

62. The question of patentability is not ordinarily regarded as open on appeal to the Court of Appeals of the District of Columbia in an interference case, but is to be regarded therein as conclusively established by the Commissioner of Patents. The question in such cases is one of priority and not of patentability. *Latham v. Armat*, 17 App. D. C. 345; 95 O. G. 232; 1901 C. D. 337.

63. Where the question of facts as to priority of invention had been fully considered by the officials of the Patent Office, the decision of the Patent Office must stand, unless the evidence shows beyond any reasonable doubt that the appellant was the first inventor. *Hisey v. Peters*, 6 App. D. C. 68; 71 O. G. 892; 1895 C. D. 349.

64. When lower tribunals of the Office conclude that the inventions of two applications are the same and the Commissioner

## II. To Court of Appeals. 5. Scope of Review.

concludes that they are different, since in interference cases the question of priority only is before the court, the court will not decide which is the proper theory, but will accept the theory of the Commissioner. Each contestant is accordingly entitled to a patent for his particular invention. *Cushman v. Lines*, 10 App. D. C. 156; 78 O. G. 2051; 1897 C. D. 346.

65. Where the junior party to an interference concedes that his preliminary statement fails to overcome the filing date of the senior party and the patentability of the issue has been favorably passed upon by the tribunals of the Patent Office, before whom the question was brought in accordance with the practice of that Office, on appeal to the Court of Appeals from a judgment on priority the question of patentability will not be considered where it is raised merely for the purpose of preventing the grant of a patent to the senior party, except in an extraordinary case. *Potter v. McIntosh*, 28 App. D. C. 510; 127 O. G. 1995; 1907 C. D. 505.

66. Upon a petition for rehearing on the ground that the Court of Appeals of the District of Columbia had no jurisdiction over an interference case appealed to it, except on the question of priority of invention, and yet that, instead of deciding that question, it decided that appellant was entitled to the patent on account of the relations existing between him and the appellee, *Held* that it was not necessary to adjudge in formal terms that the appellant is the prior inventor when he has been adjudged to be, in law, the only inventor. *Milton v. Kingsley*, 7 App. D. C. 531; 75 O. G. 2195; 1896 C. D. 426.

67. Where appeal was taken to the Court of Appeals on the ground that the Commissioner of Patents erred (1) in refusing to consider whether a patent granted to one of the parties to the interference was for the same invention as that involved in the interference and if so whether it is not a statutory bar to the grant of a patent for said invention to said party; (2) in holding that this question of a statutory bar was an *ex parte* one and therefore not involved in the interference; (3) in declining to consider whether an application as filed disclosed the invention in controversy, and (4) in refusing to hold that the subject-matter of the interference was inserted in one of the applications by amendment after the application had been filed in the Patent Office and subsequently to the application filed by the other party,

upon which his patent had issued, *Held* that these questions are of a preliminary nature and do not arise for consideration by the Court of Appeals upon a decision by the Commissioner of Patents in an interference case. *Hulett v. Long*, 15 App. D. C. 284; 89 O. G. 1141; 1899 C. D. 446.

68. The mode of raising these questions in the Patent Office and of their determination therein specially provided for and prescribed by Rules 122, 124 and 126 of the Rules of Practice of that Office. *Ib.*

69. Where it was urged on appeal to the Court of Appeals from the decision of the Commissioner in an interference case that the application of one of the parties as originally filed did not claim or disclose the subject-matter of the interference and that the matter of interference is new matter put in the case by amendment since the original application was filed, and therefore said party had no right to make the claim in issue, and that he could not be given the benefit of constructive reduction to practice as of the date of filing his original application, *Held* that this is a preliminary question which had been disposed of by the tribunals of the Office on motion to dissolve under Rule 122. *Ib.*

70. The right of appeal in case of refusal of a patent upon the ground of non-patentability of the claim and refusal of a patent because of interference with a prior right of invention are distinct rights, and the latter does not involve the former. *Hisey v. Peters*, 6 App. D. C. 68; 71 O. G. 892; 1895 C. D. 349.

71. The court should not be called upon to decide priority between rival claimants to an invention where the Patent Office expressly reserves for future consideration the question of patentability of the invention. It is not the province of the court to decide moot causes. *Oliver v. Felbel*, 20 App. D. C. 255; 100 O. G. 2384; 1902 C. D. 565.

72. Whether or not an application involved in interference discloses the subject-matter in issue, and therefore whether or not the interference is properly declared, is a question to be ordinarily determined by the Patent Office, but in extreme cases where palpable error has been committed the court may review the decision of the Patent Office on this point. *MacMulkin v. Bolle*, 30 App. D. C. 112; 130 O. G. 1691.

73. On an appeal from the Commissioner of Patents to the Court

## II. To Court of Appeals. 5. Scope of Review.

of Appeals of the District of Columbia on the question of priority of invention the court has no power to hold that the Commissioner has committed an error for which a case should be reversed because of a claim that he refused to permit counsel to be heard in support of a given contention. The court cannot in such a proceeding control his action in a discretionary matter such as the extent of oral argument he will permit at a hearing of an interference. *Sobey v. Holsclaw*, 28 App. D. C. 65; 1907 C. D. 465; 126 O. G. 3041.

74. Assignments of error by the Commissioner of Patents raising the question of the sufficiency of disclosure in appellee's applications will be given but passing notice by the Court of Appeals where such question was not raised before the tribunals of the Patent Office. It was incumbent upon appellant to raise this question before the Primary Examiner, whose skill in the particular art peculiarly qualified him to consider it. *Cutler v. Leonard*, 136 O. G. 438; 31 App. D. C. 297.

75. The question of interference in fact and the question of patentability of the issue must be presumed to have been finally determined in the Patent Office. They will not be inquired into by the court, except perhaps in very rare and exceptional cases. *Luger v. Browning*, 21 App. D. C. 201; 104 O. G. 1123; 1903 C. D. 593.

76. The court will not, except in extreme cases, go behind the declaration of interference in order to determine the question of identity of the inventions claimed by the parties. *Swihart v. Mauldin*, 19 App. D. C. 570; 99 O. G. 2322; 1902 C. D. 540.

77. Where it was sought to show that the Commissioner of Patents had no authority to refuse a patent when the Primary Examiner had held the alleged invention to be patentable and had put the application in interference with another case, *Held* that it is not competent for the Court of Appeals of the District of Columbia to go behind the records in the case before it and review what had been done in another and distinctly independent proceeding, and that the court has no right to review or supervise the administrative action of the Commissioner. *In re Locke*, 17 App. D. C. 314; 94 O. G. 432; 1901 C. D. 267.

78. Where it was contended that the question whether Steven's application discloses or covers the invention of the issue is necessarily involved in the determination of the question of priority



of invention, *Held* that this contention has no support in any decision of the court. It is a question of patentability and nothing else. *Schupphaus v. Stevens*, 17 App. D. C. 548; 95 O. G. 1452; 1901 C. D. 365.

79. Where the Commissioner in considering the question of priority dissolves the interference as to some of the counts, it is not within the province of the Court of Appeals to review his order in that regard. *Hillard v. Brooks*, 23 App. D. C. 526; 111 O. G. 302; 1904 C. D. 658.

80. Where the Examiners-in-Chief expressed the opinion that some of the counts were anticipated by a patent issued to other parties and the Commissioner did not adopt their recommendation, that question is not for the Court of Appeals to consider. *Hillard v. Brooks*, 23 App. D. C. 526; 111 O. G. 302; 1904 C. D. 658.

81. Where it appears that the Primary Examiner, the Examiner of Interferences, and the Examiners-in-Chief have construed an issue broadly and the Commissioner held that a limited construction must be placed upon the issue in the light of the art, *Held* that the question as to whether the Primary Examiner erred in allowing the broad claims will not be considered by the Court of Appeals, though it might have been considered by the Commissioner, and as the interference was not dissolved by the Commissioner a machine which comes within the broad terms of the issue is a reduction to practice of that issue. *Ib.*

82. As regards the contention of the appellant that "the structure in interference differs from the prior structure of Roberts in but two particulars, it is sufficient to say, that in so far as it appears to raise a question of patentability, that question has been settled by the allowance of the claims. *Dunbar v. Schellenger*, 29 App. D. C. 129; 128 O. G. 2837; 1907 C. D. 567.

83. On an appeal from the decision of the Commissioner award-priority of invention, *Held* that the court will confine its decision to the matter passed upon in his decision and not consider the questions of abandonment, prior public use, and anticipation of the invention, which have not been acted on in the Patent Office. *Colhoun v. Hodgson*, 5 App D. C. 21; 70 O. G. 276; 1895 C. D. 122.

84. On an appeal on priority the court will not review the findings of the Commissioner upon the sufficiency of a showing to

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support a petition for the reinstatement of an abandoned application where there appears to have been no abuse of power on the part of the Commissioner. *Kinsman v. Strohm*, 31 App. D. C. 581; 136 O. G. 1769.

85. Where in an interference proceeding the testimony of the party had been suppressed for gross irregularities in taking it and no attempt had been made within the proper time to get the decision suppressing the testimony set aside or to take other testimony, *Held* that the court would not be justified in considering the suppressed testimony were it before them. *Jones v. Starr*, 26 App. D. C. 64; 117 O. G. 1495; 1905 C. D. 694.

86. Where an interference is before the Court of Appeals on appeal from the decision of the Commissioner of Patents, the court cannot and should not interfere with the rulings of the Patent Office upon interlocutory matters that occurred in the office during the pendency of the cause, such as motions for rehearing, motions to vacate orders and to remand the cause, which have no reference to the merits of the controversy, unless perhaps in extreme cases it should be necessary for the maintenance of the jurisdiction of the court. *Ritter v. Krakau*, 24 App. D. C. 271; 114 O. G. 1553; 1905 C. D. 585.

87. The Court of Appeals of the District of Columbia will not consider the operativeness of a device disclosed by one of the interfering parties as incident to the main question of priority where that question has been settled in favor of such party by the Patent Office in accordance with the practice of that office. *Duryca v. Rice*, 28 App. D. C. 423; 126 O. G. 1357; 1907 C. D. 443.

88. On an appeal relating to priority of invention the court will not consider the question whether the device shown in the application of one of the parties is operative. The decision of the Patent Office on that matter will be accepted. *Lotterhand v. Hanson*, 23 App. D. C. 372; 110 O. G. 861; 1904 C. D. 646.

89. Where each party to an interference attacks the invention of the other as impracticable and therefore devoid of patentable novelty, *Held* that that is a question which the Court of Appeals of the District of Columbia can not consider in an interference proceeding. That there may be extreme cases in which it would be proper in interference proceedings to raise and determine the question of the patentability of the device in controversy may

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be conceded, but ordinarily no such question can arise in this court in such proceedings. *Dodge v. Fowler*, 11 App. D. C. 592; 82 O. G. 595; 1898 C. D. 320.

### 6. Conclusiveness of Decisions of Patent Office Tribunals.

90. Where the three tribunals of the Patent Office have concurred in a finding of fact the Court of Appeals will defer to such finding unless error is made plainly to appear. *Onderdonk v. Parkes*, 31 App. D. C. 214; 135 O. G. 665; *Ries v. Kirkegaard*, 30 App. D. C. 199; 132 O. G. 845; *Parkes v. Lewis*, 28 App. D. C. 1; 123 O. G. 2313; 1906 C. D. 735. *In re Clinics*, 28 App. D. C. 18; 123 O. G. 263; 1906 C. D. 740. *Bourn v. Hill*, 27 App. D. C. 291; 123 O. G. 1284; 1906 C. D. 699. *Orcutt v. McDonald*, 27 App. D. C. 228; 123 O. G. 1287; 1906 C. D. 705. *Flora v. Powrie*, 23 App. D. C. 195; 109 O. G. 2443; 1904 C. D. 636. *Howard v. Hey*, 18 App. D. C. 142; 95 O. G. 1647; 1901 C. D. 375. *Glenn v. Adams*, 12 App. D. C. 175; 83 O. G. 158; 1898 C. D. 407. *In re Barratt*, 11 App. D. C. 177; 79 O. G. 2020; 1897 C. D. 506.

91. Where a junior party to an interference appeals to the Court of Appeals and the three tribunals of the Patent Office have rendered concurrent opinions against him, *Held*, that in order to prevail in the Court of Appeals he must show a clear case of error in these decisions. *Murphy v. Meissner*, 24 App. D. C. 305; 114 O. G. 1830; 1905 C. D. 592.

92. Where the three Patent Office tribunals have been in accord, and consequently the case falls within the decisions of this court that, except in extraordinary cases, it will not disturb the findings of fact of the Patent Office, *Held*, that this does not mean that the court is bound by the conclusions drawn from such facts unless convinced that such conclusions are correct. *O'Connell v. Schmidt*, 27 App. D. C. 77; 1906 C. D. 662; 122 O. G. 2065.

92½. In awarding priority of invention the right of a party to make a claim may be considered as an ancillary question; but where three tribunals of the Patent Office have concurred in answering the question in the affirmative the court will follow them unless a manifest error has been committed. *Lindmark v. Hodgkinson*, 31 App. D. C. 612; 137 O. G. 228.

93. On an appeal to the court the question is as to priority of invention and not as to patentability, and therefore the court will

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accept the ruling of the Patent Office that the claims now in issue were sufficiently apparent from the specifications and drawings in the original application and that they constituted part of the invention intended to be covered by the original patent. *Austin v. Johnson*, 18 App. D. C. 83; 95 O. G. 2685; 1901 C. D. 391.

94. Upon an appeal on priority the court will accept the adjudication of the Patent Office as conclusive of the question whether the invention specified in the issue is disclosed in the applications of the parties, and therefore authorized the declaration of interference. *Ostergren v. Tripler*, 17 App. D. C. 557; 95 O. G. 837; 1901 C. D. 350.

95. The decisions of the expert tribunals of the Patent Office on the question of the sufficiency of the disclosure of a party to an interference will be accepted by the Court of Appeals as conclusive, except in extreme cases where palpable error has been committed. *Stone v. Pupin*, 19 App. D. C. 396; 100 O. G. 1113; 1902 C. D. 550. *Kilbourn v. Hirner*, 29 App. D. C. 54; 128 O. G. 1689; 1907 C. D. 552.

96. Where a question of interference in fact or right to make claims has been fully considered by the Primary Examiner, the Examiners-in-Chief and the Commissioner and all have concurred in finding that a party to an interference has the right to make a claim which is the same as the count of the issue of an interference, *Held*, that these conclusions will ordinarily be considered by the court as conclusive. *Podlesak v. McInnerney*, 26 App. D. C. 399; 1906 C. D. 558; 120 O. G. 2127.

97. On appeal to the court the decisions of the expert tribunals of the Patent Office as to the identity of the inventions disclosed and claimed by the parties will ordinarily be accepted as conclusive; but in extreme cases where palpable error has been committed such decisions may be reversed. *Seeberger v. Dodge*, 24 App. D. C. 476; 114 O. G. 2382; 1905 C. D. 603.

98. In a case of interference appealed to a court the decision of the Patent Office must stand unless the evidence shows beyond any reasonable doubt that the appellant was the original inventor. *Arnold v. Tyler*, 10 App. D. C. 175; 79 O. G. 156; 1897 C. D. 349.

99. Where patentable novelty has been denied not only by one but by all the expert tribunals of the Patent Office, the applicant must make out a very clear case of invention, and this is but an-

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other application of the same principle that governs in those cases where a patent having been regularly granted all doubt in respect of invention is resolved in favor of the patentee. *In re Smith*, 14 App. D. C. 181; 87 O. G. 893; 1899 C. D. 313.

100. The rule that where patentable novelty has been denied by all of the expert tribunals of the Patent Office it is incumbent upon one appealing therefrom to make out a clear case of error in order to obtain a reversal, *Held*, to be particularly applicable to a case which, for its satisfactory determination, requires technical knowledge of an abstruse art that can only be acquired through thorough training. *Bestwick's Appeal*, 16 App. D. C. 345; 91 O. G. 1436; 1900 C. D. 294.

101. When the question as to whom priority should be awarded is doubtful, that doubt demands that the decision of the Commissioner of Patents should be affirmed. *Latham v. Armat*, 17 App. D. C. 345; 95 O. G. 232; 1901 C. D. 337.

102. Ordinarily where the point has been raised whether the application of one of the parties was broad enough in the terms of its specification and claims to embrace the invention of the other, and especially where the invention is one of elaborate and complicated mechanism, the decisions of the expert tribunals of the Patent Office in respect of identity have, for obvious reasons, been accepted as conclusive. *Bechman v. Southgate*, 28 App. D. C. 405; 127 O. G. 1254; 1907 C. D. 489.

### 7. Right to Appeal.

103. The right of appeal is not a vested right, but may be altered by statute or by rule of court made in pursuance of a statutory authority to enact such rule. *Hien v. Pungs*, 9 App. D. C. 492; 77 O. G. 1600; 1896 C. D. 649.

104. The right to appeal to the Court of Appeals of the District of Columbia from a decision of the Commissioner of Patents is limited to two classes of cases: first, where an application for patent has been finally denied, and, second, where in an interference proceeding there has been a final determination of the question of priority of invention between adverse claimants. *In re Frasch*, 20 App. D. C. 298; 100 O. G. 1977; 1902 C. D. 560.

105. The right of appeal given by sec. 4909, R. S., exists only where claims in an application for patent, or some of them, have been twice considered and rejected by the primary examiner. *Steinmetz v. Allen*, 22 App. D. C. 56; 31 W. L. R. 358.

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106. Appeals do not lie to this court from all or any preliminary decision in matters of interference, though seriously affecting the rights of the parties, but only from those wherein the priority of the claim to the invention has been finally awarded. *Cross v. Phillips*, 14 App. D. C. 228; 87 O. G. 1399; 1899 C. D. 342.

107. Neither the rules of the Patent Office nor any section of the Revised Statutes provide for nor permit appeals from a decision rendered upon a motion for dissolution affirming the patentability of the issue. *Sobey v. Holsclaw*, 28 App. D. C. 65; 126 O. G. 3041; 1907 C. D. 465.

108. There is no appeal to the Court of Appeals from any order or ruling of the Commissioner of Patents in any preliminary or interlocutory matter in an interference. *Westinghouse v. Duncan*, 2 App. D. C. 131; 66 O. G. 1009; 1894 C. D. 170.

109. Where the patentability of the claims is not in question, but merely the manner of their presentation to the Patent Office, *Held* that the action of the Office is interlocutory and deprives the applicant of no substantial right which would entitle him to appeal. *Steinmetz v. Allen*, 102 O. G. 231; 1903 C. D. 632.

110. There is no appeal to the Court of Appeals from the opinion of the Commissioner of Patents holding that there is or is not an interference, nor from his refusal to investigate an alleged interference, such matters being left by law to his sound discretion. *Westinghouse v. Duncan*, 2 App. D. C. 131; 66 O. G. 1009; 1894 C. D. 170.

111. Patentability of the invention is a necessary prerequisite to the declaration of an interference, and the court is without jurisdiction in a case where there is not a final favorable decision on that question by the Patent Office. *Oliver v. Felbel*, 20 App. D. C. 255; 100 O. G. 2384; 1902 C. D. 565.

112. A decision was rendered by the Commissioner on February 28, 1891, rejecting the claims. There were no other or further steps taken in the case until October 23, 1896, when appellant moved for a rehearing and for leave to amend by canceling certain claims embraced by the original patent and to insert in lieu thereof modified claims filed with the motion for rehearing. This motion was on March 13, 1897, denied by the Commissioner. On appeal to the Court of Appeals from this ruling of the Commissioner refusing to rehear the case, *Held* that the appeal can-

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not be maintained, as an appeal will not lie from a ruling refusing a rehearing or an application for leave to amend the original claims. *In re Messinger*, 12 App. D. C. 532; 83 O. G. 1995; 1898 C. D. 506.

113. The appeal cannot be maintained, as it was not taken from the original decision of the Commissioner of February 28, 1891, refusing the reissue of the patent, either to the Supreme Court of the District of Columbia or to the Court of Appeals of the District of Columbia, within the limits prescribed by the rule of the Court of Appeals after the rule was adopted. *Ib.*

114. The rulings on questions of mere practice in the Patent Office will not be reviewed in this court unless it appears that there has been an abuse in the exercise of discretion and that substantial rights have been thereby affected or denied. The practice of refusal by the Commissioner to remand a case to the Primary Examiner is settled by the decisions of the Patent Office. *In re Marshutz*, 13 App. D. C. 228; 85 O. G. 778; 1898 C. D. 578.

115. When the Commissioner decides that one of two issues of an interference was invented by one party and the other by the other party, but that the second issue has no patentable novelty to distinguish it from the one first invented, an appeal from his decision awarding priority of the second issue amounts to nothing more than a moot case and should not be adjudicated. *Shellaberger v. Schnabel*, 10 App. D. C. 145; 79 O. G. 339; 1897 C. D. 364.

116. In an interference of two issues, one of which the Commissioner decided was made by one contestant and the other by the other, when he also holds in the same decision that the two are structurally and patentably different, the party adjudged the prior inventor has no ground of appeal, since if the Commissioner was right in his holding the first issue covers all that there is patentable, and if the Commissioner is not right his mistake does not injure such prior inventor. *Ib.*

117. A decision of the Commissioner of Patents that may be appealed from to the court can only be made after the Primary Examiner, the Board of Examiners-in-Chief, and the Commissioner have all considered the case and made a finding therein. *Westinghouse v. Duncan*, 2 App. D. C. 131; 66 O. G. 1009; 1894 C. D. 170.

118. Where the Primary Examiner has held claims to be patent

## II. To Court of Appeals. 8. Assignments of Error. 9. Record on.

able and the Examiner of Interferences and the Examiners-in-Chief have omitted or declined to call the attention of the Commissioner to the unpatentability of the issue or where the Commissioner has declined to review the decision of the Primary Examiner after his attention has been called to the alleged unpatentability of the issue, the Court of Appeals of the District of Columbia should hold the question of patentability to be settled, except in an extraordinary case. The statute does not provide for an appeal to the court from a ruling by the Commissioner or of any subordinate tribunals affirming the patentability of a claimed invention. It is only from a decision adverse to the patentability of a claim that an appeal will lie. *Sobey v. Holsclaw*, 28 App. D. C. 65; 126 O. G. 3041; 1907 C. D. 465.

119. A right of appeal lost by delay cannot be revived through the instrumentality of a remedial prerogative writ. *Ex parte Dries*, 3 App. D. C. 165; 22 W. L. R. 301.

**8. Assignments of Error.**

120. Although neither the rules of the Court of Appeals of the District of Columbia nor of the Patent Office mention amendments to the reasons of appeal, when such amendment is made in due time to correct an assignment of error that may not be sufficiently specific or some inadvertence in its preparation and no possible injury could be done the opposing party, there appears to be no reason why it should not be permitted. *Horine v. Wende*, 29 App. D. C. 415; 129 O. G. 2858; 1907 C. D. 615.

121. On appeal by defendant from an order granting a preliminary injunction in a suit to enjoin the infringement of a patent, an assignment of error that the bill insufficiently describes the patent will not be entertained, where no objection was made on the preliminary hearing and defendant admitted the existence of the patent of the contents of which he was evidently advised and denied infringement. *Lane v. Levi*, 21 App. D. C. 168; 31 W. L. R. 131.

**9. Record on.**

122. The record of the proceedings in a case in the Patent Office upon being filed with the clerk of the Court of Appeals, becomes a public judicial record of the court and must be so treated. There is no warrant found either in the patent law or the com-



mon law of the land to keep such papers secret and not to allow copies to be made except upon the special order of the court or consent of the appellant. *Ex parte Drawbaugh*, 2 App. D. C. 404; 66 O. G. 1451; 1894 C. D. 192.

123. The complication of the record by testimony which is irrelevant, immaterial, and utterly useless for the elucidation of the substantial issue between the parties and by useless and irrelevant controversies between counsel condemned. *Scott v. Scott*, 18 App. D. C. 420; 96 O. G. 1650; 1901 C. D. 419.

124. Where appellee moves to dismiss the appeal or to affirm the decision below in an interference proceeding, on the ground that that decision could not have been other than in its favor and that the appeal was therefore taken for delay and appellant moves that hearing upon appellee's motion be postponed until the hearing upon the appeal on the ground that it is necessary to have certain testimony made part of the record already filed, *Held* that the appellant's motion to postpone should be denied, as no good excuse is advanced for failing to make the alleged testimony a part of the record already filed, and appellant's good faith in making the motion is open to grave doubt. *Jones v. Starr*, 26 App. D. C. 64; 117 O. G. 1495; 1905 C. D. 694.

125. Failure to print transcript of record is ground for dismissal of appeal. *Pelton v. Evered*, 77 O. G. 1600; 1896 C. D. 651. *Munson v. Carper*, 79 O. G. 160; 1897 C. D. 359.

#### 10. Costs on.

126. The Court of Appeals has no power or jurisdiction to award costs, or to execute any judgment therefor that might be entered in cases of appeals from the Commissioner of Patents. *Wells v. Reynolds*, 5 App. D. C. 20; 69 O. G. 1507; 1894 C. D. 664.

127. Where on appeal from the decision of the Commissioner of Patents a record was allowed to be filed in the case by appellee upon assurance that it would have some material bearing upon the question of the issue presented by the appellee, but on consideration it was found that the record had no such bearing, *Held* that the record so introduced must be at the cost of the appellee. *Stevens v. Scher*, 11 App. D. C. 245; 81 O. G. 1932; 1897 C. D. 761.

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**11. Practice.**

128. Where a question as to the patentability of the invention is raised by some tribunal of the Patent Office after the declaration of an interference, it should be finally settled before a decision on priority is rendered which entitles the defeated party to appeal to the court. *Oliver v. Felbel*, 20 App. D. C. 255; 100 O. G. 2384; 1902 C. D. 565.

129. A motion that an investigation be made as to the alleged loss of a part of an exhibit in the case in the Patent Office denied, since that is a matter which should have been settled in the Patent Office before taking an appeal to the court. *Blackford v. Wilder*, 21 App. D. C. 1; 104 O. G. 580; 1903 C. D. 573.

130. The court will not consider affidavits filed either in the court or the Patent Office relating to changes that may have occurred in drawings, models, experimental machines, and like exhibits after they are introduced in evidence. *Greenwood v. Dover*, 23 App. D. C. 251; 99 O. G. 2172; 1904 C. D. 630.

131. There is no precedent or practice which would justify the court in granting a motion for leave to apply to Patent Office to have an interference that has been finally determined reopened with permission to introduce additional evidence to supply defects and omissions that are supposed to exist. The court has no power to authorize the taking of new or additional testimony upon a motion like the present. *Nielson v. Bradshaw*, 16 App. D. C. 92; 91 O. G. 648; 1900 C. D. 274.

132. Defects in the evidence, if they can be corrected at all, should be corrected in the Patent Office by making a seasonable application for leave to do so, since the appellee should not be subject to the trouble and expense attending an appeal to this Court by the appellant upon a defective state of the record. *Ib.*

133. Where an interference is declared between three parties and all present testimony and but one of these parties takes an appeal to the Court of Appeals, the case made out by the party who has not appealed cannot be considered in the determination of the controversy. *Richards v. Meissner*, 24 App. D. C. 305; 114 O. G. 1831; 1905 C. D. 595.

134. Where in a suit for an accounting the decree of the court below confirmed a report of the auditor finding in favor of the complainant and adjudged that he recover costs from the defend-

II. To Court of App. 12. Rehearings. 13. Conclusiveness of Judgment on.

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ant, but did not in terms adjudge that he recover the amount found due by the auditor, this court, in affirming the decree, may modify it by the addition of a clause that the complainant recover the amount. *Eclipse Bicycle Co. v. Farrow*, 23 App. D. C. 411; 32 W. L. R. 265.

135. Where pending an appeal on a petition for mandamus against a public officer, the officer retires, the appeal will not be dismissed; but the judgment of the court below will be reversed and the cause remanded with directions to dismiss the suit for want of proper parties. The result is the same whether the judgment appealed from is in favor of or against the officer. *Seymour v. Nelson*, 11 App D. C. 58; 25 W. L. R. 542.

136. Where one of the parties to an interference added the claims in issue by amendment without a supplemental oath, the Court of Appeals would not be justified in awarding priority to the opposing party because of such failure. The most that the court could do under the circumstances would be to remand the proceeding in order that a supplemental oath may be made and the matter renewed. *Phillips v. Sensenich*, 134 O. G. 1806; 31 App. D. C. 159.

### 12. Rehearings.

137. Though there may be cases in which rehearing may well be had, the endeavor of the court is always to bring to a case in the first instance the best judgment which it possesses in the interests of justice, that the determination, when made, should have the element of stability. It is not just to the court or to the parties that argument should be held back by counsel until after decision upon the chance that the judgment may be favorable nevertheless. *Hien v. Pungs*, 9 App. D. C. 492; 78 O. G. 484; 1897 C. D. 253.

138. A motion for rehearing, made after a former motion for the same purpose had been denied, and the case appealed to the Supreme Court of the United States, in which court the appeal was dismissed for want of jurisdiction, dismissed as not having been made in time, under the rules, and that the matter was settled by the decision on the first motion. *Durham v. Seymour*, 10 App. D. C. 274; 25 W. L. R. 9.

### 13. Conclusiveness of Judgment on.

139. The final judgment of the Court of Appeals entitling a

II. To Court of Appeals. 13. Conclusiveness of Judgment. 14. In General.

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claimant to a patent, in either an *ex parte* or an interference proceeding, is not conclusive of either patentability or priority. The patent, when issued, may be attacked in the courts by parties whose interests may be affected by the monopoly claimed thereunder; and the defeated party has another remedy by proceeding in a court of equity, as provided in § 4915, Rev. Stat. *Johnson v. Mueser*, 29 App. D. C. 61.

140. In the case of interlocutory appeals taken to or allowed by this court, equally as in the case of appeals from final judgments or decrees, the decision of this court becomes the law of the case, final and irrevocable, upon all questions involved or that might have properly been brought forward in such interlocutory decision, save only that this court may, upon a proper showing, revoke or modify its decision, or allow the cause to be reopened, and save also that upon the final hearing the court below may not necessarily be bound in all cases by such interlocutory decision of this court. *Farrow v. Eclipse Bicycle Co.*, 18 App. D. C. 101; 29 W. L. R. 218.

#### 14. In General.

141. The act of Congress approved February 9, 1893, by which the determination of appeals from the Commissioner of Patents was vested in the Court of Appeals of the District of Columbia, does not overstep the boundaries erected by the Constitution between the three great departments of the Government, but it is within the power of Congress to enact such law. *Bernardin v. Seymour*, 10 App. D. C. 294; 79 O. G. 1190; 1897 C. D. 428.

142. Where the patentability of the claims of an interference issue has been favorably passed upon by the Primary Examiner *ex parte* and also *inter partes* upon a motion to dissolve, from whose affirmative decision in the latter case no right of direct appeal is given either by the patent statutes or the rules of the Patent Office, and both the Examiner of Interferences and the Examiners-in-Chief have refused to direct the attention of the Commissioner, under Rule 126, to the fact that the claims were unpatentable, it cannot be successfully maintained that the Commissioner of Patents decided the question of priority without first determining and deciding that the subject-matter was patentable. *Sobey v. Holsclaw*, 28 App. D. C. 65; 126 O. G. 3041; 1907 C. D. 465.

143. The writ of mandamus can not be used to serve the purposes of an appeal or writ of error. *Tuttle v. Allen*, 35 W. L. R. 50.

144. As to right to mandamus to compel the allowance of an appeal. See *Steinmetz v. Allen*, 22 App. D. C. 56; 31 W. L. R. 358.

145. As to proper remedy to compel Commissioner of Patents to require primary examiner to forward appeal. See *Ex parte Frasch*, 192 U. S. 566; 32 W. L. R. 153.

### III. TO COMMISSIONER OF PATENTS.

146. The Primary Examiners, who are given statutory authority to decide questions of patentability, are under the supervision of the Commissioner, and it would seem to be not only his right but his duty to correct any manifest error committed by any of the Primary Examiners relative to the patentability of a supposed invention or of the right of an applicant to claim it whenever such error was called to his attention. To warrant any action on his part in such a case, the error must be so gross that it would be a wrong to the public to permit a patent to issue. It manifestly should not be based upon a mere difference of opinion. *Sobey v. Holskaw*, 28 App. D. C. 65; 126 O. G. 3041; 1907 C. D. 465.

147. Where the question of the patentability of the claims of the issue has been repeatedly raised before the subordinate tribunals of the Patent Office and is again raised upon appeal to the Commissioner on priority, the adoption by the Commissioner of the views of the subordinate tribunals is a sufficient determination by him of the question so far as it is necessary to be determined in an interference proceeding. *Ib.*

148. The Assistant Commissioner has authority vested in him by Congress to hear and decide cases appealed to the Commissioner of Patents when they are assigned to him by the Commissioner, and a mandamus will not lie to compel the Commissioner to decide such cases in person. *Stapleton v. Duell*, 17 App. D. C. 575; 95 O. G. 1049; 1901 C. D. 359.

149. The mere fact that an appeal is taken to the Commissioner *in person* does not prevent the assignment of that case to the Assistant Commissioner for decision. The mere form in which

## IV. To Examiners-in-Chief.

the appeal is given cannot deprive the Assistant Commissioner of jurisdiction. *Ib.*

## IV. TO EXAMINERS-IN-CHIEF.

150. The statute authorizing an appeal when claims have been twice rejected means that the claims must have been considered on their merits and found to be not patentable. *Steinmetz v. Allen*, 102 O. G. 231; 1903 C. D. 632.

151. Where the claims of an application for patent have not been acted upon as to their merits, but the applicant has been required to present them in two applications instead of one, *Held* that the claims have not been rejected within the meaning of the law and the rules and that the applicant is not entitled to appeal to the Examiners-in-Chief. *Ib.*

152. A requirement by the Primary Examiner for division is appealable to the Examiners-in-Chief, although a distinction can be made between his ruling upon that question and one on the merits, if we regard the merits to mean invention, novelty, or the like. *Steinmetz v. Allen*, 192 U. S. 543; 109 O. G. 549; 1904 C. D. 703.

153. By the general terms of Sec. 4909, Rev. Stat., it was not intended by Congress to give the right of appeal in cases of mere preliminary or interlocutory orders. *Steinmetz v. Allen*, 22 App. D. C. 56; 104 O. G. 853; 1903 C. D. 578.

154. Section 4909, Revised Statutes, although general in its terms, gives the right of appeal only where the claims or some of them have been considered and twice rejected upon their merits as not being patentable for some of the causes designated by the statutes. *Ib.*

155. A requirement by the Examiner for the division of an application is not an action from which an appeal may be taken to the Examiners-in-Chief. *Ib.*

156. Where an applicant for a design patent presents a claim and the Patent Office rules that the applicant cannot have the claims presented and can have no claim but a suggested one, *Held* that such ruling is, in effect, a rejection of the claim presented and when twice refused is appealable to the Examiners-in-Chief under section 4909 of Revised Statutes. *In re Mygatt*, 26 App. D. C. 366; 1906 C. D. 596; 121 O. G. 1676.

157. Where the unity of the inventions claimed by the petitioner

is not denied, he has the right to join them in one application, and where the Primary Examiner in such case denies that right, the Examiner's action is a rejection of the application and entitles petitioner to an appeal to the Examiners-in-Chief under section 4909, Rev. Stat. *Steinmetz v. Allen*, 192 U. S. 543; 109 O. G. 549; 1904 C. D. 703.

158. Where the ruling is such that the applicant must yield and give up the right claimed, or if he does not yield he will not be heard at all and may subsequently be regarded as having abandoned his application, such ruling must be considered as final and appealable. *Ib.*

159. Where an appeal is filed regular in form, it is the duty of the Examiner to answer the appeal by furnishing the Examiners-in-Chief the statement provided for in Rule 135. *Steinmetz v. Allen*, 192 U. S. 543; 109 O. G. 549; 1904 C. D. 703.

160. There is no appeal to the Examiners-in-Chief of the Patent Office from decisions of primary examiners. *Allen v. Lowrey*, 26 App. D. C. 8; 33 W. L. R. 354.

See ACCOUNTS AND ACCOUNTING, 2; ACTIONS, 1; ATTORNEYS, 3, 4; COMMISSIONER OF PATENTS, 1; COURTS, 1; EQUITY, 3; MANDAMUS, 14, 36-44; PATENTS, 717, 724, 725, 734, 735-739, 811; REMEDIES, 2; RES ADJUDICATA, 12; STATUTES, 2, 6; TRADE-MARKS, 100, IX; WORDS AND PHRASES, 3.

**APPLICATIONS.** See APPEALS, 51, 112; RES ADJUDICATA, 3, 5.

**APPLICATION FOR PATENT.** See APPEALS, 157, 158; PATENTS III 1, 260-269, 368-373, 735, 992-994, 1001; RES ADJUDICATA, 11; STATUTES, 11.

**APPLICATION FOR REISSUE.** See PATENTS X 2; X 4.

**APPLICATION FOR REGISTRATION OF TRADE-MARK.** See APPEALS, 57; TRADE-MARKS, III.

**ARTS.** See PATENTS II 14.

**ASSIGNMENT.** See ACTIONS, 4, 5; COPYRIGHTS, 27-29, PARTIES TO SUIT, 1; PATENTS VI, 765-767, 887; PROCESS.

**ASSIGNMENTS OF ERROR.** See APPEALS, 74, 120, 121; PATENTS, 733.

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**ASSISTANT COMMISSIONER OF PATENTS.** See

APPEALS, 148,149; COMMISSIONER OF PATENTS, 7, 8.

**ATTORNEYS.**

1. Section 4 of the act of July 4, 1884, applies to agents or attorneys before the Patent Office as well as before the other Bureaus of the Interior Department. *Wedderburn v. Bliss*, 81 O. G. 1783; 1897 C. D. 750.

2. Section 487, Revised Statutes, remits to the Commissioner of Patents the entire cognizance of cases of malpractice occurring before his Bureau and under it the hearing of such cases is to be by him and not by the Secretary of the Interior. It is eminently fitting that this should be so in view of the character of the duties, judicial or quasi-judicial, which are vested in him. *Wedderburn v. Bliss*, 12 App. D. C. 485; 83 O. G. 296; 1898 C. D. 413.

3. By § 487, Rev. Stat., there is reserved to the Secretary of the Interior a supervisory power over the action of the Commissioner of Patents; but this is no more than an executive or administrative proceeding. The provision that the judgment of the Commissioner shall "be subject to the approval of the Secretary of the Interior" does not make the Secretary a court for the trial of the case, nor does it make him in any proper sense an appellate tribunal before which it would be proper for a party in interest to demand and to be accorded a hearing. *Ib.*

4. The meaning of such supervisory power is not that the Secretary must try or hear the cause, but that the judgment of the Commissioner is not to be carried into effect until it receives the approval of the Secretary, and in order to give it this approval, or conversely and by implication his disapproval, the Secretary is necessitated to go over the record of the proceedings that is made up for him according to law or regulation. This, as we have said, is a judicial or quasi-judicial duty on his part; but it is not the equivalent in any sense of the hearing of a cause. *Ib.*

5. When the act of July 4, 1884, and § 487, Rev. Stat., are compared and construed together, it is clear that it was not the intention of Congress to repeal § 487 by the enactment of the later law, and if such was not the intention of Congress then the only reasonable construction of the act of 1884 was that



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the hearing therein provided to be given to the persons charged with malpractice was the hearing implied to be by §487 of the Rev. Stat. So far, at least, as the Patent Office was concerned the act of 1884 made no substantial change in the law. *Ib.*

6. The provision of the act of July 4, 1884, is not that the Secretary might exclude from practice after notice and hearing of the party charged, which would be the more natural form of expression if it was the intention that the hearing should be before the Secretary in person, but that he might exclude "after notice and opportunity for a hearing," meaning plainly a hearing before some proper officer in such reasonable mode as should be provided by regulation of the Department. *Ib.*

7. The word "hearing" in law and in this statute means something more than oral argument. It means, also, the right to adduce testimony. If the sole hearing contemplated by the statute was to be had before the Secretary, the Commissioner of Patents could not hear it at all, and the only duty that could reasonably be imposed upon that officer was that of taking the testimony and reporting it to the Secretary; but this conclusion would be in direct contravention of § 487, Rev. Stat. which explicitly provides that the Commissioner shall determine the matter, subject only to the approval of his action by the Secretary of the Interior. *Ib.*

8. Assuming that mandamus is proper whenever an inferior court or a judicial officer charged with the exercise of discretionary or judicial functions either assumes to exercise jurisdiction when none exists, or refuses to entertain jurisdiction with which he is by law invested, without regard to the question whether there is any appeal from his judgment when rendered and when he has acted, *Held* that it is doubtful whether the refusal of the Secretary to accord to the relator the opportunity to make an argument, especially when it is not shown or in any manner intimated how or where the Secretary erred or was mistaken or misled, is to be regarded as a jurisdictional matter for which the writ of mandamus would be proper. *Ib.*

9. The construction placed by an executive department of the Government upon a statute enacted for its guidance and the regulation of its business must, unless it be plainly erroneous, receive due weight and consideration, and should not be disregarded, except for cogent reasons. When, therefore, the De-

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partment, which was called upon to administer the act of 1884 and construe that act in connection with § 487, Rev. Stat., did so construe it that the notice and an opportunity for a hearing therein provided to be given should be given by the head of the proper Bureau and that the investigation should be conducted by such Bureau officer, subject to the approval of his findings by the Secretary of the Interior, it is not apparent that there was error in that construction. *Ib.*

10. Where an agent was furnished with a copy of charges made against him before the Commissioner of Patents as to why he should not be disbarred from practicing as a patent agent, and he had a hearing before the Commissioner of Patents on these charges and the Commissioner recommended that he be disbarred from further practicing as an agent or attorney, and the Secretary approved the reasons given by the Commissioner of Patents without affording the agent a hearing before him in person, *Held* that the refusal of the Secretary to hear oral argument was not arbitrary, oppressive, or unjust, and the proceeding before him was conducted under "due process of law." *Wedderburn v. Bliss*, 81 O. G. 1783; 1897 C. D. 750.

11. The proceeding before executive and ministerial officers and special tribunals exercising quasi-judicial powers in order to constitute due process of law need not be as formal as in courts of justice or conducted after the manner of proceedings in such courts. What would be due process of law before such officers and tribunals might not be considered such in a court of justice. What is due process of law in a particular case depends largely upon the nature and object of the proceeding, the duties and the jurisdiction of the officer or tribunal, and the nature of the right or immunity to be affected by the proceeding. If the mode of procedure be such that the party to be affected has an opportunity of presenting to the officer or tribunal in any reasonable way his contention as to the facts and merits of the question to be determined, the proceeding is due process of law; but if the determination be made in an arbitrary, oppressive, or unjust manner, so that the party to be affected has no reasonable opportunity for hearing, then the proceeding and determination are void because not due process of law. *Ib.*

12. Mistaken advice on the part of a solicitor, from which followed long delay in putting an invention into practice, will not

be allowed to militate against the just claim of others who have been diligent in the realization of their conceptions. *Arnold v. Tyler*, 10 App. D. C. 175; 79 O. C. 156; 1897 C. D. 349.

13. The attorney cannot be made responsible for mistakes in the case, since the client must be charged with the responsibility for the action, mistake, or inadvertence of the attorney. *In re Starkey*, 21 App. D. C. 519; 104 O. G. 2150; 1903 C. D. 607.

**AUDITOR OF COURT.** See ACCOUNTS AND ACCOUNTING.

**AUDITOR'S REPORT.** See APPEALS, 134.

**BAR OF PATENT ISSUED.** See PATENTS, 12.

**BAR OF RIGHT TO PATENT.** See PATENTS, 174.

**BROADENING CLAIMS.** See PATENTS.

**BURDEN OF PROOF.** See PATENTS, 9, 290, 291, 556, 574, 584, IX 4; TRADE-MARKS, 101.

**CANCELLATION OF PATENT.** See PATENTS, 975.

**CANCELLATION OF TRADE-MARK.** See TRADE-MARKS, VI.

**CHAMPERTY.** See COPYRIGHTS, 26.

**CHANGE IN LOCATION OF ELEMENTS.** See PATENTS II, 9.

**CHROMOLITHOGRAPHS.** See COPYRIGHTS, 2.

**CLAIMS.** See APPEALS, 38, 53, 54, 167, 168, 209, 210, 213, 214, 215, 457-465, 549-550, V, VIII 3, X 4.

**CLOUD ON TITLE.**

A vague and adroitly worded assertion of right, accompanied by threats of litigation, will create a cloud on title to letters patent sufficient to sustain a bill in equity by the patentee to remove the cloud and to justify the granting of a temporary injunction. *Columbia Sand Dredging Co. v. Miller*, 20 App. D. C. 245; 30 W. L. R. 469.

A cloud on title can be created by matter not of record. *Ib.*  
See PATENTS, 702.

**COAT OF ARMS OF UNITED STATES.** See TRADE-MARKS, 9.

**COMBINATIONS.** See PATENTS, 71, 83, 84, 94, 102 112, 114, 115, II, 8, 9, 137, 157, 1003.

**COMITY.** See PATENTS, 1008.

**COMMISSIONER OF PATENTS.**

1. While the Commissioner of Patents is an executive officer and subject in administrative or executive matters to the supervision of the Secretary of the Interior, his actions in deciding patent cases are essentially judicial in their nature and not subject to review by the executive head, an appeal to the courts having been provided for. *Bernardin v. Duell*, 172 U. S. 576; 86 O. G. 995; 1899 C. D. 287.

2. The Commissioner of Patents is empowered by law to establish rules to regulate the procedure and practice in his office, and the requirement that certain claims be presented in two applications instead of one comes within this authority. *Steinmetz v. Allen*, 102 O. G. 231; 1903 C. D. 632.

3. Notwithstanding that the law has provided certain official agencies to advance the work of the Patent Office, the Commissioner is the head of the Bureau, and if there be any reasonable ground within his knowledge why a patent should not issue, whether specific objection be raised by the Examiners or not, it is his duty to refuse the patent, and it is especially his duty to do so when the Primary Examiner and the Examiners-in-Chief have found such ground for refusal to exist. *Drawbaugh v. Seymour*, 9 App. D. C. 219; 77 O. G. 313; 1896 C. D. 527.

4. As one of the instrumentalities designated by Congress in execution of the power granted, the office of Commissioner of Patents was created, and though he is an executive officer, matters in the disposal of which he exercises functions judicial in their nature may properly be brought within the cognizance of the courts. *Bernardin v. Duell*, 172 U. S. 576; 86 O. G. 995; 1899 C. D. 287.

5. In deciding whether or not a patent shall issue the Commissioner acts on evidence, finds facts, applies the law, and decides questions affecting not only public but private interests, and so as to reissues or extensions or interferences between contesting claimants. In all this he exercises judicial functions. *Bernardin v. Duell*, 172 U. S. 576; 86 O. G. 995; 1899 C. D. 287.

6. The different statutes show that in the gradual development

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of the policy of Congress in dealing with the subject of granting patents the recognition of the judicial character of the questions involved became more and more pronounced. *Ib.*

7. Where on appeal from the decision of the Examiners-in-Chief of the Patent Office to the Commissioner, the Commissioner referred the case to the Assistant Commissioner for his consideration and determination, although the Commissioner was present and engaged in other official duties, and the Assistant Commissioner heard and determined the case and thereafter the Commissioner declined to rehear the case, *Held* that a petition for writ of mandamus will not lie to compel the Commissioner to hear the case. *Stapleton v. Duell*, 28 W. L. R. 835 93 O. G. 2532; 1900 C. D. 409.

8. Under the provision contained in the appropriation act of Congress of July 11, 1890, and repeated in each annual appropriation act since that date, whereby it is declared that the Assistant Commissioner of Patents "shall perform such duties pertaining to the office of the Commissioner of Patents as may be assigned to him by the Commissioner," any duty pertaining to the office of the Commissioner, whether of an appellate character or otherwise, may be assigned by him to be performed by the Assistant Commissioner and includes an assignment of the duty of hearing and deciding an appeal taken to the Commissioner in an interference proceeding. *Stapleton v. Duell*, 17 App. D. C. 575; 29 W. L. R. 156; 95 O. G. 1049; 1901 C. D. 359.

9. When an application is made for the registration in the Patent Office of a label under the provisions of sec. 3 of the act of Congress of June 18, 1874, the Commissioner of Patents is called upon to decide whether or not the thing presented for registration is a label as defined by the statute; and his determination of that question can not be controlled by injunction or mandamus. *Allen v. Regina Music Box Co.*, 22 App. D. C. 271; 31 W. L. R. 476.

10. Courts of the United States are bound to take notice of the persons who occupy the positions of heads of Departments, etc., including that of the Patent Office. The Commissioner made a party defendant in this suit having been succeeded in that office by another person, no decree made against him would

bind the present incumbent of the office. *Backus Heater Co. v. Simonds*, 2 App. D. C. 290; 66 O. G. 1893; 1894 C. D. 211.

11. After a decision of the Court of Appeals on the question of priority, the Commissioner of Patents may refuse a patent to the successful interferant. *Sobey v. Holsclaw*, 28 App. D. C. 65; 126 O. G. 3041; 1907 C. D. 465.

12. The performance by the Commissioner of Patents of the duty of determining whether a particular word or words can become the subject of lawful appropriation as a trademark, involves the exercise of discretion, and in such respect his function is judicial. *Bronson v. Duell*, 17 App. D. C. 471; 29 W. L. R. 126.

13. As to power relative to disbarment of attorneys from practice before Patent Office. See *Wedderburn v. Bliss*, 12 App. D. C. 485; 26 W. L. R. 293.

14. As to time within which appeal from the Commissioner of Patents may be taken. See *Hein v. Pungs*, 9 App. D. C. 492; 77 O. G. 1600; 1896 C. D. 649. *Burton v. Bentley*, 14 App. D. C. 471; 87 O. G. 2326; 1899 C. D. 393. *Ross v. Loewer*, 9 App. D. C. 563; 77 O. G. 2141; 1896 C. D. 665. *In re Bryant*, 9 App. D. C. 563; 77 O. G. 1599; 1896 C. D. 648. *Ocumpaugh v. Norton*, 24 App. D. C. 296; 32 W. L. R. 846.

See ABATEMENT AND REVIVAL; ACTIONS, 3; APPEALS, 40, 42, III, 135; ATTORNEYS, 2, 3, 7; MANDAMUS, 18, 19; PARTIES TO SUIT, I, 3, 6; PATENTS, 190, 705, 727, 770, 773, 959; RES ADJUDICATA, 13; TRADE-MARKS, 39, 104, 130, IV.

**COMMON LAW.** See COPYRIGHTS, 15.

**COMPOSITIONS.** See PATENTS II, 12; 64; 118, 1005, 1006.

**COMPUTATION OF TIME.** See APPEALS, 29.

**CONCEALMENT OF INVENTION.** See PATENTS, 186, 444-456, 503.

**CONCEPTION OF INVENTION.** See PATENTS.

**CONCLUSIVENESS OF DECISIONS OF PATENT OFFICE TRIBUNALS.** See APPEALS, 90-102, 106, 118.

**CONCLUSIVENESS OF JUDGMENT OF COURT OF APPEALS.** See APPEALS, 139, 140.

**CONFUSION AND DECEPTION.** See TRADE-MARKS, 19, 21, 22, 23, 26, 53, 54, 101, 110.

**CONGRESS, POWERS OF.** See PATENTS, 11; STATUTES, 10.

**CONSTITUTIONAL LAW.** See APPEALS, 11, 141; COPYRIGHTS, 23; PATENTS, 11, 199, 200.

**CONSTRUCTION OF CLAIMS.** See PATENTS, 457-465, V. 751.

**CONSTRUCTION OF ISSUES.** See APPEALS, 81; VIII, 4, 5.

**CONSTRUCTION OF STATUTES.** See STATUTES.

**CONSTRUCTIVE REDUCTION TO PRACTICE.** See PATENTS, 196, 197, 368-373, 564, 565, 744, 746, 752, 802, 803, 812.

**CONTINUATION OF APPLICATION FOR PATENT.**  
See PATENTS, 192, 193, 195.

## **CONTRACTS.**

1. That a licensee of a former owner of patents, having the right under contract to lease phonographs and graphophones, does not itself perform the contract, and sells only graphophones, thereby discriminating against the phonograph, is no answer to an application for a temporary injunction to enjoin a third party, who has become owner of the patents, from infringing upon his rights under the contract; but the fact might be availed of by proper proceedings to enforce or vacate the contracts. *Whitson v. Columbia Phonograph Co.*, 18 App. D. C. 565; 29 W. L. R. 804; 98 O. G. 418; 1902 C. D. 497.

2. Where an agreement provides for the organization of a corporation to handle patents obtained by one of the parties, and the assignment of such patents to the corporation, and the agreement has been performed in part, a court of equity will decree specific performance thereof, even though while still executory it was too vague and uncertain to be then enforced, and was in part for personal services. *Sanche v. Electrolibration Co.*, 4 App. D. C. 453; 22 W. L. R. 769.

3. A bill in equity to enforce specific performance of an alleged

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verbal contract to give 1,000 shares of stock in a corporation proposed to be formed to exploit a patent in consideration of a payment by complainant to defendant of \$45 in cash and the assumption by him of an indebtedness of \$50 on a certain lot in Wisconsin (which was also conveyed to complainant), was properly dismissed on the ground that the evidence did not establish such a complete and certain contract as would justify a decree of performance, there being no showing as to what was to be the amount of the capital stock or the number and value of the shares into which it was to be divided. *Riordan v. Stout*, 17 App. D. C. 397; 29 W. L. R. 141.

4. An interest in the proceeds of a patent may be transferred by contract; but the interest so acquired is not the right or interest of an inventor upon which a patent can be obtained. *Tyler v. Kelch*, 19 App. D. C. 180; 98 O. G. 1282; 1902 C. D. 506.

5. Where T. executed a release to K. of all claim to the invention for the sum of \$75 and alleges in his testimony that this release was of his right as the true inventor and not of a mere pecuniary interest in the invention and it appears that the invention is a very valuable one, *Held* that to accept T.'s statement would be to indulge a supposition contrary to all rational conduct of men understanding the nature of the business in which they were engaged. *Ib.*

6. A contract between the parties whereby they agreed to transfer all inventions made by them to a certain company can have no bearing on the question as to which of these parties is the inventor of a certain machine, but bears only on the question of ownership of the invention. *Hunt v. McCaslin*, 10 App. D. C. 527; 79 O. G. 861; 1897 C. D. 401.

7. A company agreed in consideration of the sale to it by F. of all his interest in an invention for which two applications for patent were pending in the Patent Office to pay him royalty on each device manufactured and to use due diligence in manufacturing and selling, and the company's attorney took charge of the prosecution of the applications, and the manufacture of the device was begun and it was extensively advertised, but subsequently M., an officer of the company, obtained a patent for a device effecting the same purpose as that of F., whereupon the company ceased to make the latter's device and substituted that of M., and one of F.'s applications after being allowed was



placed in interference with other applications and was abandoned by the failure of the attorney to prosecute it and the other application was allowed to become forfeited by failure of the company to pay the final Government fee, and meanwhile the company became the owners of another patent claimed to dominate the devices of both F. and M. under which it continued to manufacture the device of M., and on the failure of the company to make any returns or render any account F. instituted proceedings for an accounting, *Held* that a decree holding F. entitled to royalty from the company for the devices manufactured under M.'s patent, as well as for those professedly manufactured under its contract with him, and directing a reference to the auditor for a statement of such account should be affirmed. *Eclipse Bicycle Co. v. Farrow*, 16 App. D. C. 468; 93 O. G. 1312; 1900 C. D. 389.

See COPYRIGHTS, 26; ESTOPPEL, 9; PATENTS, 3, 998.

## COPYRIGHTS.

- I. What Copyrightable.
- II. Who May Obtain.
- III. Perfecting Right.
- IV. Notice of Copyright.
- V. Publication.
- VI. Rights of Owner of Copyright.
- VII. Mandamus to Compel Issuance.
- VIII. Infringement.
- IX. Assignments.

### I. What Copyrightable.

1. A blank book of forms containing not a complete English sentence or composition of any kind is not the subject of copyright. *Everson v. Young*, 26 W. L. R. 546.

2. A Chromolithograph is a "pictorial illustration" within the meaning of section 4952, R. S. U. S., and is within the protection of the copyright law (secs. 4952, 4956, and 4965 R. S. U. S., as amended by Act of March 3, 1891, ch. 565, 26 Stat. 119, and Act of March 2, 1895, 28 Stat, 965). *Bleistein v. Donaldson Lith. Co.*, 188 U. S. 239; 31 W. L. R. 99.

### II. Who May Obtain.

3. The interests of a party as printer and publisher merely of a dramatic composition will not entitle him to obtain a copyright

for the protection of that interest. *Koppel v. Downing*, 11 App. D. C. 93; 25 W. L. R. 511.

4. A mere temporary licensee of the use of a dramatic composition, without any proprietary right or interest in it, and without special authority from the proprietor to act as his agent, has no right to take out a copyright of the manuscript, and no authority to confer upon a printer or publisher employed by him the right to take out a copyright in his own name. *Ib.*

5. Where a temporary licensee of the use of a dramatic composition, without authority from the proprietor, authorized a publisher employed by him to take out a copyright in his own name, which was done, and thereafter the proprietor agreed with the publisher to defray the expenses of a suit for infringement to recover penalties provided by § 4966 R. S., the recovery to be apportioned between them; held that the interest of the publisher was not sufficient to entitle him to a copyright, and that the proprietor could not, by retroactive adoption, constitute him a trustee so as to enable him to maintain the suit. *Ib.*

6. Where a proprietor of a work, after filing a copy of the title, neglects to perfect his copyright, and by such neglect abandons such right, that right cannot, sixteen years thereafter, be revived by authorizing another to apply for and obtain a copyright in a name different from that of the real proprietor. *Ib.*

### III. Perfecting Right.

7. To secure a copyright of a book of dramatic composition, the work must be published within a reasonable time after the filing of the title page, and two copies delivered to the Librarian of Congress. *Koppel v. Downing*, 11 App. D. C. 93; 25 W. L. R. 511.

8. The policy of the law of copyright requires that the public should have notice, by a true and correct official registry, of the real author or proprietor entitled to the enjoyment of the monopoly granted thereby as against the public. *Koppel v. Downing*, 11 App. D. C. 93; 25 W. L. R. 511.

### IV. Notice of Copyright.

9. Section 4962 of the Revised Statutes as amended by act of June 18, 1874, ch. 301, (18 Stat. L., 78; U. S. Comp. St. 1901, p. 3411,) providing "that no person shall maintain an action for the infringement of his copyright unless he shall give notice

thereof by inserting in the several copies of every edition published \* \* \* by inscribing upon some visible portion thereof, or of the substance on which the same shall be mounted," the notice of copyright, has not for its object to require the inscription upon the original painting, map, &c., but only upon those published copies concerning which it is designed to convey information to the public which shall limit its use and circumscribe the rights of the purchaser. *American Tobacco Co. v. Werckmeister*, 207 U. S. 284; 133 O. G. 1433.

### V. Publication.

10. The requirement of the act of June 18, 1874, chapter 301, section 1, 18 Stat., 78, (Rev. Stat., sec. 4962,) that "no person shall maintain an action for the infringement of his copyright" unless the required notice shall be inserted "in the several copies of every edition published" does not extend to publications abroad, and the owner of a work copyrighted in this country may restrain the publication thereof by another who has imported for purposes of reproduction copies published by such owner abroad without such notice. *United Dictionary Co. v. G. & C. Merriam Co.*, 208 U. S. 260; 133 O. G. 515.

11. The exhibition of a painting at a public gallery by the author prior to copyrighting the same does not deprive him or his assigns from subsequently securing a valid copyright where the same was expressly entered at the gallery with copyright reserved. *American Tobacco Co. v. Werckmeister*, 207 U. S. 284; 133 O. G. 1433.

### VI. Rights of Owner of Copyright.

12. Copyright property under the Federal law is wholly statutory and depends upon the rights created under acts of Congress passed in pursuance of authority conferred by § 8 of Art. I of the Constitution. *Bobbs-Merrill Co. v. Strauss*, 210 U. S. 339.

13. Property in copyright is the creature of the Federal statute passed in the exercise of the power vested in Congress by the Federal Constitution in Article I, section 8, "to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." *American Tobacco Co. v. Werckmeister*, 207 U. S. 284; 133 O. G. 1433.

14. The right of an author in the United States to multiply

copies of his works after publication is the creation of a new right by Federal statute under constitutional authority and not a continuation of a common-law right. *Globe Newspaper Co. v. Walker*, 210 U. S. 356.

15. At common law an author had a property in his manuscript and might have redress against anyone undertaking to publish it without his consent. *Bobbs-Merrill Co. v. Strauss*, 210 U. S. 339.

16. The rights of a patentee are not necessary to be applied by analogy to those claiming under copyright. *Bobbs-Merrill Co. v. Strauss*, 210 U. S. 339.

17. The sole right to vend granted by § 4952, Rev. Stat., does not secure to the owner of the copyright the right to qualify future sales by his vendee or to limit or restrict such future sales at a specified price, and a notice in the book that a sale at a different price will be treated as an infringement is ineffectual as against one not bound by contract or license agreement. *Bobbs-Merrill Co. v. Strauss*, 210 U. S. 339. *Scribner v. Strauss*, 210 U. S. 352.

18. Whatever rights one may have as author and composer of musical compositions and vocal selections must depend wholly for recognition and remedy upon the provisions of the Copyright Act. *Stern v. Rosey*, 17 App. D. C. 562; 29 W. L. R. 159.

### VII. Mandamus to Compel Issuance.

19. A writ of mandamus will not be issued to compel the Librarian of Congress to register a publication claimed to be the subject of copyright, unless it appears that the publication comes fairly within the purview of the Copyright Act. *Everson v. Young*, 26 W. L. R. 546.

### VIII. Infringement.

20. An action to recover damages for the infringement of a copyright cannot be maintained by the person who, though not the proprietor of the thing copyrighted but merely the printer and publisher thereof under a contract with the proprietor, unlawfully takes out a copyright in his own name. *Koppel v. Downing*, 24 W. L. R. 342.

20a. Reproduction, through the agency of the phonograph, of the sounds of musical instruments playing the music composed

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and published by the appellants was not a copy or publication of the same within the meaning of the Copyright Act (R. S. § 4952). *Stern v. Rosey*, 17 App. D. C. 562; 29 W. L. R. 159.

21. Congress having by §§ 4965-4970, Rev. Stat., provided a remedy for those whose copyrights in maps are infringed, a civil action at common law for money damages cannot be maintained against the infringers. *Globe Newspaper Co. v. Walker*, 210 U. S. 356.

22. The copyright of a musical composition which is published in the form of sheet-music is not infringed by a perforated roll of paper designed to be used in connection with an automatic piano-player in reproducing the music recorded in the copyrighted sheets, since such perforated roll is not a "copy" within the meaning of the copyright statutes. *White-Smith Music Publishing Co. v. Apollo Co.*, 209 U. S. 1; 133 O. G. 762.

23. Constitutional rights of a corporate defendant in an action for the forfeiture of infringing copies of a painting protected by copyright are not violated by the admission in evidence of the replevin proceedings under which such infringing copies were seized over the objection that by such proceedings rights under the fourth and fifth amendments to the Federal Constitution were invaded. *American Tobacco Co. v. Werckmeister*, 207 U. S. 284; 133 O. G. 1433.

24. After judgment of forfeiture of infringing copies of a copyrighted painting under § 4965 of the Revised Statutes (U. S. Comp. St. 1901, p. 3414) a separate action cannot be maintained to recover the penalty prescribed in said section for every infringing copy of the copyrighted painting found in the infringer's possession or sold by him, since such section contemplates but a single action in the nature of replevin, in which may be had both a forfeiture and a recovery of penalties. *Werckmeister v. American Tobacco Co.*, 207 U. S. 375; 133 O. G. 2179.

25. Where the jurisdiction of the Circuit Court is invoked for the protection of rights under the copyright statute that court cannot consider questions of contract right not dependent on the statute where diverse citizenship does not exist, or if it does exist, where the statutory amount is not involved. *Scribner v. Strauss*, 210 U. S. 352.

26. As to whether an agreement between the owner of a translation, who had failed to take out a copyright, and a publisher,

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who had unlawfully done so, that the latter should bring suit for infringement in his own name, the expense to be borne by the owner and any recovery to be for their mutual benefit, is not champertous. See *Koppel v. Downing*, 24 W. L. R. 342.

### IX. Assignments.

27. An instrument providing that "I hereby transfer the copyright in my picture 'Chorus' to the Photographische Gesellschaft, Berlin (The Berlin Photographic Company) for the sum of £200, London, April 2, 1894." signed by the author of the painting, *Held* to constitute a complete transfer of the property right of copyright existing in the picture, there being no evidence of any intention on the part of the author to retain any further interest in the copyright. *American Tobacco Co. v. Werckmeister*, 207 U. S. 284; 133 O. G. 1433.

28. An author may, before publication, assign the right or privilege of taking a copyright independent of the transfer of the copyrightable thing itself. *Ib.*

29. The word "assigns" in § 4952, Rev. Stats., as amended March 3, 1891, (26 Stat. L. 1106, c. 565; U. S. Comp. St., 1901, p. 3406), is not used as descriptive of the character of the estate which the "author, inventor, designer or proprietor" may acquire. The statute was intended to give to the assigns of the original owner of the right to copyright an article the right to take out the copyright secured by the statute independently of the ownership of the article itself. *Ib.*

See STATUTES, 7.

### COSTS.

The Court of Appeals has no power or jurisdiction to award cost, or to execute any judgment therefor that might be entered in cases of appeals from the Commissioner of Patents. *Wells v. Reynolds*, 5 App. D. C. 20.

See APPEALS, 126, 127, 134; MANDAMUS, 52.

### COURTS.

1. The Court of Appeals has ample authority, under the statute creating it, to frame rules to limit the time in which appeals may be taken from decisions of the Commissioner of Patents; and Rule 22 of the court is a valid and appropriate one and bind-

ing alike upon court and parties. *Hien v. Pungs*, 9 App. D. C. 492; 25 W. L. R. 8.

2. The Court of Appeals has no power or jurisdiction to award cost, or to execute any judgment therefor that might be entered in cases of appeals from the Commissioner of Patents. *Wells v. Reynolds*, 5 App. D. C. 20.

3. The Court of Appeals cannot review by mandamus the determination by the Commissioner of Patents of the question whether a label is entitled to registration. *Allen v. Regina Music Box Co.*, 22 App. D. C. 271; 31 W. L. R. 476.

4. The Court of Appeals of the District of Columbia has no original jurisdiction to direct and supervise the administration of the affairs of the Patent Office and a petition that the Commissioner of Patents be instructed to allow a party to an interference to take testimony denied. *De Ferranti v. Lindmark*, 30 App. D. C. 417; 137 O. G. 733.

5. The jurisdiction of the Supreme Court of the District of Columbia to proceed in a suit under section 4915 Rev. Stat. can arise only in case of refusal of an application by the Commissioner of Patents or the Supreme Court on appeal from him. *Durham v. Commissioner of Patents*, 69 O. G. 507; 1894 C. D. 547.

See APPEALS; COMMISSIONER OF PATENTS, 4, 10; COPYRIGHTS, 25; PATENTS, 106, 768, 959; PUBLIC OFFICERS, 2; TRADEMARKS, 109.

**DAMAGES.** See ACTIONS, 4; EQUITY, 4, 5.

**DEATH.** See ABATEMENT AND REVIVAL.

**DECLARATIONS.** See ESTOPPEL, 1; PATENTS, 625.

**DECLARATION OF INTERFERENCE.** See APPEALS, 39; PATENTS.

**DELAY.** See PATENTS, 174-189; III, 2; 374, 376, 387-389, 416, 485, 486, 491, 493, 919, 925, 964-966, 972, 973.

**DEPOSITIONS.** See PATENTS, IX, 7.

**DESCRIPTIVE MARKS.** See TRADE-MARKS, 12, 13, 18, 20, 25, 27, 28, 31, 32, 33, 35.

**DESIGNS.** See APPEALS, 52; PATENTS, 52-57, 155, 160, 162, 466, 467, 472.

**DETERMINATION OF PATENTABILITY.** See PATENTS II, 17.

**DILIGENCE.** See PATENTS, 173-189; III 2, 374-376, 486, 487, 491, 493, 494, 496, 501, 505, 506, 509, 511, 512, 527, 597, 621, 626.

**DISBARMENT OF ATTORNEYS.** See ATTORNEYS.

**DISCLOSURE OF INVENTION.** See APPEALS, 95; ESTOPPEL, 3; PATENTS, 60, 240, 443, 508, 531, 605-620, 829, 873, 874, 921, 922, 924.

**DISCREDITED CLAIMS.** See PATENTS, 549-550.

**DISSOLUTION OF INTERFERENCE.** See APPEALS, 33, 35, 37, 79, 107, 719, 730, 749, VIII 9.

**DIVISIONAL APPLICATIONS.** See PATENTS, 193-202, 373.

**DIVISION OF APPLICATION.** See APPEALS, 36, 152, 155; MANDAMUS, 25; PATENTS, 203 et seq., 716; REMEDIES, 2.

**DOUBLE USE.** See PATENTS, 82; II 11.

**DRAWINGS.** See PATENTS, 60, 216, 217, 219, 270, 324, 359, 360, 361, 466-472; TRADE-MARKS, 72, 73.

**DUE PROCESS OF LAW.** See ATTORNEYS, 10, 11.

**EMPLOYER AND EMPLOYEE.** See PATENTS, 575-601.

**EQUITABLE ESTOPPEL.** See ESTOPPEL, 10; PATENTS, 503.

## **EQUITY.**

1. The expiration of a patent pending a suit to enjoin its infringement and for an accounting will not defeat the jurisdiction of equity to take the account prayed. *Busch v. Jones*, 16 App. D. C. 23; 28 W. L. R. 535.

2. The fact that an alleged infringer of a patent covering a process and machine is not a manufacturer of the article but a mere user, does not affect the jurisdiction of a court of equity to entertain a suit for infringement. *Ib.*

3. Where, pending a suit to enjoin the infringement of a patent and for an accounting, the patent expires, it is discretionary with



the court either to retain the bill and proceed with the cause or to dismiss it and turn the parties over to their action at law; and the exercise of its discretion in favor of retaining the cause and taking the account will not be reviewed unless shown to have been clearly illegal. *Ib.*

4. Where a bill seeks to foreclose a mortgage on certain inventions and domestic and foreign patents to be granted therefor, damages growing out of the same transactions, sought to be recouped by defendant by means of a cross-bill, consisting of loss of profits by the mortgagor on the sale of one of the patents abroad, which he had negotiated at a fixed price, but which had failed of consummation by failure of mortgagees to perform their obligations under the mortgage, *held*, not too remote and speculative. *Fitzgerald v. Wiley*, 22 App. D. C. 329; 31 W. L. R. 491.

5. Where an agreement provides for the organization of a corporation to handle patents obtained by one of the parties, and the assignment of such patents to the corporation, and the agreement has been performed in part, a bill will lie to enjoin the patentee from manufacturing the devices patented and for an accounting and assignment of the patents, even though the agreement while still executory was too vague and uncertain to be then enforced, and was in part for personal services. *Sanche v. Electrolibration Co.*, 4 App. D. C. 453; 22 W. L. R. 769.

6. Claims cancelled in the Patent Office cannot be reinstated or reviewed by bill in equity under § 4915, Rev. Stat. *Durham v. Seymour*, 6 App. D. C. 79; 71 O. G. 601; 1895 C. D. 307.

See APPEALS, 55; CLOUD ON TITLE, CONTRACTS, 2, 3; PATENTS, 702, 1007, 1008; TRADEMARKS, 43.

**EQUIVALENTS.** See PATENTS, II. 6, 7.

### **ESTOPPEL.**

1. A declaration by one of the parties to an interference made to parties in interest that his invention was different from the invention of the other party does not necessarily raise an estoppel, as the effect of such a declaration could be explained by testimony, inasmuch as there might well be differences of detail between the two claims, while they might be the same in substance. *Furman v. Dean*, 24 App. D. C. 277; 114 O. G. 1552; 1905 C. D. 582.

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2. A party is not estopped from subsequently making a claim to an invention unless there is a failure of the specification to disclose it. The absence of a definite and specific claim for an invention when the application was originally filed does not act as an estoppel to the subsequent making of the claim. *Ib.*

3. The doctrine of estoppel announced in the cases of *Bechman v. Wood* and *Miehle v. Read* was based upon the failure of the parties to disclose the invention. Those cases refer to substantial differences between the original claims and specifications of an application and new and enlarged claims subsequently introduced for the first time after rights of third parties have intervened. *Ib.*

4. When the lapse of time between H.'s conception and his date of reduction to practice would be fatal if unexplained, but his delay is claimed to have been caused by an infringement suit and the same suit is relied upon by B. to explain delay, *Held* that B. is in no condition to take advantage of the omission to show what there was in that suit to excuse delay in the matter of this invention. *Hammond v. Basch*, 24 App. D. C. 469; 115 O. G. 804; 1905 C. D. 615.

5. While the courts are zealous to protect an inventor to the full extent of the contribution which he has made to the art, they must give due weight to any estoppel which he has created by anything done either prior or subsequent to the issue of his patent which prevents him from claiming his invention in its entirety. *Computing Scale Co. v. Automatic Scale Co.*, 26 App. D. C. 238; 119 O. G. 1586; 1905 C. D. 704.

6. Where in an interference between an application filed March 22, 1897, for the reissue of McB's patent, dated Aug. 13, 1895, and an application of C. filed July 29, 1896, it was contended that C.'s original application contained no claim to the invention of the issue, that not until five months thereafter and after the rejection of his claims in part did he amend by setting up the claims of the McB. patent now in interference, and that consequently he is estopped, under *Bechman v. Wood*, from claiming priority of invention as against McB.'s subsequent application for reissue, *Held* that the attitude of the parties is different from that shown in *Bechman v. Wood*. McB. did not come into the office originally after C., but before, and when he made his reissue application C.'s later claims had been made. He does not

therefore stand in the situation of one who claims a specific invention with specification and claims that are not embraced in the original application of an earlier applicant, but which the latter seeks by subsequent amendment to dominate with claims that have no foundation in the original description of his invention. *McBerty v. Cook*, 16 App. D. C. 133; 90 O. G. 2295; 1900 C. D. 248.

7. The amended claims of Cook are clearly shown and described in the specification of his original application and his amendment constitutes no departure which would subordinate him to the claim of even an intervening applicant. *Ib.*

8. Where the senior party informed the junior party that he had applied for a patent on the invention and the junior party made no protest and signified neither by word nor by act that the invention was his own, *Held* that it was then, if ever, he should have spoken. *Scott v. Scott*, 18 App. D. C. 420; 96 O. G. 1650; 1901 C. D. 419.

9. A party is estopped to repudiate a contract when the other parties to it have been induced by his action and conduct to expend money in carrying it out. *Sanche v. Electrolibration Co.*, 4 App. D. C. 453; 22 W. L. R. 769.

10. The doctrine of equitable estoppel applies in the administration of the patent law, as it does in other cases, for the prevention of injustice. *In re Mower*, 15 App. D. C. 144; 88 O. G. 191; 1899 C. D. 395.

11. Hodge's evidence in respect of his conception of the invention does not show an intention to disclaim and is not of a nature to estop him from claiming an invention as broad as the issue. The decision of the Commissioner of Patents awarding priority to Hodge affirmed. *Hill v. Hodge*, 12 App. D. C. 528; 83 O. G. 1211; 1898 C. D. 480.

12. An appellant is not to be heard to urge non-patentability of his claim after it has been placed in interference. He is estopped on that question by reason of his own affirmative assertion that his claim is patentable. *Hisey v. Peters*, 6 App. D. C. 68; 71 O. G. 892; 1895 C. D. 349.

13. Where an applicant in the Patent Office withdrew claims which were rejected and substituted others with the statement that they were the ones on which he would want a final decision, *Held* that such action was a waiver by the applicant of his right to

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assert title to the withdrawn claims in a bill in equity under § 4915. *Durham v. Commissioner of Patents*, 69 O. G. 507; 1894 C. D. 547.

See PATENTS, 503; RES ADJUDICATA.

**EVIDENCE.** See APPEALS, 41, 43, 44, 46, 130-133; ATTORNEYS, 7; COPYRIGHTS, 23; JUDICIAL NOTICE; PATENTS, 99, 223-225, 226, 227, 391-410, 468, 469, 514, 552, 557, 559, 498, 623-642, 718, 720, 758, 789, 790; VIII 8; IX; 1004, 1009; TRADE-MARKS, 96, VIII.

**EXAMINERS.** See APPEALS, 159; COMMISSIONER OF PATENTS, 3.

**EXAMINERS IN CHIEF.** See APPEALS, IV; COMMISSIONER OF PATENTS, 3; MANDAMUS, 14; PATENTS, 733.

**EXAMINER OF INTERFERENCES.** See APPEALS, 47; PATENTS, 733, 976; TRADE-MARKS, 100.

**EXCUSES FOR INACTIVITY IN PERFECTING RIGHT TO PATENT.** See PATENTS, 271-287; 388, 389.

**EXECUTIVE DEPARTMENTS.** See ATTORNEYS, 9.

**EXECUTIVE OFFICERS.** See ATTORNEYS, 11; COMMISSIONER OF PATENTS; MANDAMUS, 30-35.

**EXHIBITS.** See APPEALS, 129, 130; PATENTS, 219, 397, 817, IX 10.

**EXPERIMENTS.** See PATENTS, III 3, 4.

**EXPERIMENTAL TESTS.** See PATENTS, 440 et seq.

**EXPERIMENTAL USE.** See PATENTS, 428, 429.

**EXPIRATION OF PATENT.** See APPEALS, 55; EQUITY, 1, 3; PATENTS, 1007; TRADE-MARKS, 56.

**EXTENSION OF INTERFERENCES.** See COMMISSIONER OF PATENTS, 5.

**EXTINGUISHMENT OF PATENT.** See PATENTS, 975.

**FALSE REPRESENTATIONS.** See TRADE-MARKS, 53.

**FELLOW EMPLOYEES.** See PATENTS, 576.

**FLAG OF UNITED STATES.** See TRADE-MARKS, 9.

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**FOREIGN APPLICATIONS FOR PATENTS.** See PATENTS, 172.

**FOREIGN COMMERCE.** See TRADE-MARKS, 68-70.

**FOREIGN PATENTS AND INVENTIONS.** See PATENTS, 650, 651; XI.

**FORFEITED APPLICATIONS.** See PATENTS, 220, 221, 371.

**FORFEITURES.** See COPYRIGHTS, 24.

**FRAUDULENT ASSIGNMENT.** See PATENTS, 702.

**FUNCTIONAL UTILITY.** See PATENTS, II. 15.

**GEOGRAPHICAL NAMES.** See TRADE-MARKS, 4, 14, 15, 16, 28.

**GREAT SEAL OF UNITED STATES.** See TRADE-MARKS, 6, 7.

**HEARINGS.** See APPEALS, 73; ATTORNEYS, 4-7, 10.

**HOLIDAYS.**

Saturday, after 12 o'clock noon, is a half holiday for all purposes. *Ocuppaugh v. Norton*, 24 App. D. C. 296; 32 W. L. R. 846.

**HUSBAND AND WIFE.** See PATENTS, 829, 873, 874.

**IDENTITY OF INVENTIONS.** See APPEALS, 76; PATENTS.

**ILLUSTRATIONS AND DESCRIPTIONS.** See PATENTS, 60, 216, 217, 219, 270, 324, 359-361, 466-472; TRADE-MARKS, 72, 73.

**IMPROVEMENTS.** See PATENTS, 16, 17, 58, 88, 89, 110, 575-577, 580, 581, 583, 588, 600, 918.

**INADVERTENCE, ACCIDENT AND MISTAKE.** See PATENTS, X 1.

**INFRINGEMENT OF COPYRIGHT.** See COPYRIGHT, 5, 17, 20-26.

**INFRINGEMENT OF PATENTS.** See ACCOUNTS AND

ACCOUNTING, 4; ACTIONS, 4; APPEALS, 55, 121; CONTRACTS, 1; EQUITY, 1, 2; PATENTS.

## INJUNCTION.

1. Determination by Commissioner of Patents of question whether a label is entitled to registration cannot be controlled by injunction. *Allen v. Regina Music Box Co.*, 22 App. D. C. 271; 31 W. L. R. 476.

2. The N. A. Co., owning the Edison patents for the phonograph and graphophone, granted to complainant, the C. P. Co., for a term of years not yet expired, the exclusive right to deal in these instruments and their appurtenances within this District. The N. A. Co. subsequently became insolvent and its assets were disposed of under the direction of the court of chancery in New Jersey. Whitson Bros. are dealers in phonographs and phonograph supplies in this District, such supplies purchased from the N. P. Co., which company was alleged in the bill to be the successor of the N. A. Co. and bound by its agreements, though this was denied by the defendants in affidavits filed by them. In a suit in equity by complainant to enjoin Whitson Bros. and the National Company from dealing in phonographs and phonograph supplies in this District, a temporary injunction was granted; *held*, on appeal, that complainant had stated a case which entitled it to a temporary injunction. *Whitson v. Columbia Phonograph Co.*, 18 App. D. C. 565; 29 W. L. R. 804; 98 O. G. 418; C. D. 1902, p. 497.

3. Non-performance of contract by complainant as ground for refusal to restrain an infringement of complainant's rights under such contract. *Ib.*

4. Since it appears that the complainant acquired from the owners of the patents the exclusive right to deal in phonographs in this District, an injunction *pendente lite* was properly granted restraining the defendants from dealing in phonograph supplies. *Whitson v. Columbia Phonograph Co.*, 18 App. D. C. 565; 98 O. G. 418; 1902 C. D. 497.

See APPEALS, 55, 121; COMMISSIONER OF PATENTS, 9; CONTRACTS, 1; EQUITY, 1, 5; MANDAMUS, 28; TRADE-MARKS, 43.

**INOPERATIVENESS AND IMPERFECTION.** See PATENTS, 105.

**INSPECTION OF AFFIDAVITS.** See APPEALS, 50.

**INSPECTION OF RECORDS OF PATENT OFFICE.**

See MANDAMUS, 20.

**INTERFERENCE PROCEEDINGS.** See APPEALS; COMMISSIONER OF PATENTS, 5; ESTOPPEL; MANDAMUS, 16; PATENTS; RES ADJUDICATA, 10; TRADE-MARKS, VII.

**INTERLOCUTORY ORDERS.** See APPEALS, 31-36.

**INTERNATIONAL CONVENTION.** See PATENTS, XII

**INTERPRETERS.** See PATENTS, 937, 938.

**INVENTION.** See PATENTS.

**ISSUES IN INTERFERENCE.** See PATENTS, VIII, 4, 5.

**JOINDER OF INVENTIONS IN APPLICATION.** See APPEALS, 157; PATENTS, 194, 716.

**JOINT INVENTORS.** See PATENTS.

**JUDGMENTS AND DECREES.** See APPEALS, 49, 134, 139, 140; COMMISSIONER OF PATENTS, 10; MANDAMUS, 23; PARTIES TO SUIT, 2; PATENTS, 975, 976; PUBLIC OFFICERS, 1; RES ADJUDICATA.

## **JUDICIAL NOTICE.**

1. The process of taking judicial notice does not necessarily imply that the judge at the moment actually knows and feels sure of the truth of the matter submitted. It merely relieves the party from offering evidence, because the matter is one which the judge either knows or can easily discover. *Ball v. Flora*, 26 App. D. C. 394; 1906 C. D. 618; 121 O. G. 2668.

2. While the allowance of an application is not evidence for the interested party in the ordinary sense, yet it is a record of an official action in the Office and under the authority of the Commissioner of which the Court of Appeals may take notice in order that justice may be done. *Cain v. Park*, 14 App. D. C. 42; 86 O. G. 797; 1899 C. D. 278.

3. In passing upon an application for a patent the Commissioner may go outside of the record and take notice of the official

entries made in his own Office and under his own supervision in order that justice may be done to parties. *Ib.*

See COMMISSIONER OF PATENTS, 10; PATENTS, 718; PUBLIC OFFICERS, 2.

**JUNIOR AND SENIOR APPLICANTS.** See PATENTS.

**JURISDICTION.** See APPEALS; COSTS; COURTS; EQUITY; MANDAMUS.

**LABELS.** See COMMISSIONER OF PATENTS, 9; COURTS, 3; INJUNCTION, 1; MANDAMUS, 12, 17, 18.

**LACHES.** See APPEALS, 17; ATTORNEYS, 12; PATENTS, 174-189, III 2; TRADE-MARKS, 59.

**LIBRARIAN OF CONGRESS.** See COPYRIGHTS, 19.

**LICENSES.**

The rights of a licensee are not destroyed by a subsequent transfer of the patent. *Whitson v. Columbia Phonograph Co.*, 18 App. D. C. 565; 29 W. L. R. 804; 98 O. G. 418; C. D. 1902, p. 497.

See CONTRACTS, 1; COPYRIGHTS, 4, 5.

**LIMITATIONS.** See PATENTS, 171, 172, 438.

**MALPRACTICE BY ATTORNEYS.** See ATTORNEYS.

**MANDAMUS.**

- I. Office in General.
- II. To Control Action of Commissioner of Patents and Other Officers of the Government.
- III. To Compel Allowance of Appeal.
- IV. Practice and Procedure.

**1. Office in General.**

1. Mandamus will not lie where there is another plain legal remedy. *Lochren v. Long*, 6 App. D. C. 486; 23 W. L. R. 358; *Stapleton v. Duell*, 28 W. L. R. 835; 93 O. G. 2532; 1900 C. D. 1109; *Newcomb Motor Co. v. Allen*, 130 O. G. 302.

2. Mandamus lies only where there is no other legal remedy to compel performance of an act when that performance has been imposed as a positive duty to or on behalf of the party seeking the remedy. *Mutual Dis. Messenger Co. v. Wight*, 15 App. D. C. 463; 28 W. L. R. 57.



3. Mandamus is not the proper writ to control the judgment and discretion of an officer as to the decision of a matter which the law gives him the power and imposes upon him the duty of deciding for himself. *Riverside Oil Co. v. Hitchcock*, 190 U. S. 316; *West v. Hitchcock*, 26 App. D. C. 290; 34 W. L. R. 3; 205 U. S. 80.

4. The use of the writ is limited to enforcement of a purely ministerial duty and to the protection of a plain legal right denied arbitrarily or without due warrant of law. *Riverside Oil Co. v. Hitchcock*, 21 App. D. C. 252; 31 W. L. R. 174.

5. There is no ministerial act to which the writ of mandamus would be applicable that does not involve the exercise of judgment and discretion. An act may be ministerial although it may occur in the course of judicial proceedings, or in the exercise of discretionary power when it is merely a ministerial thing to be done after the judicial authority over the subject-matter has been exercised. *Payne v. National Ry. Co.*, 20 App. D. C. 581; 30 W. L. R. 791.

6. The writ cannot be used to serve the purposes of an appeal or writ of error, nor to control the exercise of judicial discretion. *Tuttle v. Allen*, 35 W. L. R. 50; *In re Key*, 189 U. S. 84.

7. The fact that an act which is sought to be compelled by mandamus is the culmination of proceedings of a judicial nature, or is an act in the course of such proceedings, does not exempt it from judicial control by the courts by mandamus, when the officer or person charged to perform it arbitrarily and without just legal cause refuses such performance. *West v. Hitchcock*, 19 App. D. C. 333; 30 W. L. R. 186.

8. Although the writ of mandamus might serve as an inexpensive and summary conclusion of the whole matter, providing this court had jurisdiction to issue the writ, yet neither economy of time, nor expense can weigh anything as against the orderly procedure under the law of a given case. *Newcomb Motor Co. v. Allen*, 130 O. G. 302.

9. A mandamus lies for the enforcement of the performance of some act or duty required by law to be performed in the performance or non-performance of which the applicant for the writ is interested where there is no other legal remedy. *Seymour v. Brodie*, 10 App. D. C. 567; 79 O. G. 509; 1897 C. D. 372.

10. The mere fact that the relator has been put to trouble or ex-

## II. To Control Action of Commissioner of Patents, etc.

pense in legal proceedings or has suffered commercial injury is no basis for the writ of mandamus when the respondent has failed in no legal duty. *Ib.*

**II. To Control Action of Commissioner of Patents and Other Officers of the Government.**

11. The writ will not lie to compel the Commissioner of Patents to register a trademark after an application therefor has been rejected by him. *Seymour v. South Carolina*, 2 App. D. C. 240; 21 W. L. R. 675.

12. Determination by Commissioner of Patents of question whether a label is entitled to registration cannot be controlled by mandamus. *Allen v. Regina Music Box Co.*, 22 App. D. C. 271; 31 W. L. R. 476.

13. As proper remedy to compel Commissioner of Patents to require primary examiner to forward appeal to board of examiners in chief. *Ex parte Frasch*, 192 U. S. 566; 32 W. L. R. 153; *Steinmetz v. Allen*, 102 U. S. 543; 32 W. L. R. 147.

14. The writ will not lie to compel the Commissioner of Patents to direct examiners-in-chief to reinstate and take jurisdiction of an appeal taken by the relator from a ruling of the primary examiner denying his motion to dissolve an interference. *Allen v. U. S. ex rel. Lowrey*, 26 App. D. C. 8; 33 W. L. R. 354.

15. The issuance of the writ to compel the Commissioner of Patents to register the words "Ever-Ready" as a trademark for coffee mills, properly denied. *Bronson v. Duell*, 17 App. D. C. 471; 29 W. L. R. 126; 95 O. G. 229; 1901 C. D. 330.

16. Mandamus will not lie to compel the Commissioner of Patents to reinstate an interference and to decide the question of priority of invention therein presented. *Brodie v. Seymour*, 10 App. D. C. 567; reversing 25 W. L. R. 183.

17. A mandamus does not lie to compel the Commissioner of Patents to register in the Patent Office an alleged label which in his opinion is not a label as defined by the statute. *Allen v. Regina Music Box Co.*, 22 App. D. C. 271; 105 O. G. 747; 1903 C. D. 615.

18. Section 3 of the Act of June 18, 1874, imposes upon the Commissioner of Patents the duty of determining whether or not the thing presented for registration is a label as defined by the

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statute, and his decision whether right or wrong is not subject to control by mandamus. *Ib.*

19. Where an applicant sought to register a trademark under § 13 of the trademark act for the purpose of registering abroad and the Commissioner refused to register it on the ground that it was not a lawful trademark, upon petition for a writ of mandamus to compel the Commissioner to register, *Held* that the Commissioner had jurisdiction to consider the question, and the petition denied. *Buffalo Pitts Co. v. Duell*, 28 W. L. R. 789; 93 O. G. 1491; 1900 C. D. 397.

20. In a petition for mandamus against the Commissioner of Patents where the prayer was for premission "to inspect the abandoned cases in the United States Patent Office," and was not confined to a specific case, *Held* that no such broad right exists to the public, and writ refused. *Fowler v. Commissioner of Patents*, 62 O. G. 1968; 1893 C. D. 268.

21. Where the Commissioner has in fact acted and rendered his decision touching the very matter in controversy and has the clear legal right to act and decide for himself, the court is without jurisdiction to review his action and above all to compel him by its writ to undo what he has done. *Newcomb Motor Co. v. Allen*, 130 O. G. 302.

22. Where the Commissioner had the power to act and has acted, *Held* that it is wholly immaterial whether in the judgment of the court he was right or wrong in his determination and that in overruling the motion for a writ of mandamus no opinion will be expressed as to the merits of the relator's contentions. *Ib.*

23. Where a primary examiner on a motion to dissolve decides that one of the parties has no right to make the claims of an interference issue and such party, after filing an appeal from such decision, fails to prosecute the same and abandons it, such judgment becomes final and binding upon the parties, and mandamus is the proper proceeding to secure the enforcement of such judgment and a vacation of any subsequent *ex parte* or *inter partes* proceedings adjudicating the same question or based upon such an adjudication. *U. S. ex rel. Newcomb Motor Co. v. Moore*, 30 App. D. C. 464; 133 O. G. 1680.

24. Where a party alleges that an invention has been in public use for more than two years before an application for a patent upon

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it was filed by another party and asks the court for a mandamus to compel the Commissioner of Patents to institute public-use proceedings and recognize him as a party in interest, *Held* that the petition will be denied because the petitioner is without legal interest in the matter. *National Phonograph Co. v. Allen*, 101 O. G. 1133; 1902 C. D. 571.

25. The requirement for division of an application is interlocutory and cannot be remedied by mandamus, since the question is peculiarly within the jurisdiction of the Commissioner of Patents and requires judgment on his part to decide. *Steinmetz v. Allen*, 102 O. G. 231; 1903 C. D. 632.

26. The action of the head of a Department in construing the law for his guidance is not subject to revision by mandamus. *South Carolina v. Seymour*, 2 App. D. C. 240; 66 O. G. 1167; 1894 C. D. 174.

27. In order to maintain an application for a mandamus upon a public officer, the authorities are very clear that he must have a legal interest in the matter. A mere commercial interest is not sufficient. *National Phonograph Co. v. Commissioner of Patents*, 101 O. G. 1133; 1902 C. D. 571.

28. Where an officer has jurisdiction to decide at all, he necessarily has jurisdiction and it is his duty to decide as he thinks the law is, and the courts have no power whatever to review his determination by mandamus or injunction. *Allen v. Regina Music Box Co.*, 22 App. D. C. 271; 105 O. G. 747; 1903 C. D. 615.

29. Upon a demurrer to the petition for writ of mandamus to compel the Secretary of the Interior to grant a hearing in person to a patent agent whom the Commissioner of Patents had recommended to the Secretary for disbarment, the reasons for which recommendation the Secretary had approved without a hearing before him in person, *Held* that the demurrer should be sustained, the rule to show cause discharged, and the petition for writ of mandamus dismissed. *Wedderburn v. Bliss*, 81 O. G. 1783; 1897 C. D. 750.

30. The Supreme Court of the District of Columbia has authority to issue the writ of mandamus to the head of a department of the Federal Government or the chief of a bureau upon whom some special duty has been devolved by law, to compel the performance of a ministerial duty by such officer. *West v. Hitchcock*, 19 App. D. C. 333; 30 W. L. R. 186.

## III. To Compel Allowance of Appeal.

31. As to jurisdiction of Supreme Court D. C. to issue mandamus against highest officers of Government. See *Houghton v. Payne*, 31 W. L. R. 178.

32. Writ will lie to control acts of executive officers where the exercise of discretion is not involved. *Daly v. Macfarland*, 28 App. D. C. 552; 35 W. L. R. 81.

33. While this court has power to direct by mandamus an executive officer of the Government to perform an act commanded by law and which he declines to perform, such writ will not be granted unless the act is a mechanical one, a plain, purely ministerial duty involving no consideration of testimony or exercise of judgment or discretion on the part of such executive officer. *U. S. ex rel. West v. Hitchcock*, 29 W. L. R. 704.

34. Mandamus will not lie in a case where its effect is to direct or control the head of an executive department in the discharge of an executive duty involving the exercise of judgment and discretion. *International Co. v. Lamont*, 2 App. D. C. 532; 22 W. L. R. 173.

35. The courts will not interfere by mandamus with the executive officers of the Government in the exercise of their ordinary official duties, even where such duties require an interpretation of the law. *Mut. Dist. Messenger Co. v. Wight*, 15 App. D. C. 463.

## III. To Compel Allowance of Appeal.

36. Where a party has a clear right to an appeal he may resort to an appellate court for a mandamus to compel its enforcement. *Beal v. Cox*, 14 App. D. C. 368; 27 W. L. R. 231.

37. To entitle a party to a mandamus to compel the allowance of an appeal, it is incumbent on him to show affirmatively not only a right of appeal, but that such right has been denied under circumstances that entitle him to a mandamus to enforce it. *Steinmetz v. Allen*, 22 App. D. C. 56; 31 W. L. R. 358.

38. Mandamus will not lie to compel the approval of an appeal bond which had been offered in time and approval refused and re-offered after the expiration of the time limited for taking an appeal, no application having been made for time within which to perfect it. *Beal v. Cox*, 14 App. D. C. 368; 27 W. L. R. 231.

39. An applicant for a patent having the right to appeal from a decision of the primary examiner cannot resort to mandamus to

compel a reconsideration of the decision even though it be erroneous. *Tuttle v. Allen*, 35 W. L. R. 50.

40. A mandamus will not issue directing the Commissioner of Patents to order the primary examiner to forward to the examiners-in-chief an appeal from a requirement for division. *Ib.*

41. Where an appellant delayed in applying to the Court of Appeals of the District of Columbia beyond the time provided in the rules of said court, in consequence of which said appeal was dismissed, *Held* that a writ of mandamus to compel the Court of Appeals to entertain the appeal will not lie to the Supreme Court of the United States. *In re Hien*, 79 O. G. 507; 1897 C. D. 367.

42. Where the Commissioner of Patents refuses to direct the primary examiner to forward to the examiners-in-chief an appeal from the primary examiner's action in requiring the applicant to divide his application, *Held* that his action will not be interfered with by mandamus, since the applicant has no right of appeal. *Steinmetz v. Allen*, 102 O. G. 231; 1903 C. D. 632.

43. Petition for a mandamus to the Court of Appeals to hear and determine an appeal from a decision of the Commissioner of Patents requiring division of an application for patent *dismissed*, since the remedy was not by appeal to the court, but by mandamus to compel the allowance of an appeal from the primary examiner to the examiners-in-chief upon the question of division. *Ex parte Frasch*, 192 U. S. 566; 109 O. G. 554; 1904 C. D. 716.

44. Where the Commissioner of Patents refused to direct the primary examiner to forward to the examiners-in-chief an appeal from his ruling that process and apparatus claims should be divided and presented separately, *Held* that a mandamus will lie to compel him to forward the appeal. *Steinmetz v. Allen*, 192 U. S. 543; 109 O. G. 549; 1904 C. D. 703.

#### IV. Practice and Procedure.

45. The court may refuse to grant mandamus, even though relator may technically be entitled to it, when its issuance would not promote the substantial ends of justice, or when it would prove unavailing or be without beneficial results to the relator. *Dancy v. Clark*, 24 App. D. C. 487; 33 W. L. R. 18.

46. The use of the name of the United States in a petition for a writ of mandamus, even if not abolished by §§ 1273-1282, Code D. C., is a mere formality, which should not be permitted to affect

the substance of the action, and its omission may be supplied by amendment, either in the trial court or in this court. *Ib.*

47. The relator in mandamus proceedings is, as matter of course, permitted to use the name of the United States, without resort to the intervention of the district attorney; and even that formality is not now essential to maintain the action. *Dancy v. Clark*, 24 App. D. C. 487. *Bundy v. U. S. ex rel. Darling*, 25 App. D. C. 460; 33 W. L. R. 434.

48. The statute of 9 Anne, ch. 20, regulating proceedings in mandamus, equally with §§ 1273-1282 of the District Code, contemplates a return or answer to the writ, not a demurrer to the petition, and the practice of demurring to the petition upon which the writ or rule to show cause has been issued condemned. *West v. Hitchcock*, 19 App. D. C. 333; 30 W. L. R. 186.

49. The return to a rule to show cause why a writ of mandamus should not issue should be an answer or statement of facts showing the grounds of the respondent's action or refusal to act. It may state the fact in part or in whole by denying or admitting the allegations of the petition, or by qualifying or explaining them, but should state all the facts necessary and proper for the determination of the cause. *Ib.*

50. On appeal from a judgment denying mandamus, the substantial allegations of respondent's return will be taken as true. *Mut. Dis. Messenger Co. v. Wight*, 15 App. D. C. 463; 28 W. L. R. 57.

51. The word "may" in § 1274 D. C. Code, providing that on the filing of a petition for a writ of mandamus the court may lay a rule requiring the defendant to show cause, etc., is used in a permissive, and not a mandatory sense; and the court may refuse the rule if the petition itself shows that further proceedings would be a waste of time and would ultimately prove futile. *Holsendorf v. Hay*, 20 App. D. C. 576; 30 W. L. R. 825.

52. Where a peremptory writ of mandamus is awarded against a public officer to compel the performance of a ministerial duty, the costs will be awarded against the defendant. *Roberts v. United States*, 13 App. D. C. 38; 26 W. L. R. 375.

53. A petition for a writ of mandamus to a public officer of the United States abates by reason of his retirement from office, as well after judgment and pending an appeal therefrom as before.

*Seymour v. Nelson*, 11 App. D. C. 58; 25 W. L. R. 542; 79 O. G. 1522; 1897 C. D. 471.

54. Where pending an appeal on a petition for a writ of mandamus against a public officer the officer retires, *Held* that the appeal will not be dismissed; but the judgment of the court below will be reversed and the cause remanded to said court, with directions to dismiss the suit for want of proper parties. The result is the same whether the judgment appealed from is in favor of or against the officer. *Ib.*

55. Where a mandamus proceeding against an officer of the Government abated on the death of the officer and a motion was made for leave to substitute his successor, who consented to be substituted, *Held* that, in the absence of statutory authority, after such a cause had abated, the court cannot bring a new party into the case. Nor is the want of such authority supplied by the consent of a person not a party in the cause. *Bernardin v. Butterworth*, 169 U. S. 600; 82 O. G. 1991; 1898 C. D. 403.

56. Where a principal examiner in the Patent Office was made respondent to a petition for a writ of mandamus commanding him to perfect an appeal to the examiners-in-chief, the examiner having refused, under the Rules of the Patent Office and instructions from the Commissioner, to answer the appeal, on demurrer to the petition on the ground that the Commissioner, the responsible head of the Office, and not the examiner, should have been made respondent, *Held* that the demurrer should be sustained. *Hodgins v. Simpson*, 82 O. G. 190; 1898 C. D. 296.

See ACTIONS, 2; APPEALS, 135, 143, 144; ATTORNEYS, 8; COMMISSIONER OF PATENTS, 7, 9; COPYRIGHTS, 19; COURTS, 3; PUBLIC OFFICERS, 3; TRADEMARKS, 87, X.

**MECHANICAL INGENUITY.** See PATENTS.

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**MODELS.** See PATENTS, 216, 219; III 3; 414.

**MODIFICATION OF FORMER INVENTION.** See PATENTS, 72.

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**NAMES.** See TRADE-MARKS.

**NEWLY DISCOVERED EVIDENCE.** See APPEALS, 41, 43, 44, 46.

**NEW MATTER.** See PATENTS, 205-215.

**NEW TRIAL.** See ACTIONS, 1.

**NON-TECHNICAL MARKS.** See TRADE-MARKS, 5.

**NOTARIES PUBLIC.**

The provisions of § 558 of the Code of the District of Columbia, which provides that no notary public shall be authorized to take acknowledgments, administer oaths, certify papers, or perform any official acts in connection with matters in which he is employed as counsel, attorney, or agent, or in which he may be in any way interested, for any of the Departments of the United States Government in the District of Columbia or elsewhere, applies to all notaries, whether within or without the District of Columbia. *Hall's Safe Co. v. Herring-Hall-Marvin Safe Co.*, 135 O. G. 1804; 31 App. D. C. 498.

See TRADEMARKS, 114, 115.

**NOTICE.**

An inventor is charged with knowledge of the prior art as exhibited in prior patents whether he had actual knowledge of them or not. *Millett v. Allen*, 27 App. D. C. 70; 1906 C. D. 752; 124 O. G. 1524.

See ATTORNEYS; COPYRIGHTS, 8-10; PATENTS, 727; TRADE-MARKS.

**NOVELTY.** See APPEALS, 89, 99, 100; PATENTS, II. 2; 117, 162.

**OATHS.** See AFFIDAVITS; PATENTS, 971.

**OBJECTIONS TO EVIDENCE.** See PATENTS, 940, 943.

**OPERATIVENESS OF DEVICE.** See APPEALS, 87, 88; PATENTS, II, 4; 504, 648.

**OPPOSITION.** See TRADE-MARKS, VII.

**ORIGINALITY OF INVENTION.** See PATENTS, IV.

**PARTICULAR PATENTS.** See PATENTS, II. 18; XIV.

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**PARTIES TO SUIT.**

1. To a suit in equity for the cancellation and surrender of an alleged fraudulent assignment of a patent and to expunge such assignment from the records of the Patent Office, the parties by and to whom the assignment was made and the Commissioner of Patents are necessary parties. *Backus Co. v. Simonds*, 2 App. D. C. 290; 22 W. L. R. 137.

2. It is not necessary that a person should appear upon the record as a technical party to the proceedings in order to be bound by a judgment. If he be a substantial party, he will be bound by the finding in the case. *In re Drawbaugh*, 9 App. D. C. 219; 77 O. G. 313; 1896 C. D. 527.

3. Where there are adverse parties, the Commissioner of Patents is not a necessary party to and cannot be joined in a suit under § 4915, Revised Statutes of the United States. *Mergenthaler Linotype Co. v. Commissioner*, 66 O. G. 1311; 1894 C. D. 186.

4. The allegation by a party that he has invested money in a factory and machinery for making a device does not give him a legal interest in the invention embodied in it nor in the question whether or not a patent shall be issued upon it. *National Phonograph Co. v. Allen*, 101 O. G. 1133; 1902 C. D. 571.

5. Where a party has no patent upon an invention and does not claim the right to secure a patent upon it and merely says that it is not patentable to anybody, he is not entitled to interfere with the consideration by the Commissioner of Patents of an application for that invention filed by another party. *Ib.*

6. By the death of a Commissioner of Patents, a suit to compel him to issue a patent abates and cannot be revived so as to bring in his successor; the act of Maryland of 1785, ch. 80, having no application to such a case. *Bernardin v. Butterworth*, 169 U. S. 600.

See ABATEMENT AND REVIVAL; APPEALS, 135; COMMISSIONER OF PATENTS, 10; MANDAMUS, 55, 56; PATENTS, VIII, 2, 702.

**PARTNERSHIP.**

One partner may not, without the consent of his co-partners, carry on for his exclusive advantage any business within the scope of the business of the partnership; and this rule is as applicable to partnerships entered into for the purpose of perfecting and exploiting inventions in the useful arts as to any other class

of partnerships. *Milton v. Kingsley*, 7 App. D. C. 531; 24 W. L. R. 18.

See TRADEMARKS, 45-47.

**PATENTABILITY.** See PATENTS; RES ADJUDICATA, 2.

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## **PATENTS.**

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**I. IN GENERAL.**

1. In granting patents the interests of the public are the primary consideration, and to these the privileges granted to inventors are secondary and subordinate. *Warner v. Smith*, 13 App. D. C. 111; 84 O. G. 311; 1898 C. D. 517.

2. While Congress has prescribed the mode by which the exclusive right of an inventor in his invention may be secured, yet there is no property right in such invention until a patent is issued therefor. *Christensen v. Noyes*, 15 App. D. C. 94; 90 O. G. 227; 1900 C. D. 212.

2a. A patent for a composition should state and fully disclose the component parts of the composition claimed with clearness and precision, and not leave a person attempting to use the discovery to find it out by experiment. If the description be so vague and uncertain that no one can tell with certainty, except by independent experiment, how to apply the discovery and what exact result may be expected therefrom, the patent is void. *Stevens v. Seher*, 11 App. D. C. 245; 81 O. G. 1932; 1897 C. D. 761.

2b. The decision of the Supreme Court in the case of *Miller v. Eagle Manuf. Co.* interpreted and *Held* that it did not change the law. It simply declared a second patent void on the plain ground that it was for the same invention as the first, and the effect of it, if sustained, would be to prolong the monopoly beyond the period intended by the patent law. *Fenton Man. Co. v. Office Specialty Man. Co.*, 68 O. G. 1390; 1894 C. D. 474.

3. A patent constitutes a contract, but no vested right of which the applicant for patent cannot be deprived is acquired under the preliminary proceedings leading to its issuance, and a statute passed while an application is pending will apply to such a case as well as to cases filed after its passage unless it especially provides for the protection of pending cases. *De Ferranti v. Lindmark*, 30 App. D. C. 417; 134 O. G. 515.

4. A patentee whose patent issues while the application of another party for the same invention is pending in the Patent Office acquires as against that other party no rights by the issuance of the patent. *Ib.*

5. The sole and original inventor of a device cannot part with his right to a patent and give a valid claim to some one else as inventor by a surrender or concession in favor of that other party.

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The patent must disclose the real inventor, and the issue thereof must be founded upon his right as such inventor. *Tyler v. Kelch*, 19 App. D. C. 180; 98 O. G. 1282; 1902 C. D. 506.

6. By a well-established rule of the patent law the inventor is entitled to all the uses to which his invention can clearly be put, no matter whether he had conceived the idea of the use or not. *Rossell v. Allen*, 16 App. D. C. 559; 92 O. G. 1036; 1900 C. D. 333.

7. By the grant of a patent a patentee is merely put in a position to assert his *prima facie* right against infringers who may in their defense raise the question of the validity of the patent and have the same finally adjudicated in the light of a full presentation and consideration of all the evidence attainable in respect of anticipation, prior knowledge, use and the like. *In re Thompson*, 26 App. D. C. 419; 1906 C. D. 566; 120 O. G. 2756.

8. An inventor cannot be deprived of the right to his invention where he has used due diligence in the assertion of his right except by express contract or by a course of conduct that fairly gives rise to an implication of an intention to part with or dispose of the right, and a presumption to that effect is not lightly to be made. *Sendelbach v. Gillette*, 22 App. D. C. 168; 109 O. G. 276; 1904 C. D. 597.

9. A subsisting patent, lawfully issued, cannot be invalidated or in any manner affected by any subsequent proceedings in the Patent Office, even to the extent of imposing the burden of proof upon its holder that it was lawfully issued, and it is the express provision of the statute that no person has a right to "obtain a patent for that which was in fact invented by another, who was using reasonable diligence in adapting and perfecting the same," or unless the latter has abandoned his invention. *Christensen v. Noyes*, 15 App. D. C. 94; 90 O. G. 227; 1900 C. D. 212.

10. The Office has no right, except where the right of the applicant is clearly shown, to create a necessity or make it incumbent upon a prior inventor and patentee to go into court to vindicate his patent as against a subsequent patentee for substantially the same invention, and therefore it should not allow claims merely because they contain apparent structural differences over those of the patentee upon the theory that no great harm could be done by such course. *In re Marshutz*, 13 App. D. C. 228; 85 O. G. 778; 1898 C. D. 578.

## II. Patentability. 1. Invention Generally.

11. As Congress had the power to create a distinct special tribunal, proceeding after the manner of a court of law or equity, for the adjudication of claims to patents for inventions, there seems to be no convincing reason why it could not without violating the Constitution make it a branch or bureau of an executive department, subject to supervision in matters administrative only by the head of that department and subject to review in matters judicial in their nature by a court of competent jurisdiction. *Bernardin v. Seymour*, 10 App. D. C. 294; 79 O. G. 1190; 1897 C. D. 428.

12. P. filed an application and assigned it to V. Later he filed a second application for the same invention and assigned it to W. A patent was issued on the latter application. *Held* that this patent is a bar to the issuance of a patent on the earlier application. *In re Pearsall*, 135 O. G. 221; 31 App. D. C. 265.

12a. Although the issuance of a patent upon an invention which a party is manufacturing and which he says is not patentable might cast a cloud upon his right to manufacture it and expose him to litigation, *Held* that it does not injure him legally, since if he is sued for infringement of the patent he may set up its illegality as a complete defense. That is all the remedy needed. *National Phonograph Co. v. Commissioner of Patents*, 101 O. G. 1133; 1902 C. D. 571.

**II. PATENTABILITY.****1. Invention Generally.**

13. Invention must extend beyond the merely novel and useful and into the domain of original thought, though the extent of the mental process is immaterial. *In re Snyder*, 10 App. D. C. 140; 78 O. G. 485; 1897 C. D. 254.

14. Result considered in connection with references may indicate that degree of thought that rises to the dignity of invention. *Ib.*

15. In order to constitute a patentable invention, there must be more than mere progress to an end, however near that progress may have approximated to the end in view. The law requires not conjecture, but certainty, and where the question relates to a machine the conception must have been clothed in substantial form, which demonstrated at once its practical efficiency and



utility. *Funk v. Haines*, 20 App. D. C. 285; 100 O. G. 1764; 1902 C. D. 553.

16. It is not every improvement that will entitle a party to a patent therefor, since it must be shown to be the result of an act of invention as distinguished from an act of applied skill by those familiar with the state of the art. *In re Klemm*, 21 App. D. C. 186; 103 O. G. 1682; 1903 C. D. 540.

17. Not every change or improvement is patentable invention, and the merits of the exercise of the inventive faculty must be refused to such things as are plainly within the scope of mechanical ingenuity. *In re Draper*, 10 App. D. C. 545; 79 O. G. 864; 1897 C. D. 407.

18. It does not involve invention to make that permanent which in its inception was only temporary, since that is the work of the skilled mechanic. *In re Scabury*, 23 App. D. C. 377; 110 O. G. 2238; 1904 C. D. 655.

18a. Invention consists in the combination of old elements as well as in the discovery of an element entirely new, provided it produces a new and useful result. *Fenton Mfg. Co. v. Office Specialty Mfg. Co.*, 26 W. L. R. 116.

19. To make the handle of a knife for cutting hay reversible on the head of the shank to which the blade is attached does not require anything more than ordinary mechanical ingenuity and does not involve invention. *In re Iwan*, 17 App. D. C. 566; 95 O. G. 441; 1901 C. D. 344.

20. The discovery of a new process in any art by the addition of heat as a material factor, where heat had never before been applied or suggested, would constitute invention; but the adoption of a discretionary temperature in treating coal, subject to increase or diminution, as experience, as well as the varying character of the material treated, may suggest, does not amount to invention. *In re Musgrave*, 10 App. D. C. 164; 78 O. G. 2047; 1897 C. D. 336.

21. It involves only the exercise of ordinary faculties to vary the temperature required in a certain process in which heat is essential, even when this variation is great. *Ib.*

22. If a process for the reduction of any and all metallic oxids is not patentable, the same process for one specific metal oxid—the oxid of zinc—cannot be patentable. *Mond v. Duell*, 16 App. D. C. 351; 91 O. G. 1437; 1900 C. D. 298.

## II. Patentability. 1. Invention Generally.

23. To change the form of a pin from a round shank with a button head to a square-shanked pin with an oblong head to overcome a defect in operation was simply a matter of variation in construction not affecting the substance of the invention claimed, and such change or variation in form could be made by mere mechanical skill, without the exercise of the faculty of invention, in order to render more perfect the operation of the original device. *Hein v. Buhoup*, 11 App. D. C. 293; 81 O. G. 2088; 1897 C. D. 772.

24. The mere enlargement of a covering box, shield, or plate of a holding-stud of a garment supporter, so as to allow greater space within said box, is not the result of an application of the inventive faculty. *In re Draper*, 10 App. D. C. 545; 79 O. G. 864; 1897 C. D. 407.

25. The mere idea that there ought to be an arrangement to strip a stocking from a board or form on which it was mounted and return the board to the one who placed the stockings thereon and the illustration of this idea by the originator thereof by stripping a stocking from a form by the passage thereof between his hand and the edge of a table does not amount to a conception of an invention. No mechanism was described by which the desired result could be obtained. Invention consists of the conception of the idea and of means for putting it in practice and producing the desired result. Until the latter conception is complete and ready to be put in some practical form there is no available conception of the invention within the meaning of the patent law. *Burson v. Vogel*, 29 App. D. C. 388, 404; 131 O. G. 942; 1907 C. D. 669.

26. Where the prior art disclosed a train of gearing positively connecting the hour, minute and second hands of a time mechanism, whereby the rotation of one would cause the proper relative movement of the others, and it also disclosed a winding and setting mechanism controlling the proper relative rotation of the minute and hour hands, it did not amount to invention to insert an additional gear and pinion in the latter mechanism to secure the proper position of the second hand with relation to the minute and hour hands upon operation of the setting mechanism. *In re Volkmann*, 28 App. D. C. 441; 126 O. G. 2593; 1907 C. D. 462.

27. The use of two closures upon the same powder-can, each

being separately old, *Held* not to constitute invention, since the mere duplication of closures does not involve even the ingenuity of the skilled mechanic. *In re Seabury*, 23 App. D. C. 377; 110 O. G. 2238; 1904 C. D. 655.

28. The use of a well-known perforated pivoted closure and an ordinary screw-cap on a powder-can *Held* a mere aggregation of independent and well-known elements and not invention. *Ib.*

29. Not even the ingenuity of a skilled mechanic, much less the inventive faculty, seems to have been required to devise an aggregation or combination consisting of a catalogue and desk-pad bound together. *In re Davenport*, 23 App. D. C. 370; 110 O. G. 2017; 1904 C. D. 653.

## 2. Novelty.

30. A novelty involving a state of art so universal and common as the making and adjustment of clothing must be of a radical character to overcome the presumption against its patentability. *In re Fay*, 15 App. D. C. 515; 90 O. G. 1157; 1900 C. D. 232.

31. Where it was old to provide spots in a bowling-alley to insure the accurate setting of the pins, claims covering two series of spots, one within the other, thereby to insure the correct setting of different kinds of pins having different-sized bases, not limited to any mechanical construction, set forth nothing which involves the exercise of the inventive faculty. *In re Milans*, 135 O. G. 1126; 31 App. D. C. 269.

32. Where it is old in the art of dyeing to fix anilin-black upon vegetable textile fabrics by a two-step process consisting in treating the fabric with salt of anilin alone and with an oxidizing salt mixed with a compound containing a catalytic agent and it was old to print textile fabrics in two-step processes, *Held* that to apply to the two-step printing process the selection of ingredients theretofore used in dyeing did not arise to the dignity of invention. *In re Chase and McKensie*, 31 App. D. C. 154, 135 O. G. 895.

33. Where a claim covers a lathe structure comprising a pair of uprights and a bed consisting of two sections of shafting arranged one above the other, said sections having their ends cast or embedded in the uprights, *Held* that there is nothing patentable in the idea of *casting* the ends of the cross-bars into the uprights. *In re Sheldon*, 135 O. G. 1585; 31 App. D. C. 201.

## II. Patentability. 2. Novelty.

34. The use in the same wire band of two features separately old in wire bands to effect the identical functions performed separately by each of them in the prior devices *Held* not to constitute patentable novelty. *In re Griswold*, 9 App. D. C. 496; 78 O. G. 482; 1897 C. D. 248.

35. Where a claim in an application for a striker-plate had been rejected by the Commissioner for want of patentable novelty, and such rejection acquiesced in, a claim by the same inventor in another application for the combination of a door or casing and the striker-plate *Held* not patentable, because the striker-plate must be held old in view of decision of the Commissioner, the combination broadly was old, and no invention was claimed for the manner of applying the old striker-plate to a door or casing. *In re Forg*, 2 App. D. C. 58; 66 O. G. 515; 1894 C. D. 138.

36. A process of rolling pills which differs from the old process merely in cutting the pill mass into sections of the proper size before feeding it to the rolling-machine *Held* lacking in patentable novelty. *In re Colton*, 21 App. D. C. 17; 104 O. G. 577; 1903 C. D. 566.

37. Where under the old process the pills were unequal in quantity and not regularly rounded because of overfeeding and irregular division of the pill mass, *Held* that the obvious remedy was to reduce the supply and that no invention was involved in so doing. *Ib.*

38. A pliable metallic capsule for bottles having applied to its inner surface a coating of material which becomes adhesive when moistened *Held* to be not patentable, as cemented appliances—such as envelopes, labels, and postage-stamps—requiring merely the application of moisture to put them into use are old. *In re Nimmy*, 13 App. D. C. 565; 86 O. G. 345; 1899 C. D. 265.

39. Although it may appear that a device is of superior utility over other devices, as it has gone into general use, the fact that it has gone into such use, even to the displacement of other devices, has no weight upon the question of patentable novelty except when it is otherwise in doubt. *In re Smith*, 14 App. D. C. 181; 87 O. G. 893; 1899 C. D. 313.

40. A system of ventilation the novel feature of which consists in supplying each of the branch pipes leading into a room or compartment to be ventilated with nozzles composed of articulated

sections of such construction that the current of air forced into the pipe may be discharged in any direction in the room by the adjustment of the nozzles, so that the incoming air may be more thoroughly agitated and commingled and drafts prevented, *Held* to be patentable over the systems of ventilation disclosed by patent to Brown, No. 182,746, and to Jennison, No. 177,847. *In re McCreery*, 12 App. D. C. 517; 83 O. G. 1210; 1898 C. D. 478.

41. A patent for a supporting rack or shelf for books, composed of metallic strips with a re-entrant bend or recess in its front edge for the insertion of the hand, with rollers projecting above and in front of each side or recess, is invalid for lack of invention. *Office Specialty Co. v. Fenton Co.*, 174 U. S. 492.

42. Appellant's design for a hose-supporter is lacking in patentable novelty in view of his own prior patent and also in view of patents granted to others upon devices differing from the appellant's only in mechanical details. *In re Freeman*, 23 App. D. C. 226; 109 O. G. 1339; 1904 C. D. 619.

43. The steps in a process of making a coil for electrical measuring instruments, which consist in securing the pivot pins in the axial line of the coil and simultaneously adjusting the needle-supporting pivot in such manner that the point of the needle is located in the central plane of the coil or in a plane at a definite angle thereto, *Held* to be more than mere mechanical steps and when added to a process which is merely mechanical to confer patentability on claims covering the combined steps. *In re Weston*, 17 App. D. C. 431; 94 O. G. 1786; 1901 C. D. 290.

44. Claims for the process of making a coil for electrical measuring instruments, which consists merely in drawing a section of sheet metal over a mandrel and subjecting it to pressure until a desired configuration is acquired and then turning down the lateral edges, *Held* to cover simple and well-known mechanical operations and to be without any element of patentable novelty. *Ib.*

45. It being old to secure together two shells or cups of a porcelain insulator by cement, there is no patentable novelty in securing them together by fusing. *In re Locke*, 17 App. D. C. 314; 94 O. G. 432; 1901 C. D. 267.

46. A hay-knife composed of several cutting-sections with serrated edge and set in a flanged back, the back tapering gradually

## II. Patentability. 2. Novelty.

from base to point and the cutting-sections secured to said back and abutting against the flange thereof, *Held* in view of the state of the art to be lacking in patentable novelty. *In re Iwan*, 17 App. D. C. 566; 95 O. G. 441; 1901 C.D. 344.

47. An improvement in musical notation which consists in dividing the whole tone first by three and then successively by two, whereby the expression of whole tones and one-third, one-sixth, one-twelfth, one twenty-four tones, &c., are obtained, held to be not patentable. *In re Beswick's Appeal*, 16 App. D. C. 345; 91 O. G. 1436; 1900 C. D. 294.

48. A claim for a removable box-liner consisting of a sheet of paper cut in the shape of a cross, creased at the junction of the arms, and having lacework ornamentation attached to the arms is lacking in patentable novelty in view of the prior art, which discloses the use of one-piece removable liners and the use of non-removable liners bordered with lacework. *In re Warren*, 30 App. D. C. 308; 134 O. G. 258.

49. Where the want of patentable novelty is reasonably clear and not in doubt, *Held* that the fact, if established, that the apparatus claimed has displaced others generally by reason of its obvious superiority can have no weight. *In re Garrett*, 27 App. D. C. 19; 1906 C. D. 645; 122 O. G. 1047.

50. It amounts only to mechanical skill to provide an old electromagnet with an old non-magnetic metal covering for the purpose of rendering the electromagnet operative under water. Any one having ordinary skill in the art should know that such a covering should be made of non-magnetic material to avoid interfering with the electrical action of the magnet. *In re Hayes*, 27 App. D. C. 393; 1906 C. D. 697; 123 O. G. 1000.

51. In view of the state of the art relating to combined funnels and valves and the Baker patent, which shows a reversible funnel in combination with a valve, *Held* that using the neck of a funnel as part of a plug-valve to be opened by turning the funnel involves nothing more than the work of a skilled mechanic. *In re Baker*, 26 App. D. C. 363; 1906 C. D. 594; 121 O. G. 1352.

52. The novelty of a design must be judged by the test of ornament, and while the final merit of ornamentation may depend upon the harmonious blending of small details mechanical differences which may make a vast difference in the operativeness

## II. Patentability. 3. Anticipation.

of the devices may make no appreciable difference between the devices as designs. *In re Freeman*, 23 App. D. C. 226; 109 O. G. 1339; 1904 C. D. 619.

53. The change or omission or addition of a few minor details would not justify the multiplication of design patents even though the designs may readily be distinguished from each other by one or more features. Substantial differences are required to render one device patentable over another as a design. *Ib.*

54. Where small differences existed in the applicant's design over the references, which differences would appear greater to an expert than to the average observer, *Held*, nevertheless, that the design was not patentable, because the differences did not rise to the dignity of invention. *In re Schraubstadter*, 26 App. D. C. 331; 1906 C. D. 541; 120 O. G. 1167.

55. Where peculiarities in the applicant's design were such as to prevent that design from being regarded in the trade as a substitute for the design shown by the references, *Held* that the applicants' design was nevertheless not patentable, because such peculiarities did not rise to the dignity of invention. *Ib.*

56. The novelty of a design held to be determined and infringement decided by the comparative appearance of the designs in the eyes of average observers and not by such appearance to the eyes of experts. *Ib.*

57. Where the applicant's design was for a font of type in which the letters had a waved outline, *Held* that aside from the waved outline the letters seemed to be of a very ordinary style and that to add a waved outline, which was old, to common forms of letters did not involve invention. *Ib.*

### 3. Anticipation.

58. No patent should issue nor will it be valid if issued for an improvement which is merely a new application of knowledge already possessed by those skilled in the art—a mere modification, variation, or carrying forward of the principle involved in a previous invention or discovery. *In re Klemm*, 21 App. D. C. 186; 103 O. G. 1682; 1903 C. D. 540.

59. A patent is no less an anticipation because it does not claim the invention, since the failure to claim it simply implies either that he abandoned it to the public or that he regarded it as al-

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ready well known to the art. *In re Millett*, 18 App D. C. 186; 96 O. G. 1241; 1901 C. D. 410.

60. Disclosure in a drawing alone if sufficiently plain and clear may be sufficient to show an anticipation of an invention. *Ib.*

61. A decision of the Commissioner of Patents allowing one and rejecting the five remaining claims of an application for a patent for improvements in flame-guards for burners held error in that the rejected claims were not substantially different from the allowed one. *In re Foster*, 19 App. D. C. 391.

62. While inventions, claimed as anticipations, might by modification have been made to perform the functions of another invention, if it appears that these functions were not in the mind of the inventors their inventions cannot be treated as anticipations. *Fenton Manuf. Co. v. Office Specialty Co.*, 12 App. D. C. 201.

63. Where the claim is distinguishable from the prior art by a mere arbitrary variation which amounts only to a change in mechanical design, *Held* that such a claim is unpatentable. *In re Williams*, 30 App. D. C. 117; 130 O. G. 1692; 1907 C. D. 664.

64. The claims in an application for a patent for a composition of matter consisting of a soluble alizarine coloring-matter, *Held* to have been anticipated and properly rejected by the Commissioner of Patents on the product described in Crookes' "Hand-Book of Dyeing and Calico Printing," London, 1874, 242 to 263. *In re Schaeffer*, 2 App. D. C. 1; 66 O. G. 514; 1894 C. D. 134.

65. A process of pasteurizing beer which consists in continuously moving the bottles through the pasteurizing agent, *Held* not anticipated by a process in which the pasteurizing agent is continuously moved in reference to the stationary bottles of beer. *In re Wagner*, 22 App. D. C. 267; 105 O. G. 1783; 1903 C. D. 629.

66. Where application is made for a patent upon an alleged method after a patent has been granted upon the apparatus and it appears that the substitution of the word "means" for the word "method" at two places would not change the sense and would make the disclosure in the application the same as that in the patent, *Held* that to grant the alleged method claims would re-



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sult in two patents for substantially the same thing. *In re Creveling*, 25 App. D. C. 530; 117 O. G. 1167; 1905 C. D. 684.

67. Where the only suggestion of a method as a distinctive part of an inventive concept in the specification is in the use of the word "method" at two places therein and it does not appear that there is any difference in the inventive concept underlying such disclosure from that underlying the disclosure in a patent to the applicant upon the apparatus, *Held* that the alleged method claims are not patentable. *Ib.*

68. The alleged process claims in this case *Held* not patentable in view of a prior patent to the same applicant upon the apparatus disclosed. *Ib.*

69. A claim for a process of forming metal rings which differs from the references merely by the statement that a head is formed centrally of the blank *Held* unpatentable. *In re White*, 31 App. D. C. 607; 136 O. G. 1771.

70. A claim for a process *Held* unpatentable when it does not appear that said process can be carried out by any other means than that invented for such purpose by appellant and for which he has obtained a patent. *Ib.*

71. The mere combination of articles disclosed in two former patents will not constitute invention unless it results in producing a new and useful article not applied by those familiar with the state of the art. A patent should not be issued when the alleged invention is a mere modification of the principle involved in former inventions or discoveries. *In re Faber*, 136 O. G. 229; 31 App. D. C. 531.

72. An article of manufacture composed essentially of pieces of the pericarp of the cocoanut, dried and coated with waterproof substance, *Held* to be not patentable because of anticipation and lack of invention. *In re Cheneau*, 5 App. D. C. 197; 70 O. G. 924; 1895 C. D. 188.

73. An improvement in a stocking-supporter, consisting in raised lugs on the side of the slot-plate to prevent the stud over which the upper end of the stocking is gripped from rising in the slot and becoming disengaged, does not rise to the dignity of invention in view of the fact that lugs for the same purpose have been used in suspender-clasps. *In re Smith*, 14 App. D. C. 181; 87 O. G. 893; 1899 C. D. 313.

74. An apparatus for producing ozone by the use of electrical

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currents of high frequency *Held* not patentable in view of certain patents to Tesla cited. *In re Verley*, 19 App. D. C. 577; 99 O. G. 2323; 1902 C. D. 543.

75. Where the claim covers an ozone apparatus in combination with particular means for producing currents of high frequency, *Held* anticipated by two patents, one disclosing the high-frequency apparatus used with the electric lights and the other disclosing an ozone apparatus supplied by a different form of high-frequency apparatus. *Ib.*

76. There was no invention in using the Herzian exciter in an ozone apparatus when it had been used in other devices to obtain electric currents of high frequency and an ozone patent had described the use of devices of that class with an ozonizer. *Ib.*

77. A claim for a steam-gage comprising a "Bourbon tube and the part to which it is secured, the joint between the two being unsoldered and held by frictional contact" is not patentable over a steam-gage having a Bourdon tube attached to its socket by means of a flange on the tube and which is held in place by a jam-nut, making a steam-tight union-joint without the use of solder. *Millett v. Allen*, 27 App. D. C. 70; 1906 C. D. 752; 124 O. G. 1524.

78. Where the appellant claims a steam-gage having a tapering end, so that it may be secured in place without soldering, and the reference shows a similar gage, but contains no statement that solder is not used, the patent is an anticipation and there is no reason for assuming that the patentee intended to use solder when it is entirely unnecessary. *In re Millett*, 18 App. D. C. 186; 96 O. G. 1241; 1901 C. D. 410.

79. A lathe having a bed consisting of two horizontal bars arranged one above the other is not anticipated by a drill-frame having two vertically-arranged bars, the two devices having different functions and belonging to remote arts. *In re Sheldon*, 135 O. G. 1585; 31 App. D. C. 201.

80. A claim covering the use of a thermostat to cut off the supply to a gas-engine to prevent overheating, *Held* not patentable in view of the common use of thermostats to cut off the supply of heating medium to various devices when the temperature reaches a predetermined point. *In re Adams*, 24 App. D. C. 275; 114 O. G. 2093; 1905 C. D. 602.

81. A thermostat when used to cut off the supply to a gas-en-

gine, performs no unusual function and does not produce a new and useful result that rises to the dignity of invention. *Ib.*

82. A claim for a traveling carrier of a hog-hoisting machine the essential feature of which is chain-pendants permanently attached to the carrier, Held to be anticipated by an endless carrier for hoisting building material, having rod-pendants permanently attached thereto, the uses of the two devices being practically the same, as by substituting the chain for the rod attached to the carrier of the reference the latter would be available for drawing hogs from the pen to the hoisting-point in the manner described by appellant. *In re Lowry*, 14 App. D. C. 473; 88 O. G. 717; 1899 C. D. 410.

83. A claim for a compound bar for making cutting-tools, consisting of an inner bar of harder metal and an inclosed bar of softer metal pressed on the same, etc., contains nothing that is patentably new in view of a patent which shows a bar of hard steel surrounded or partly surrounded by a bar of softer steel and another patent which shows a bar for cutting-blades made by partly surrounding the hard steel by iron. *In re Bedford*, 14 App. D. C. 376; 87 O. G. 1611; 1899 C. D. 357.

84. If there be any invention, it is not to be found in the combination described in the claims, but by reference to the drawing and in the words "substantially as described." This would confine the plaintiff to a metallic frame divided longitudinally into three sections, each fitted with short rollers, two of which project above and forward of the front bar of the frame, which is bent inward in front of the middle section to form the "re-entrant bend or recess" for the insertion of the hand. *Office Specialty Mfg. Co. v. Fenton Metallic Mfg. Co.*, 174 U. S. 492; 87 O. G. 1608; 1899 C. D. 352.

85. Limiting the patent to the precise construction shown, none of the defendant's devices can be treated as infringements, since none of them shows a shelf divided into three sections, and none of them, except possibly one, the manufacture of which was stopped, indicates a bend in the front bar of the frame to form the recess for the insertion of the hand. *Ib.*

86. A material consisting of the comminuted cellular portion of corn-pith freed from sappy, deleterious, and adherent matters by subjecting the pith to the action of a blast of air, preferably heated, *Held* to be not anticipated by applicant's prior patent

## II. Patentability. 3. Anticipation.

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disclosing corn-pith obtained by passing cornstalks through breakers and then separating the pith from the fiber and outside shell, as there is no description in the patent that the pith is subjected to air at a high temperature. *In re Marsden*, 14 App. D. C. 223; 87 O. G. 1239; 1899 C. D. 339.

87. The similitude in the invention relied on as matter of anticipation with the invention for which a patent is sought need not be exact in form or structure but if the information contained therein is full enough and sufficiently precise to enable any person skilled in the art to which it relates to perform the process or make the thing covered by the claim of invention sought to be patented it will be sufficient to establish the fact of anticipation and want of novelty in the alleged invention. *In re Bedford*, 14 App. D. C. 376; 87 O. G. 1611; 1899 C. D. 257.

88. Claims for improvements in which the applicant designates as an "adjustable single-loop wire bale-tie," consisting, substantially, in forming the eye or loop out of the tie, or, as expressed in the specification, "integral" therewith, and of peculiar shape, whereby the free end of the tie is gripped and wedged in the eye upon the expansion of the bale, *Held* anticipated by the prior art. *In re Griswold*, 9 App. D. C. 496; 78 O. G. 482; 1897 C. D. 248.

89. A claim for a guarantee credit book having certain designated columns for certain entries involves no invention over the prior art which disclosed the general scheme, the only difference being the addition of certain columns for the purpose of keeping an account of liquidated damages. *In re Taylor*, 31 App. D. C. 529; 136 O. G. 1767.

90. After the generic process of preparing printing-plates with projecting portions on the back thereof and pressing these to the face of the plates, giving a graduated surface, has been claimed and the specific mode of preparing the plates by the use of photolithographing and etching has also been claimed there is nothing left to claim in a separate application as a separate invention as a process of making-ready printing-plates. What remains would appear to be a mere carrying out of the purposes of the original invention, which ought to be obvious to skilled workers in the art. *In re Wickers and Furlong*, 29 App. D. C. 71; 129 O. G. 2074; 1907 C. D. 608.

91. A claim to a printing-press held unpatentable where it

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amounts to a mere duplication of what is shown in the prior art and involves the production of no new result save, perhaps, greater convenience. *In re Scott*, 25 App. D. C. 307; 117 O. G. 278; 1905 C. D. 665.

92. A method of covering playing-balls consisting of knitting separately a wrapper leaving a slit therein, inserting a deflated rubber ball through said slit, closing the slit by meshes of the same material as that forming the cover, and finally inflating the ball, *Held* anticipated by certain patents showing the idea of covering inflated rubber balls with a crocheted or knitted cover and another patent which contains the idea of inserting a deflated ball in a cover, inflating the ball, and then closing the aperture. *In re Droop*, 30 App. D. C. 334; 133 O. G. 517.

93. The process for the manufacture of zinc which consists in lixiviating roasted zinc ores by a solution of caustic soda or potash, electrolyzing the solution of zinc oxid thus obtained with an anode of sodium or potassium amalgam, and causing deposit of zinc on a metallic cathode, *Held* to be not patentably new. *Mond v. Duell* 16 App. D. C. 351; 91 O. G. 1437; 1900 C. D. 298.

94. Where the Commissioner of Patents refused to applicant a claim for the process of reducing a metallic oxid by electrolysis and applicant acquiesced in that rejection, but prosecuted another claim which differed from the rejected claim, first in mentioning zinc specifically as the metal to be extracted from the metallic oxid, and, second, in the introduction into the claim of the preliminary step of producing the zincate solution by lixiviation of roasted zinc ores by caustic-alkali solutions, *Held* that the first modification does not add to the patentability of the alleged invention, that the second modification simply adds to the process which was rejected as unpatentable, a preliminary step which was already well known, and that the claim is not patentable. *Ib.*

95. A seam for sewed articles consisting of two crossed threads on the upper surface of the fabric and a single locking-thread crossing the seam below the fabric, *Held* not patentable in view of two patents, one showing two crossed threads above and two straight locking-threads below and the other showing two straight threads above and a single crossed locking-thread below.

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*In re Klemm*, 21 App. D. C. 186; 103 O. G. 1682; 1903 C. D. 540.

96. Where it was old to vulcanize a rubber sole to the outer leather sole of a shoe and was old to vulcanize a rubber sole to the inner sole, there was no invention to vulcanize a rubber sole directly to an inner sole of a particular kind provided with a welt. *In re Butterfield*, 23 App. D. C. 84; 108 O. G. 1589; 1904 C. D. 585.

97. Where a prior patent shows a rubber sole vulcanized to the inner sole with an interposed layer of rubber-coated cloth, the omission of the cloth does not involve invention, but mere mechanical skill. *Ib.*

98. Means for fastening an initial flat upon a finger-ring, consisting of a stud on the initial having square shoulders engaging shoulders in a hole made in the ring, *Held* not anticipated by a construction in which the stud on the initial was provided with a rounded spring-head which did not engage the ring proper, but after extending through an onyx-setting engaged a box attached to the ring. *In re Weiss*, 21 App. D. C. 214; 103 O. G. 1918; 1903 C. D. 546.

99. A patent granted after the appellants' filing date, but upon an application filed before, is evidence of the state of the art at the time as shown by the drawings and specification of the application, and it is a state of the art and not the existence of a patent which determines a party's right to a patent. *In re Millett*, 18 App. D. C. 186; 96 O. G. 1241; 1901 C. D. 410.

100. Where a patent showing in the drawing but not describing or claiming the invention was granted to another three days after the appellants' case was filed on an application filed two years before that time, *Held* that the appellants' claims were properly rejected. *Ib.*

101. Claims appealed, *Held* anticipated by the prior art cited, and the decision of the Commissioner of Patents affirmed. *In re Carpenter*, 24 App. D. C. 110; 112 O. G. 503; 1904 C. D. 669.

102. In this case held that it is shown by the record patents that the applicant's claims were anticipated and that by recombining selected elements the appellant has not produced a combination which amounts to invention, and the details of construction specified in some of the claims are within the scope of the skill

of mechanics familiar with this art. *In re Clunies*, 28 App. D. C. 18; 1906 C. D. 740; 123 O. G. 2631.

103. An application substantially for the process of reducing refractory oxides by electrolysis without the aid of external heat, *Held* to be anticipated by patent No. 468,148, issued February 2, 1892, to Charles S. Bradley. *In re Heroult*, 5 App. D. C. 90; 70 O. G. 784; 1895 C. D. 177.

#### 4. Operativeness.

104. Where a machine turned out satisfactory work, but it was not commercially successful, for the reason that it did not turn out the work with desirable rapidity, *Held* that such device was not so inoperative as to be deficient in patentability. *Bechman v. Wood*, 15 App. D. C. 484; 89 O. G. 2459; 1899 C. D. 453.

105. There is a great difference between inoperativeness and imperfection. It is well known that many inventions were extremely crude in their inception, and it is not always easy to recognize the original conception in the perfected device. *Fowler v. Dodge*, 14 App. D. C. 477; 87 O. G. 895; 1899 C. D. 316.

106. As it is not usual for courts to disturb the conclusions of the Patent Office on such a question as the operativeness of a device as shown and described by an application for patent without very cogent proof of error, and there being no such proof in this case, *Held* that the decision of the Patent Office that the Dodge application describes an operative device should be affirmed. *Ib.*

107. The appealed claims to an alleged process of regulating a generator *held* not patentable, since they do not include all of the steps necessary to effect the result stated or any useful result. *In re Creveling*, 25 App. D. C. 530; 117 O. G. 1167; 1905 C. D. 684.

108. A claim purporting to cover a method cannot be regarded as patentable where it is lacking in one of the steps which in accordance with the statement of invention, description, and drawings is essential to the carrying out of the alleged method. *Ib.*

109. Where an alleged process claim includes the step of rotating an armature and concludes "and by said motion in one direction increasing the output of the generator and in the other direction decreasing the said output," but it appears that the result stated is not accomplished by the mere motion of the armature, but

by the interposition of other means, *Held* that there is no foundation in the case for the claim. *Ib.*

### 5. Substitution of Elements.

110. It is not every new and useful improvement produced by the adaptation or substitution of one well-known material for another that will entitle a party to a patent. The improvement must be the result of invention. *In re Cheneau*, 5 App. D. C. 197; 70 O. G. 924; 1895 C. D. 188.

111. Where the article sought to be patented differs from prior like articles merely in the difference and superiority of the material of which it is composed, the material and its properties being old and known, *Held* that such article involves the mere substitution of one old material for another. *Ib.*

112. The substitution for an old element in a combination of an element performing a similar function but constructed in a different way, does not render the combination itself patentable where there is no resultant change in the operation. In such a case, although the substituted element may be superior, the invention lies in the element and not in the combination. *In re Hawley*, 26 App. D. C. 324; 1906 C. D. 576; 121 O. G. 691.

113. It being old to employ "depending" means for supporting the load in computing scales, there was no invention in substituting such means in an old combination. *Computing Scale Co. v. Automatic Scale Co.*, 26 App. D. C. 238; 119 O. G. 1586; 1905 C. D. 704.

114. Where the applicant claimed a combination of old elements and a reference shows a combination which is intended for a different use and which involves differences of operation, and one of the elements shown in the reference is different from the corresponding element in the applicant's device, *Held* that a patent should not necessarily be refused on account of such reference. *In re Thompson*, 26 App. D. C. 419; 1906 C. D. 566; 120 O. G. 2756.

115. Where a prior combination cited against the combination claimed includes elements in addition to those used by the applicant which result in differences in operation undesirable for the purpose of the applicant's device and one of the elements of the prior combination is different from the corresponding element of the applicant's combination, *Held* that a patent should



not necessarily be refused on account of the prior combination. *Ib.*

116. Where there was doubt as to the sufficiency of the references and the applicant demonstrated that he had produced an apparatus of great utility, *Held* that the doubt should be resolved in favor of the applicant's claim. *Ib.*

117. Where it was old in a time-recording mechanism to provide a revolving drum operated by clockwork, a record-sheet to be wound thereon as the drum revolved, and a marking-point which made a mark on the record-sheet when placed in contact therewith, and it was also old to make a record on a lamp-black surface by the removal of a portion of such surface by means of a coating stylus, it does not involve invention to use in a time-recording mechanism a record-sheet having a removable surface in combination with a stylus which removes a portion of said surface, although the record-sheet itself may be novel. *In re Hazley*, 26 App. D. C. 324; 1906 C. D. 576; 121 O. G. 691.

### 6. Substitution of Equivalents.

118. The substitution of one ingredient for another in a composition will not avoid infringement if the two ingredients were well known at the date of the patent as endowed with the same capacity. *Lane v. Levi*, 21 App. D. C. 168; 104 O. G. 1898; 1903 C. D. 601.

119. A mere carrying forward of an original conception patented, a new and more extended application of it involving change only of form, proportions, or degree, the substitution of equivalents doing the same thing as the original invention by substantially the same means with better effects, is not such invention as will sustain a patent. It is only the invention of what is new and of practical utility, and not the arrival at comparative superiority or greater excellence in that which was already known, which the law protects as exclusive property and which it secures by patent. *In re Marshutz*, 13 App. D. C. 228; 85 O. G. 778; 1898 C. D. 578. *In re Iwan*, 17 App. D. C. 566; 95 O. G. 441; 1901 C. D. 344.

120. Where it is old to heat exhaust-air as it passes from the high-pressure to the low-pressure cylinder of a compound air-engine by means of a liquid substance, and it is also old to use

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**II. Patentability. 7. Equivalents. 9. Change in Location of Elements.**

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atmospheric air to impart heat to air within a receptacle, it does not amount to invention to substitute the latter heating medium for the former. *In re Hodges*, 28 App. D. C. 525; 128 O. G. 887; 1907 C. D. 543.

**7. Equivalents.**

121. A device embodying two springs used to disrupt a telephone circuit is substantially equivalent to a device embodying one spring for the same purpose. *McBerty v. Cook*, 16 App. D. C. 133; 90 O. G. 2295; 1900 C. D. 248.

**8. Combinations.**

122. The addition of one well-known process to another well-known process does not constitute invention unless some different or better result is produced, than that which had been previously obtained. *Mond v. Duell*, 16 App. D. C. 351; 91 O. G. 1437; 1900 C. D. 298.

123. A combination as claimed is an entirety and disappears with the removal of one of its elements, and therefore it is a settled principle of patent law that where an element of the combination claimed is omitted there is no infringement. *Lane v. Levi*, 21 App. D. C. 168; 104 O. G. 1898; 1903 C. D. 601.

124. Where the combination in a sewing-machine of a trimmer in advance of one form of stitch-forming mechanism is old, *Held* that the combination of that trimmer with another stitch-forming mechanism is not patentable, whether that stitch-forming mechanism is new or old. *In re McNeil*, 20 App. D. C. 294; 100 O. G. 2178; 1902 C. D. 563.

125. An article consisting of a catalogue having a desk-pad bound to it as one of its covers, *Held* a mere aggregation of unrelated elements and not a patentable combination. *In re Davenport*, 23 App. D. C. 370; 110 O. G. 2017; 1904 C. D. 653.

126. Where the appellant urges that he has a permanent closure, whereas the references show detachable closures, but it appears that the claim is for a combination of two closures and not for the substitution of a permanent for a movable attachment the alleged difference does not make the claim patentable. *In re Seabury*, 23 App. D. C. 377; 110 O. G. 2238; 1904 C. D. 655.

**9. Change in Location of Elements.**

127. Claims which comprise merely a reversal of parts disclosed

in a prior machine are unpatentable. *In re McNeil*, 28 App. D. C. 461; 126 O. G. 3425; 1907 C. D. 478.

128. The change in the relative location of the various elements of an apparatus, *Held* nothing more than would suggest itself to a skilled mechanic having in view the conditions and conveniences of the different places in which the construction and use of the apparatus may be desired. *In re Garrett*, 27 App. D. C. 19; 1906 C. D. 645; 122 O. G. 1047.

129. The change in location of projections on the seat portion of a bed-couch from the upper to the lower side of the seat does not amount to invention. It is possible, but not apparent, that a better balance of the seat and back is secured by changing these projections. It is possible that a more attractive exterior is thereby presented. It is possible that a more salable article is thereby secured; but all this does not prove originality of invention. While courts deal liberally with inventors in sustaining patents having but slight distinction over prior structures, they do not and ought not to permit the real inventor to be deprived of the fruits of his genius and labor by a mere copyist. *In re Hoey*, 28 App. D. C. 416; 127 O. G. 2817; 1907 C. D. 516.

130. Where a given combination of elements is old in an automatic computing-scale of the horizontal type and the prior art also shows a computing-scale arranged vertically, although it was not entirely automatic, a claim covering a rearrangement of the elements of the automatic horizontal scale to provide a vertical construction can be sustained only to a limited extent. *Computing Scale Co. v. Automatic Co.*, 204 U. S. 609; 127 O. G. 849.

#### 10. Analogous Use.

131. The application of an old device or process to a similar or analogous subject with no change in the manner of applying it and no result substantially distinct in its nature is not patentable, even if the new form of result has not before been contemplated. *Millett v. Allen*, 27 App. D. C. 70; 1906 C. D. 752; 124 O. G. 1524.

132. Where it appears that a tapered screw-joint had been used in steam-fittings of different kinds and that such a joint had been used in juxtaposition to a steam-gage comprising a Bourdon tube having a soldered joint, it did not involve invention to substitute for such soldered joint the old tapered screw-joint. *Ib.*

## II. Patentability. 10. Analogous use.

133. Where the Magee patent and the appellant's claims show the same arrangement of diving and discharge flues at the rear of the stove, though the return-flues connecting the last two mentioned in Magee's patent are located in the bottom of the stove, while the applicant locates them on the side, and the stoves of Hynes and Williams have horizontal flues on the side, and Varney's hot-air heater shows a similar arrangement, *Held* that there is no invention in these claims. *In re Clunies*, 28 App. D. C. 18; 1906 C. D. 740; 123 O. G. 2631.

134. The decision in *Potts vs. Creager* does not apply to the circumstances of the case, in which an old construction of cutter-head used in a wood-planing machine is applied to an ice-planing machine, since the uses are analogous. *In re Briggs*, 9 App. D. C. 478; 78 O. G. 169; 1897 C. D. 211.

135. Where applicant changed the size and mode of fastening of the tubes of the device shown in the reference and transferred the device for heating water into one for cooling it. *Held* that the use of the latter is too nearly analogous to the former to raise the transfer to the dignity of invention, notwithstanding the fact that the new device may possess great advantages over the others used to accomplish the same purpose. It evinces the skill of the mechanic informed in the art and not the exercise of the inventive faculty. *In re Welch*, 28 App. D. C. 362; 1906 C. D. 758; 125 O. G. 2767.

136. Where the invention relates to finger-rings, the expedient of forming shoulders within holes in the band with which shoulders on the stud engage would not be suggested to one skilled in the art by a similar construction in street-signs. Street-signs and finger-rings are not in analogous or correlated arts. *In re Weiss*, 21 App. D. C. 214; 103 O. G. 1918; 1903 C. D. 546.

137. The combination here claimed has not produced a new device differing in character and function from others in existence and common use, nor does it accomplish a novel result through the co-operative action of old agencies. The applicant has done nothing more than exercise mechanical skill in bringing old devices into juxtaposition, and thereby constituting an aggregation merely of separate elements. *In re Smith*, 14 App. D. C. 181; 87 O. G. 893; 1899 C. D. 313.

138. There is no such remoteness in the use of the slot-plate

with the lugs in the clasp of the suspender as is sufficient to raise its adaptation to use in a stocking-supporter from the plane of mechanical ingenuity to that of invention. The use is clearly analogous. *Ib.*

### 11. Double Use.

139. A patent will not be granted upon the discovery of a new and analogous function for an old machine. *In re McNeil*, 82 App. D. C. 461; 126 O. G. 3425; 1907 C. D. 478.

140. The substitution for the two locking-threads used in the old cross-thread seam of the single locking-thread before used in the parallel-stitch seam *Held* not invention, but double use. *In re Klemm*, 21 App. D. C. 186; 103 O. G. 1682; 1903 C. D. 540.

141. In denying patentability to a change in prior devices, *Held* that the change was not made by transferring an old device to use in an entirely different and unrelated art and that therefore the case of *Potts v. Creager*, 155 U. S. 597, does not apply. *In re Thurston*, 26 App. D. C. 315; 1906 C. D. 539; 120 O. G. 1166.

142. Where in a rock-crusher a mantle removably secured upon a conical core is concedely unpatentable, *Held* that the provision of old pin-and-slot fastening devices for retaining the mantle tightly upon the conical core is mere double use and in view of certain references, an obvious substitution of equivalents. *Ib.*

143. The mere combining of an ordinary calking tool or blade with an automatically-operating pneumatic hammer which is adapted to be controlled and adjusted by hand amounts to nothing more than an obvious double use that would naturally occur to one skilled in the art with mind directed to cheapening the cost of ship-calking and does not rise to the dignity of invention. *In re Mason*, 136 O. G. 441; 31 App. D. C. 539.

### 12. Compositions.

144. A patentable compound or composition of matter is one that is produced by the intermixture of two or more specific ingredients and possesses properties pertaining to none of those ingredients separately, thereby accomplishing a new and useful result. *Lane v. Levi*, 21 App. D. C. 168; 104 O. G. 1898; 1903 C. D. 601.

145. A patentee seeking protection for such a compound must

describe with clearness and precision the component parts thereof, the process of their admixture, and the result. *Ib.*

146. The addition to a composition of substances that do not by their interaction change the properties, effect, or usefulness of the composition does not destroy its identity. The composition is the same if its properties substantially remain. *Ib.*

147. The identity of two compositions depends in general upon the identity of their ingredients and of their co-operative law, as well as upon the identity of the properties and effect of the composition as a whole. *Ib.*

### 13. Processes.

148. From the authorities it may be deduced, first, that processes involving a chemical or other elemental action, if new and useful, are patentable; second, that a process which amounts to no more than the function of a machine is not patentable; third, that a process of method of a mechanical nature not absolutely dependent upon a machine, although perhaps best illustrated by mechanism, may, if new and useful, be the proper subject of a patent, even though it involves no chemical or other elemental action. *In re Weston*, 17 App. D. C. 431; 94 O. G. 1786; 1901 C. D. 290.

149. A process of coaling ships at sea consisting in making a flexible connection between them and creating a pressure between one ship and the water on the side toward the other ship, *Held* to cover merely the function of mechanism and not a true process. *In re Cunningham*, 21 App. D. C. 29; 102 O. G. 824; 1903 C. D. 524.

150. Where the applicant has been allowed a claim for means for effecting a certain purpose and he claims the process of effecting it, but that alleged process cannot be conceived as independent of the means and cannot be described without reference to the means, the alleged process is the function of the means and is not patentable. *Ib.*

151. As to whether a statement of the mode of construction of a shoe having a rubber sole vulcanized to it can be considered a process at all. See *In re Butterfield*, 23 App. D. C. 84; 108 O. G. 1589; 1904 C. D. 585.

### 14. Arts.

152. Where the alleged invention is nothing more than a form

II. Patentability. 15. Functional utility. 16. Superiority and Popularity.

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of proposed contract to be entered into with individuals desiring the benefit of burial insurance or guaranty, with blanks attached and readily separable therefrom, which in addition to the ordinary draft for payment show the several certificates required in order to provide, as far as practicable, against the perpetration of frauds upon the insurer or guarantor, *Held* not an art, machine, manufacture, or composition of matter within the meaning of the patent laws of the United States. *In re Moeser*, 27 App. D. C. 307; 1906 C. D. 685; 123 O. G. 655.

153. Where each form of proposal is one for entry into and performance of a distinct contract and there is no physical construction or combination that can convert it from a mere contract into a tangible device or manufacture, *Held* not patentable. *Ib.*

154. The form of contracts or proposals for contracts devised or adopted as a method of transacting a particular class of indemnity or insurance business, *Held* not patentable as an art. *Ib.*

### 15. Functional Utility.

155. In addition to the mere esthetical or artistic effect of the design upon the senses of the spectator the element of functional utility may be considered in determining the question of patentability; but the functional utility is not to be regarded as a controlling or even as an essential element in a patent for a design. *In re Tournier*, 17 App. D. C. 481; 94 O. G. 2166; 1901 C. D. 306.

### 16. Superiority and Popularity.

156. The fact that a new device may have displaced others by reason of its manifest superiority is material only when the question of patentability is otherwise a matter of doubt. *Millett v. Allen*, 27 App. D. C. 70; 1906 C. D. 752; 124 O. G. 1524.

157. A patent should not be granted merely because a device or combination may possess great advantages, thereby bringing it into immediate use, as it is only when the question of novelty is in doubt that the fact that the device has gone into commercial use, displacing others employed for a like purpose or supplying the place of others whose intrinsic defects have prevented their general adoption and use, is sufficient to turn the scale in favor of invention. *In re Thomson*, 26 App. D. C. 419; 1906 C. D. 566; 120 O. G. 2756.

158. Where the assertion was made that the new machine had

## II. Patentability. 17. Determination of. 18. Particular Patents.

met with instant favor and large sales, but there was nothing in the record to bear out the assertion, *Held* that no effect could be given thereto. *In re Thurston*, 26 App. D. C. 315; 1906 C. D. 539; 120 O. G. 1166.

159. Notwithstanding that appellant's device may be superior in finish, neater in its appearance, and generally better accommodated for the uses for which it is intended than the devices which it is said to have displaced, yet it is not a patentable device. *In re Draper*, 10 App. D. C. 545; 79 O. G. 864; 1897 C. D. 407.

**17. Determination of Patentability.**

160. Where contention was made that it is impracticable for the Patent Office to pass on esthetic values and that the proper estimation of the applicant's design required cultivated taste, *Held* that the statutes as construed by the courts intend that the patentability of designs shall be determined by their appeal to the eye of the ordinary man. *In re Schraubstadter*, 26 App. D. C. 331; 1906 C. D. 541; 120 O. G. 1167.

161. Where there is a serious doubt as the patentability that doubt should be resolved in favor of the one seeking a patent, for if his claim be denied he has nothing with which he can go into court and attempt to enforce a lawful monopoly; but in reversing the concurrent decisions of the Patent Office there should be conviction beyond a reasonable doubt that in the absence of anything but what is shown by the record a patent granted on the application would be held a valid one. *Ib.*

162. The test of patentable novelty in the case of mechanical inventions and in the case of designs is different, owing to the different nature of the two things. Detail is of little consequence in designs, and it may be all important in mechanical inventions. *In re Freeman*, 23 App. D. C. 226; 109 O. G. 1339; 1904 C. D. 619.

163. Until the patent is actually issued it is always competent for the Patent Office, with due regard to the rules of law, to vacate its favorable adjudication upon the question of patentability for good and sufficient cause. *Oliver v. Felbel*, 20 App. D. C. 255; 100 O. G. 2384; 1902 C. D. 565.

**18. Particular Patents.**

164. Bill in equity filed by Caleb W. Durham, for a patent for improvements in a drainage apparatus, dismissed, on the ground



of lack of patentability in the subject-matter of the bill. *Durham v. Commissioner of Patents*, 69 O. G. 507; 1894 C. D. 547.

165. Claims 6, 7, and 8 of patent No. 700,919, granted to Austin B. Hayden May 27, 1902, for an improvement in computing-scales, *Held* void for lack of patentable invention in view of the prior art and proceeding in the Patent Office. *Computing Scale Co. v. Automatic Scale Co.*, 26 App. D. C. 238; 119 O. G. 1586; 1905 C. D. 704.

166. The claims in the application of Chester McNeil for a sewing-machine, Serial No. 665,193, filed December 31, 1897, examined and *Held* to be not patentable in view of the prior art. *In re McNeil*, 20 App. D. C. 294; 100 O. G. 2178; 1902 C. D. 563.

### 19. Generally.

167. A claim which is inaccurate is not patentable. *In re Creveling*, 25 App. D. C. 530; 117 O. G. 1167; 1905 C. D. 684.

168. The presumption against the patentability of any claim is made very strong by the concurrent denial of all the tribunals of the Patent Office to whom in turn it has been presented. *In re Fay*, 15 App. D. C. 513; 90 O. G. 1157; 1900 C. D. 232.

169. A method of treating shells in the manufacture of pearl buttons held not patentable. *In re Weber*, 26 App. D. C. 29; 117 O. G. 1494; 1905 C. D. 693.

170. The decision of the Commissioner of Patents refusing a patent upon a grain-door construction for car-doors affirmed as to claims 1, 2, 3, 5, 8, 9, 10, 11, 12, 13, 17, 18, 19, and 20 and reversed as to 6 and 7. *In re Hill*, 26 App. D. C. 318; 1906 C. D. 572; 121 O. G. 340.

## III. PERFECTING RIGHT TO PATENT.

### 1. Applications.

#### a. Time for filing.

171. The act of March, 1903, by which the limitation within which an application must be filed in this country after the filing of a foreign application for the same invention was extended from seven months to twelve months construed and *Held* not to apply to application pending at the date of its passage. *Gueniffet v. Wictorsohn*, 30 App. D. C. 432; 134 O. G. 779.

172. Under the provisions of § 4887, Rev. Stat., as amended March 3, 1903, an applicant who filed an application in this coun-

## III. Perfecting right. 1. Applications. b. Diligence in filing.

try after the passage of the act is entitled to the benefit of a foreign application for the same invention filed less than twelve months prior to the domestic application, although such foreign application was filed prior to the passage of the act. *De Ferranti v. Lindmark*, 30 App. D. C. 417; 134 O. G. 515.

b. *Diligence in filing.*

173. The patent laws are founded in a large public policy to promote the progress of science and the useful arts. The public, therefore, is a most material party to and should be duly considered in the application for a patent securing to the individual a monopoly for a limited time in consideration of the exercise of his genius and skill. *In re Mower*, 15 App. D. C. 144; 88 O. G. 191; 1899 C. D. 395.

174. It is greatly to the interest of the public that long delay unexplained between the time of the alleged invention and the application for patent when other inventors have entered the same field and other rights have accrued should be held to bar stale claims of priority. *Fefel v. Stocker*, 17 App. D. C. 317; 94 O. G. 433; 1901 C. D. 269.

174½. The inventor is entitled to a reasonable time to perfect his invention before applying for a patent, and what is a reasonable time is dependent upon the circumstances of the particular case. *Mead v. Davis*, 31 App. D. C. 590; 136 O. G. 2001.

175. Long delay in filing an application for a patent after alleged conception of the invention casts a doubt upon the allegation of conception, but it may be shown by the circumstances to be not inconsistent with inventorship. *Hunt v. McCaslin*, 10 App. D. C. 527; 79 O. G. 861; 1897 C. D. 401.

176. Where for a period of more than two years L. knew that the device was being manufactured and sold by A., and that A. was involved in a controversy with another party in regard to the rights to the invention, but during all of that time L. failed to assert his right to the invention, *Held* that this course of inaction is not in accordance with the ordinary rules that govern human conduct. *Lloyd v. Antisdell*, 17 App. D. C. 490; 95 O. G. 1645; 1901 C. D. 371.

177. Inventors striving honestly, in good faith, and with due diligence to perfect their inventions, instead of engaging in a race of diligence to reach the Patent Office with crude and probably inoperative devices, should be commended for their delay rather

## III. Perfecting right. 1. Applications. b. Diligence in filing.

than be charged with laches; but there is sometimes a tendency to hold back applications for patents in order to circumvent rival claimants and to prolong the life of the monopolies previously granted, which tendency should be rebuked whenever it is possible to do so. *Fefel v. Stocker*, 17 App. D. C. 317; 94 O. G. 433; 1901 C. D. 269.

178. Where the appellant took out seven patents on other inventions after the alleged reduction to practice before he filed his present application, his delay and apparent indifference in regard to an application until after he saw the patent of the appellee are significant. *Kelly v. Fynn*, 16 App. D. C. 573; 92 O. G. 1237; 1900 C. D. 339.

179. The proof offered in this case to relieve appellants of the charge of negligence is the same as that offered in the case of *Jackson v. Knapp*, 91 O. G. 1034, and for the same reason that was held in that case—that the appellants had not by sufficient proof relieved themselves of the consequence of their delay and neglect—the decision of the Commissioner of Patents awarding priority to their opponents is affirmed. *Jackson v. Gets*, 16 App. D. C. 343; 91 O. G. 1036; 1900 C. D. 284.

180. The mere statement that a party was unable to pay the expenses of an application, without showing the special facts and circumstances that rendered him unable, will not do. The special facts should be shown and not mere general conclusions, which may have been wholly unjustified by the facts. *Jackson v. Knapp*, 16 App. D. C. 338; 91 O. G. 1034; 1900 C. D. 281.

181. It is an easy thing to allege that it was the want of financial means to pay the fees attending the application that produced the delay in making it, and it is sometimes a difficult thing to do to disprove the truth of such reason assigned; but where the delay and the circumstances attending it give rise to the presumption of negligence the onus of proof is upon the party charged with the delay, and it is incumbent upon him to repel such presumption by clear and definite proof. *Ib.*

182. The bare assertion of inability to pay the expense of an application for a patent will not suffice to excuse the party charged with negligence to prevent the effect of delay when the question of due diligence becomes important in determining the question of right as between such party and another who has been diligent and prior in point of time in coming into the Patent

## III. Perfecting right. 1. Applications. b. Diligence in filing.

Office for a patent, though he may be subsequent in conception and perfecting his invention. *Ib.*

183. Where two joint inventors executed an application on July 1, 1896, which was not filed until May 26, 1897, more than nine months after the application of the senior party was filed, and the excuse given for the delay was that one of the joint inventors went abroad the latter part of July and before he returned the company with which he was connected made an assignment; that the other joint inventor was not in a situation, financially, to go on with the case and to pay the attorney's fees until after the other joint inventor had returned from abroad, *Held* that it is not consistent with the general allegation of poverty that one of the joint inventors after the application had been prepared could afford to embark upon a long travel and to remain absent for several months in a foreign country, which required the expenditure of a considerable amount of money, and the excuse for the delay is not satisfactory, especially where there is no explanation why some small part of the money so expended could not have been applied in filing the application in the Patent Office. *Ib.*

184. Where a party claims to have been in possession of the invention and to have consulted his attorney in 1896 to see whether he was infringing upon any rights, his delay for nearly two years thereafter before filing his application is a remarkable circumstance and tends to throw discredit upon his whole story in regard to the date of his alleged invention. *Nielson v. Bradshaw*, 16 App. D. C. 92; 91 O. G. 644; 1900 C. D. 265.

185. It is a settled principle in practice as well as in reason that forbearance to apply for a patent during the progress of experiments and until the party has perfected his invention and tested its value by practical experiment affords no ground for presumption of abandonment, nor should such delay operate in any way to the prejudice of the inventor or to his right to obtain a patent for his invention, certainly not as against a subsequent or junior inventor. *Christensen v. Noyes*, 15 App. D. C. 94; 90 O. G. 227; 1900 C. D. 212.

186. Where during a delay of six years P. was poor but concealed his invention and failed to make efforts to interest others in it to assist him in securing a patent or in making practical use of it, *Held* that mere poverty cannot excuse an absence of all effort

## III. Perfecting right. 1. Applications. c. Second application.

for such a length of time. *Petrie v De Schweinitz*, 19 App. D. C. 386; 99 O. G. 1387; 1902 C. D. 534.

187. Unexplained delay in applying for a patent is a circumstance of considerable significance when considered in connection with other circumstances tending to discredit the applicant's claims. *Sendelbach v. Gillett*, 22 App. D. C. 168; 109 O. G. 276; 1904 C. D. 597.

188. Where an inventor after an alleged reduction to practice of his invention lays it aside for five years, during which times he files several domestic and foreign applications and develops another system to accomplish the same purpose which he regards as superior, and fails to file an application until after the grant of a patent to another for the same invention who was proceeding in good faith, he is guilty of inexcusable laches. *Bliss v. McElroy*, 29 App. D. C. 120; 128 O. G. 458; 1907 C. D. 537.

189. Where an inventor relies upon the constructive reduction to practice, established by his application, and upon diligence, coupling this with an earlier conception, and urges in excuse of delay in filing the application that he could not come to terms with the company at whose expense the invention had been made, *Held* this excuse is insufficient, as it does not attempt to explain why an understanding could not have been reached earlier either that the company file the application or allow the inventor to protect the invention himself. *Paul v. Hess*, 24 App. D. C. 562; 115 O. G. 251; 1905 C. D. 610.

c. *Second Application.*

190. When an application for patent is after due examination rejected and finally determined against the applicant after exhaustion of the right of appeal allowed to him, *Held* that it is not incumbent upon the Patent Office as a duty to entertain such second application, and that if the Commissioner refuses to entertain it he has a perfect legal right to do so. *In re Barratt*, 14 App. D. C. 255; 87 O. G. 1075; 1899 C. D. 320.

191. There is no provision of law for a second application where a previous application has been adjudicated and a patent denied. The absence of such a provision is sufficient evidence that the right to have a second application considered after the refusal of a patent upon a previous application does not exist. *Ib.*

d. *Continuations.*

192. An application filed within one year after the grant of a patent disclosing the subject-matter of such application is not a continuation of the application on which such patent was granted and is not entitled to the benefit of the date of such prior application. Although the claims of the second application were made in the prior application, on which the patent was granted, and could have been divided out therefrom, and the date of the prior application could have been thus secured, when the patent was granted the application was merged in the patent, the proceeding was closed, and there was nothing to be continued. *In re Spitteler*, 134 O. G. 1301; 31 App. D. C. 271.

193. The rule which permits a divisional application to relate back to the filing date of the original, which also discloses its subject-matter, as long as it remains open in the Patent Office is a very liberal one that sometimes works hardship upon intermediate inventors, and it ought not to be extended to cases not clearly within it. *Ib.*

e. *Joinder of Inventions in.*

194. The statute gives the right to join inventions in one application in cases where the inventions are related, and it cannot be denied by a hard and fixed rule which prevents such joinder in all cases. *Steinmetz v. Allen*, 192 U. S. 543; 109 O. G. 549; 1904 C. D. 703.

f. *Divisional.*

195. A divisional application filed while the original application is pending in the Office covering matter carved out of the original is a continuation of the latter and is entitled to its date as a constructive reduction to practice, even though such divisional application was filed more than two years after an action by the Office on claims which applicant elected to retain in response to a requirement of division. *Duryea v. Rice*, 28 App. D. C. 423; 126 O. G. 1357; 1907 C. D. 443.

196. A divisional application dates back to the original one and secures to the applicant the benefit of a constructive reduction to practice, whether the claims of the divisional application were in the original when filed or not. *Lotz v. Kenny*, 135 O. G. 1801; 31 App. D. C. 205.

197. Process and apparatus may be related and may approach

each other so nearly that it will be difficult to distinguish the process from the function of the apparatus. *Steinmetz v. Allen*, 192 U. S. 543; 109 O. G. 549; 1904 C. D. 703.

198. Where it is urged that the Commissioner had no valid authority to require division between process and apparatus claims, *Held* that the ruling of the Supreme Court in *Steinmetz v. Allen* is the guiding authority in determining this question. *In re Frasch*, 27 App. D. C. 25; 1906 C. D. 648; 122 O. G. 1048.

199. Where the constitutionality of § 4886, Rev. Stat., is attacked because it provides that inventions or discoveries may be either arts, machines, manufactures, or compositions of matter and because presumptively no two of these subjects are one invention, it is a sufficient answer to say that inventions have been thus distinguished continuously since 1793 and that the court of last resort has been called upon to consider, from one standpoint or another, this division of inventions and has frequently recognized the distinction between them without ever intimating that the legislative branch of the Government had exceeded its power in so classifying inventions. *Ib.*

200. The statute being constitutional and the Supreme Court having laid down the rule that not in all cases can claims for process and apparatus be joined in one application, it follows that the Commissioner in requiring division exercises a valid authority, and if correctly exercised no error is committed. *Ib.*

201. The application of the rule concerning the requirement of division to a given case involved an exercise of judgment and discretion in every case. The facts of each case must be considered, with the burden on the applicant who asserts that two statutory inventions are one unitary invention. *Ib.*

202. A process and an apparatus, while presumptively independent inventions when considered in the light of § 4886, Rev. Stat., they nevertheless may be so connected in their design and operation as to constitute a unitary invention; that when constituting independent inventions they may not be claimed in one and the same application; that when so dependent as to constitute a unitary invention they may be claimed in one and the same application. *Ib.*

*g. Division of Applications.*

203. There is no proper line of division between one application covering a specific rail and implying certain adjuncts and another

## III. Perfecting right. 1. Applications. h. Multiplication. i. Amendment.

application by the same inventor for the combination of the rail and the adjuncts, and one application should not go to patent while the other is in interference. *Porter v. Loudon*, 7 App. D. C. 64; 73 O. G. 1551; 1895 C. D. 707.

203a. The requirement for division or that certain claims be presented in a separate application is not an adverse ruling upon the applicant's right, but is a mere preliminary requirement as to procedure. *Steinmetz v. Allen*, 22 App. D. C. 56; 104 O. G. 582; 1903 C. D. 578.

203b. The decision of the Commissioner that an application must be divided is final and conclusive, and the applicant is bound to make the division as required. *Ib.*

203c. The question of division being a matter of form and procedure, the power over it is vested in the Commissioner as the head of the Office, and his determination thereof is final and is not reviewable by any authority. *Ib.*

h. *Multiplication of applications.*

204. The law does not favor the multiplication of applications and of patents for devices closely related to each other when they can properly be included in one application and in one patent. *Norden v. Spaulding*, 24 App. D. C. 286; 114 O. G. 1828; 1905 C. D. 588.

i. *Amendment and alteration.*

205. It is a well-settled and long-established practice of the Patent Office to allow amendments to applications to be made under proper circumstances to supply omissions and defects in the original specifications and claims as filed which have occurred by mistake, oversight, or inadvertence, or want of the requisite skill in the preparation and presentation of cases to the Office, and the making of such amendments should not be allowed to operate to the prejudice of the claims of applicants, if made in due and reasonable time and in good faith. *Hulett v. Long*, 15 App. D. C. 284; 89 O. G. 1141; 1899 C. D. 446.

206. An applicant has a right to add claims by amendment to cover matter which is disclosed in his drawings, but not originally claimed, where the original specifications refer to such matter as an essential part of the construction sought to be patented. *Phillips v. Sensenich*, 134 O. G. 1806; 31 App. D. C. 159.

207. Where motion was made that an application be stricken



## III. Perfecting right. i. Applications. j. New matter in.

from the files of the Patent Office because contrary to Rules 30 and 31 of the Rules of Practice of that office and changes had been made in the application papers after the execution of the oath, but there is no evidence in the case tending to show that the changes were made without the knowledge and approval of the applicant, and it is alleged, on the contrary, that the changes were made at his direction, and there is no proof that the applicant did not make an oath as to inventorship at the time he executed the corrected papers, and where since the filing of his application the applicant has made other oaths to the effect that he is the inventor of the subject-matter disclosed in his application, and it appears that the motion, if sustained, would result in removing the applicant from the field of claimants to the invention, as public use has intervened as a bar to the filing of a new application, *Held* that the objection is purely technical and should not be sustained. *Davis v. Garrett*, 28 App. D. C. 9; 1906 C. D. 724; 123 O. G. 1991.

208. Although Tripler's application met with various objections on references and underwent frequent amendment to meet the same, *Held* that the circumstances do not bring the case within the doctrine of *Bechman v. Wood*. *Ostergren v. Tripler*, 17 App. D. C. 557; 95 O. G. 837; 1901 C. D. 350.

j. *New matter in.*

209. When new matter is introduced into an application, it cannot be allowed to dominate previous claims of another applicant; but when matter has been disclosed but not claimed it is proper to include it in claims, and they may take precedence over the previous claims of another applicant. *Luger v. Browning*, 21 App. D. C. 201; 104 O. G. 1123; 1903 C. D. 593.

210. An applicant in his endeavor to protect his invention may amend the specification and claims so long as he keeps within the requirements of the statutes and the rules of the Patent Office; but he cannot be permitted at any time to introduce new matter into his application and obtain therefor a date as of the date of the original application. *In re Dilg*, 25 App. D. C. 9; 115 O. G. 1067; 1905 C. D. 620.

211. Where the original case disclosed the top pieces of the standards with straight sides, an amendment stating that those top pieces are sector-shaped or flaring involves new matter. *Ib.*

212. Where the appellant originally disclosed standards spring-

## III. Perfecting right. 1. Applications. k. Illustrations. l. Exhibits.

ing from both edges of the annular base and according to the original disclosure both were necessary, an amendment claiming a base having standards springing from one edge *only* involves new matter. *Ib.*

213. The Commissioner *held* right in rejecting the appellant's claims to a ball-retaining ring, because they do not correctly describe his invention, but include new matter borrowed from a patent granted to another party. *Ib.*

214. The claims of the appellant copied from a patent granted to another upon a printing press, *Held* to have no proper foundation in the application as filed and to constitute new matter injected by amendment. Decision rejecting claims affirmed. *In re Scott*, 25 App. D. C. 307; 117 O. G. 278; 1905 C. D. 665.

215. Where a claim inserted by amendment includes matter not originally disclosed, *Held* that if the change from the original is an obvious one which would occur to any one it is not patentable, and if it is not obvious it involves new matter. *Ib.*

k. *Illustrations and descriptions.*

216. Any full and accurate description of the invention, either in words or drawings or by model, if it be of a machine, or even an unsuccessful effort to embody the conception, when the effort discloses that the idea was complete, will suffice, although the attempt to represent it may have failed. In the absence of all other proof the date of the application for a patent, if containing a complete description, is taken as the date of the conception. *Mergenthaler v. Scudder*, 11 App. D. C. 264; 81 O. G. 1417; 1897 C. D. 724.

217. Since the appellant's ball retaining ring is a simple invention, there is no warrant for introducing ambiguous terms, thereby failing to clearly and correctly describe it. *In re Dilg*, 25 App. D. C. 9; 115 O. G. 1067; 1905 C. D. 620.

218. Where criticism was made that the type were not shown, but only the kind of printed matter produced, *Held* that the answer thereto is that the conventional drawing accepted by the Patent Office for years has been furnished and that the absence of description is authorized by the Patent Office rules. *In re Schraubstadter*, 26 App. D. C. 331; 1906 C. D. 541; 120 O. G. 1167.

l. *Exhibits.*

219. In an application for a patent relating to machinery, the in-

III. Perfecting right. i. Applications. m. Abandonment. n. As evidence.

vention may be exhibited as well in a drawing as in a model, so as to lay the foundation of a claim to priority, if such drawing be sufficiently plain to enable those skilled in the art to understand it. *Christensen v. Noyes*, 15 App. D. C. 94; 90 O. G. 227; 1900 C. D. 212.

m. *Abandonment.*

220. An application that has been allowed to lapse or become forfeited and before it is renewed, ceases to have vital or operative effect, except for a very limited and special purpose. *Christensen v. Noyes*, 15 App. D. C. 94; 90 O. G. 223; 1900 C. D. 201.

221. Under § 4897, Rev. Stat., relating to the renewal of forfeited applications, providing that "upon the hearing of renewed applications preferred under this section, abandonment shall be considered as a question of fact," the question of abandonment is one to be determined upon proof of the facts and circumstances and will not be presumed from laches in filing the renewal application, although it may be within the power of the Commissioner, whenever he entertains a doubt as to whether there has been abandonment, to require an explanation of the delay. *Cutler v. Leonard*, 31 App. D. C. 297; 136 O. G. 438.

222. Where after a case is allowed the applicant in order to embody other claims files a new case covering the invention without complying with or seeking to obtain the benefit of the statute relating to renewal of applications and files a written abandonment of the first case, specifically stating that the invention covered thereby is not abandoned, *Held* that the abandonment of the first case was as complete as provided for in § 4894 and the consequences must be the same. *Ostergren v. Tripler*, 17 App. D. C. 557; 95 O. G. 837; 1901 C. D. 350.

n. *As evidence.*

223. Where no profert is made of an application filed by one of the parties to an interference and no copy of the same is produced in evidence, no consideration can be given to that application, as it is not a record open to the public and is in no form before the court for consideration. *Robinson v. Seelinger*, 25 App. D. C. 237; 116 O. G. 1735; 1905 C. D. 640.

224. The case of *Cain v. Park*, 14 App. D. C. 42, where an application was in evidence and notice taken of certain Office records regarding that application, is to be distinguished from a case where no profert is made of an application and no copy is produced. *Ib.*

## III. Perfecting right. 1. Applications. 2. Diligence. a. In General.

225. An application filed in February, 1902, cannot warrant a finding that what is therein disclosed was in the possession of the applicant in the preceding September. *Ib.*

o. *Affidavits.*

226. Where affidavits are filed containing general expressions of opinion in respect of the patentability of claims, *Held* that they are entitled to no weight. *In re Garrett*, 27 App. D. C. 19; 1906 C. D. 645; 122 O. G. 1047.

227. Affidavits going to show the practical success of applicant's device where the truth thereof is substantially conceded are entitled to material weight in view of the fact that the grant of a patent confers no absolute right of property and in view of the customary rule of resolving ordinary doubts in favor of applicants. *In re Thomson*, 26 App. D. C. 419; 1906 C. D. 566; 120 O. G. 2756.

p. *In general.*

228. In an application for a patent the onus of showing that all the conditions and provisions of the law have been fully complied with, making it appear that the inventor is justly entitled to a patent under the law, and showing that the invention is sufficiently useful and important to justify the issue of a patent is upon the applicant. *In re Drazbaugh*, 9 App. D. C. 219; 77 O. G. 313; 1896 C. D. 527.

229. An independent inventor ignorant of another's prior conception and diligent efforts in reducing to actual practice has the right to file an application without testing the practicability of his invention and to prosecute the same to the issue of a patent, and it could not be said that he had obtained the same surreptitiously or by unfair practices; but it does not follow that he can retain an advantage so obtained when it is made to appear intrinsically unjust. *Yates v. Huson*, 8 App. D. C. 93; 74 O. G. 1732; 1896 C. D. 278.

## 2. Diligence.

a. *In General.*

230. The question of diligence cannot be determined by any general rule applicable to all cases, but necessarily depends upon the special circumstances of each case as it arises. *McCormick v. Clcal*, 12 App. D. C. 335; 83 O. G. 1514; 1898 C. D. 492; *DeWallace v. Scott*, 15 App. D. C. 157; 88 O. G. 1704; 1899 C. D. 416;

## III. Perfecting right. 2. Diligence. a. In General.

*Christensen v. Ellis*, 17 App. D. C. 498; 94 O. G. 2561; 1901 C. D. 326. *O'Connell v. Schmidt*, 27 App. D. C. 77; 1906 C. D. 662; 122 O. G. 2065.

231. There is no arbitrary rule or standard by which diligence may be measured. The sole object of the law being to mete out the fullest measure of justice, each case must be considered and decided in the light of the circumstances of that case. The nature of the invention, the situation of the inventor, the length of time intervening between conception and reduction to practice, the character and reasonableness, of the inventor's testimony and that of his witnesses, are all important factors in determining the question of diligence. *Woods v. Poor*, 29 App. D. C. 397; 130 O. G. 1313; 1907 C. D. 651.

232. There is no general rule of what constitutes due diligence. It is reasonable diligence, and that is to be determined by all the facts in the case. An inaction of eighteen months, in the absence of controlling adverse conditions, is not reasonable diligence in the case of an invention which required but one month for actual development. *Croskey v. Atterbury*, 9 App. D. C. 207; 76 O. G. 163; 1896 C. D. 437.

233. The diligence required of an inventor is diligence rather in the reduction of his invention to practice than in application to the Patent Office or in manufacturing his device for public use. *Oliver v. Felbel*, 20 App. D. C. 255; 100 O. G. 2384; 1902 C. D. 565.

234. The object of the patent laws is to foster and protect invention for the universal benefit of mankind, and while every presumption will be resolved in favor of the inventor who delays filing an application until he has perfected his invention the object of the law would be lost to view should we permit the displacement of an inventor who has given the world the benefit of his discovery by one who has permitted his invention to lie dormant for a decade. *Kinsman v. Kinter*, 31 App. D. C. 293; 136 O. G. 1532.

235. Neither the delay that is proper in one case nor the diligence that is due in the other can in the absence of any statutory limitation of time in this regard be measured by any arbitrary standard. It has been repeatedly held that the question of due diligence is one to be determined in each case by its own circumstances.

## III. Perfecting right. 2. Diligence. a. In General.

*Griffin v. Swenson*, 15 App. D. C. 135; 89 O. G. 919; 1899 C. D. 440.

236. While less harm is done and the policy of the law better promoted by a rigid insistence upon the requirement of diligence than by laxity in the encouragement of delay, it does not seem that the rule of diligence should be pushed to a harsh and unreasonable extent. What the law requires is reasonable, not extraordinary, activity. *Ib.*

237. Under § 4893, Rev. Stat., an invention claimed must not only be shown to be new and useful, but it must also be made to appear that a claimant is justly entitled to a patent therefor. A claimant cannot be justly entitled if a patent when granted would or could operate a wrong either to the public or a rival inventor and that wrong be the result of the claimant's own laches or negligent delay in asserting his rights. *In re Mowser*, 15 App. D. C. 144; 88 O. G. 191; 1899 C. D. 395.

238. The proofs show that after Christensen's conception of the device, May, 1894, he disclosed it to others in the latter part of that year; that he tried to obtain money to enable him to apply for patent in December, 1894; that he sought to interest a party in the invention in the spring of 1895; that in June, 1895, he made another attempt to file an application; that in September, 1895, an oral agreement was made in regard to the matter; that in December, 1895, working drawings were made and that from that time on to the time he filed his application he was working on the invention; that patterns were finished in 1896 and the device tested in March, 1896, and that he applied for a patent in April, 1896. *Held* that it is difficult to conceive that greater perseverance and diligence could be in reason required, especially of one who for the greater part of the time was in a state of almost abject poverty and who was under the necessity of pursuing constantly employment to procure the means of subsistence for himself and family. *Christensen v. Noyes*, 15 App. D. C. 94; 90 O. G. 223; 1900 C. D. 201.

239. The following acts held to show due diligence throughout the period covered by the dates given: Opened correspondence with attorney in March, 1902; sent check for preliminary examination on 24th of same month; sent check for drawings on April 2, 1902; swore to the application for patent upon May 12, 1902,

## III. Perfecting right. 2. Diligence. c. Delay after conception.

and filed the same on June 11, 1902. *Jones v. Cooke*, 25 App. D. C. 524; 117 O. G. 1493; 1905 C. D. 689.

b. *Disclosure.*

240. One who has made an invention and who has locked it up in the secrets of his own exclusive knowledge and who produces it only when a rival inventor has entered the field cannot be held to have acted in accordance with the policy of the law or with the spirit and purpose of the Constitutional provision relating to promoting "the progress of science and useful arts." Such inaction not only contravenes the interests of the public, but also operates to injure a rival inventor who in the meantime enters the field of invention upon the faith of the conditions as they appear to exist and upon which he is entitled to rely. *Warner v. Smith*, 13 App. D. C. 111; 84 O. G. 311; 1898 C. D. 517.

c. *Delay after conception.*

241. Where an inventor interested a third party to co-operate with him in exploiting and testing an invention and procuring a patent therefor, but without any steps whatever being taken toward the object in view beyond the mere determination to have the invention tested at some time, *Held* that such undeveloped intentions unaccompanied by any action cannot be held to be due diligence on the part of the inventor. *Griffin v. Swenson*, 15 App. D. C. 135; 89 O. G. 919; 1899 C. D. 440.

242. Where G. and B. slept on their rights and for more than five years failed to bring their invention to a complete and operative form, *Held* that by their laches they lost rights which for a long time they little valued, and which they cannot now successfully assert. *Gilman v. Hinson*, 26 App. D. C. 409; 1906 C. D. 634; 122 O. G. 731.

243. One having the first complete conception of an invention cannot hold the field against all comers by diligent efforts merely to organize and procure sufficient capital to engage in the manufacture of his device or mechanism for commercial purposes. This is a different thing from diligence in actual reduction to practice. *Seeberger v. Dodge*, 24 App. D. C. 476; 114 O. G. 2382; 1905 C. D. 603.

244. Where L. and W. made and secretly tested a machine embodying the invention August 23, 1903, and at once dismantled the same, made and tested another machine October, 1903, but

## III. Perfecting right. 2. Diligence. c. Delay after conception.

did not use the same again until September, 1904, and where L. and W. consulted their attorneys in November, 1903, and had the application papers prepared in January, 1904, but did nothing further toward filing their application until June, 1904, after they had heard of C.'s patent, *Held* that L. and W. were lacking in diligence and cannot prevail over C., who reduced the invention to practice and filed his application in September, 1903. *Lewis v. Cronmeyer*, 29 App. D. C. 174; 130 O. G. 300; 1907 C. D. 638.

245. F. conceived the invention in September, 1900, and disclosed it in September, 1903, but did nothing toward reducing it to practice until April, 1904. C. conceived the invention in January, 1904, and reduced it to practice in the following March. The excuse offered by F. for his delay was that he was too busy earning his living to attend to it, and, moreover, he did not have the means to reduce it to practice unless he borrowed the money, which he did not want to do. *Held*, that F. was lacking in diligence, it being shown by the evidence that subsequent to his conception he borrowed \$3,000 with which to engage in a venturesome undertaking, while a small amount of money would have enabled him to construct the invention. *Feinberg v. Cowan*, 29 App. D. C. 80; 128 O. G. 889; 1907 C. D. 546.

246. Where it appears that Kinsman installed mechanism embracing part of the issue in 1890 which was experimental in its nature and found to be unsuccessful, and immediately thereafter unsuccessfully tested a second experimental device, and in 1892 and 1893 installed a system embodying the invention which after being used for several months was taken out and discarded, and no further evidence of activity on the part of Kinsman was shown prior to the filing of his application in December, 1903, which was subsequent to the time Kinter entered the field and reduced the invention to practice, and during this time Kinsman was active in experimenting with other forms of invention, *Held* that he was lacking in diligence. *Kinsman v. Kinter*, 31 App. D. C. 293; 136 O. G. 1532.

247. Where the junior party had disclosed the invention to several persons and had ordered tools to manufacture the same prior to the entry of the senior party into the field and in a few months thereafter actually sold a small number which was followed a few months later by the manufacture and sale of



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large numbers of such devices, *Held* that he was diligent in reducing his invention to practice. *Davis v. Horton*, 31 App. D. C. 601; 136 O. G. 1768.

248. Where it appeared that W. I. Ohmer had a conception of the invention which he disclosed to Neth and Tamplin in 1902 and prior to January, 1903, had caused an embodiment of this invention in working plans and drawings, but did not reduce the invention to practice until February, 1903, and it is shown that John F. Ohmer reduced the invention to practice in January, 1903, *Held* that it cannot be successfully held that W. I. Ohmer was lacking in reasonable diligence in reducing his invention to practice, when it is considered that a complicated and difficult piece of mechanism was constructed in four months. *Neth v. Ohmer*, 30 App. D. C. 478; 135 O. G. 662.

249. Diligence in attempting to secure capital to engage in the manufacture of the device or to exploit the invention is not the diligence in reducing to practice required of the first to conceive, but the last to reduce to practice, in order to hold the field. *Laas v. Scott*, 26 App. D. C. 354; 1906 C. D. 621; 122 O. G. 352.

250. Where an inventor retained an attorney residing in another city to prepare a patent application covering a voting-machine, and after a large amount of correspondence the attorney requested the inventor to make and send to him a model for use in preparing the application, and the inventor decided to make a complete machine instead of a model and undertook its construction himself, being financially unable to bear the great expense of having it built by others, but when the machine was partially completed, realizing that its construction would involve great delay, discontinued work thereon and in response to his attorney's repeated request made a model, *Held* that the inventor's attempt to build a complete machine was a commendable effort to complete his invention and that the delay caused thereby did not constitute laches. *Davis v. Garrett*, 28 App. D. C. 9; 1906 C. D. 724; 123 O. G. 1991.

251. Where a machine embodying the invention was too expensive for W. to build and he did nothing with the invention for five years after his conception except make a few efforts to enlist the interest of men of capital, although he was able to file an application for a patent at any time, *Held* that he was lacking

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in diligence. *Wyman v. Donnelly*, 21 App. D. C. 81; 104 O. G. 310; 1903 C. D. 556.

252. Where R. conceived the invention in November, 1898, completed drawings in April, 1899, and then commenced work on a machine which was completed in August, 1899, and it appears that he was a very busy man and devoted all of the time he could spare to work upon this invention, *Held* that he was not lacking in diligence. *Roe v. Hanson*, 19 App. D. C. 559; 99 O. G. 2550; 1902 C. D. 546.

253. Where the inventor who was first to conceive the invention produces no evidence whatever of any action on his part to reduce the invention to practice beyond the making of some working drawings and a blue-print from them, these acts cannot be held to be a manifestation of due diligence. *Watson v. Thomas*, 23 App. D. C. 65; 108 O. G. 1590; 1904 C. D. 587.

254. Where S. had a conception of an improved retaining device for rubber tires and could have applied it to practical use at any time by means then well known in the art, although such means was crude and imperfect, but instead of so doing he devoted his time for more than two years to devising a simple and economical machine for applying the retaining device, *Held* that he did not exercise diligence in regard to the retaining device. *Stapleton v. Kinney*, 18 App. D. C. 394; 96 O. G. 1432; 1901 C. D. 414.

255. Where it is shown that Miehle had a conception of the invention in June, but did nothing in regard to it until after Read entered the field and filed his application in the following December, *Held* that Miehle did not exercise diligence and that the decision of the Commissioner of Patents in favor of Read should be affirmed. *Miehle v. Read*, 18 App. D. C. 128; 96 O. G. 426; 1901 C. D. 396.

256. Where A. claims to have conceived the invention in February, 1895, but laid it aside and was doing nothing when J. and F. entered the field in June, 1895, although he was able to reduce the invention to practice either actually by making the device or constructively by filing an application at any time he desired, *Held* that he was lacking in diligence. *Austin v. Johnson*, 18 App. D. C. 83; 95 O. G. 2685; 1901 C. D. 391.

257. Where P. had a conception of the invention so complete and definite in 1891 that he could have given the necessary information from which an application for patent could have been pre-

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pared, there was no reason or necessity for delaying the application until 1896 and his delay shows a lack of diligence. *Paul v. Johnson*, 23 App. D. C. 187; 109 O. G. 807; 1904 C. D. 610.

258. Where L. did not reduce the invention to practice for nine months after his conception and during that time deliberately and intentionally put it aside while he worked upon other inventions in the same art, he was lacking in diligence. *Lieberman v. Williams*, 23 App. D. C. 223; 109 O. G. 1610; 1904 C. D. 623.

259. To delay one invention for the sake of another projected invention to be used in connection with it and which might never be realized cannot be construed in the patent law as an exercise of due diligence. *Lotterhand v. Hanson*, 23 App. D. C. 372; 110 O. G. 861; 1904 C. D. 646.

d. *Filing and prosecution of application.*

260. Parties must be bound by the consequences of their own acts, and this principle is true in the patent laws as it is in all other departments of the law. A deliberate intentional delay and non-action in a matter of either a public or private concern is proof of a very cogent nature, and the party chargeable with such conduct must bear the consequences of it and will not be heard to excuse himself by simply declaring that he did not intend to prejudice the rights of others or to waive rights of his own that would have been available to him if they had been timely exercised. *In re Mower*, 15 App. D. C. 144; 88 O. G. 191; 1899 C. D. 395.

261. Where an applicant reduced an invention to practice, and delayed for about eleven years in filing an application, and during this delay subsequent and independent inventors of the same device came into the Office with their completed invention and applied for and obtained a patent at much cost and trouble, and put the invention into operation and gave the public the benefit of it, *Held* that to grant a patent to the first to reduce the invention to practice and thereby defeat the patent of three years' standing would neither be equitable nor just, nor would it be promotive of the great object of the patent laws. *Ib.*

262. Under such circumstances, to say the least of the matter, there was not much consideration given to the public in this scheme of delay, however much it may have inured to the benefit and advantage of the owner of the invention. *Ib.*

263. Where after a reduction to practice of an invention an ap-

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plicant delayed for eleven years in filing an application because of the fixed and determined purpose on the part of the owner of the invention to keep it from the public and to prevent his partners from obtaining any benefit whatever therefrom until the expiration of certain patents and he could find it profitable to dispose of certain machines that he had on hand and in the meantime third parties had applied for and obtained a patent for the same invention, *Held* that there was no excuse or justification whatever for the want of diligence in making the application. *Ib.*

264. Where the reduction to practice of the invention was clearly established, a delay of two and a half years in filing the application therefor is not sufficient to destroy the weight of proof of actual reduction to practice, especially where it appears that drawings showing substantially the same construction as the original device were sent to applicant's attorneys more than a year before the application was filed and before any one else had entered the field. *Seeberger v. Russell*, 26 App. D. C. 344; 1906, C. D. 612; 121 O. G. 2328.

265. Granting that actual reduction to practice is preferable to that which is constructive merely, as more to the interest of the public, and that reasonable indulgence ought to be extended to one pursuing that course in good faith, yet when the construction of an experimental device involves so great cost and risk that an inventor, though possessed of sufficient means, may well hesitate to undertake the same entirely at his own expense, due diligence requires that he should then attempt to secure his right and promote the public interest by filing an application for patent. *Seeberger v. Dodge*, 24 App. D. C. 476; 114 O. G. 2382; 1905 C. D. 603.

266. Where S. conceived the invention in May, 1895, and had such complete drawings made in the summer of 1896 that he could have filed an application for patent at that time, but did not do so or reduce the invention to actual practice until after D. filed his application in January, 1898, *Held* that S. was lacking in diligence. *Ib.*

267. After reduction to practice of an invention a mere delay of the inventor in applying for a patent, in the absence of concealment, abandonment, or suppression, will not prevent the inventor from getting a patent based upon priority of invention. *Rose v. Clifford*, 135 O. G. 1361; 31 App. D. C. 195.

## III. Perfecting right. 2. Diligence. f. Excuses for inactivity.

268. When reduction to practice by the first inventor is shown, his right to a patent is not barred by delay thereafter unless there be some circumstance of concealment, suppression, or abandonment of the invention. *Oliver v. Felbel*, 20 App. D. C. 255; 100 O. G. 2384; 1902 C. D. 565.

269. Where it was contended that a party was not diligent in the prosecution of his application in the Office, *Held* that this has no bearing on the question of priority, since his rights became fixed by the filing of his application, and they could not be lost and become vested in others by mere delay on his part in their prosecution. *Miehle v. Read*, 18 App. D. C. 128; 96 O. G. 426; 1901 C. D. 396.

e. *In making drawings.*

270. Where during the time between his conception and his reduction to practice P. had drawings of the invention made, but put them to no use and locked them up in his desk, *Held* not to constitute diligence in adapting and perfecting the invention. *Paul v. Johnson*, 23 App. D. C. 187; 109 O. G. 807; 1904 C. D. 610.

f. *Excuses for inactivity.*

271. The fact that a party does not know that a rival has entered the field is no excuse for delay, since the risk that a rival may appear at any time is something which every inventor is bound to contemplate and to anticipate, and in this lies the fundamental reason for the requirement of due diligence. *Platt v. Shipley*, 11 App. D. C. 576; 82 O. G. 461; 1898 C. D. 407.

272. A person cannot be charged in law with any want of due diligence before the advent of a rival inventor upon the field; but at and after that time he becomes liable to lose the benefit of his previous conception unless he uses due diligence. Delay for the purpose of the elaboration and perfection of a crude conception may well be commended; but it will not be excused where no such end is in view. *Ib.*

273. A mistake by a party in supposing that the invention was covered by a prior patent granted to him cannot under any known principle of law be considered a good excuse for delay in perfecting the invention or filing an application covering the same. Under the circumstances of this case the applicant is, furthermore, chargeable with the knowledge possessed by his agent or attorney as to the scope of the former patent. *Ib.*