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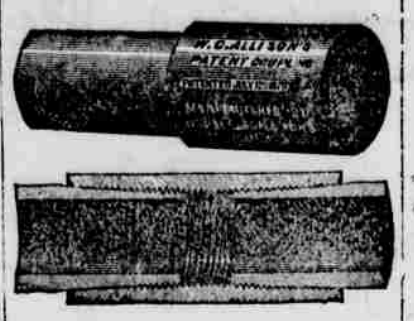

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The following is the decision rendered by Judge Grier on the twenty-second (22) day of September, 1868, in the United States Circuit Court at Philadelphia. The case was argued three days by Charles M. Keller of New York, B. F. Lucas and S. A. Purviance of Pittsburgh, for defendants, and George Harding of Philadelphia, and George H. Christy, of Pittsburgh, for plaintiff.

OPINION OF JUDGE GRIER

As I write with difficulty I can only state the conclusions to which my mind has come after a careful examination of this case.

The complainant has exhibited a patent dated 25th of April, 1865. This is prima facie evidence of a good title, and puts on the respondents the burden of proof that the patent is void or worthless.

I need not repeat my remarks in the case of Goodyear vs. Day (2 Wall, C. C. Rep. 283,) but now adopt them as affording a rule of decision which applies clearly to the present case.

As the infringement of the patent is admitted, the only question will be as to the validity of complainants patent of April 25, 1865.

"It was after speculation had been reduced to practice, and after repeated experiments, that the complainant succeeded in overcoming the prejudice and ignorance of the people on the subject, and persuading the public that his invention was useful after he had established its great utility and value and "when his genius and patient perseverance, in spite of sneers and scoffs," were completely successful, that Reed, who had before made experiments on the same subject, and was unsuccessful, and after barcharging one or more complainant's patentees, he applied on the 1st of November, 1865, for a patent for substantially the same combinations of devices and machine contained in complainant's patent; On the 15th of the same month the respondents formed themselves into a company or corporation called "the Reed Torpedo Company," for the purpose of pirating the complainant's invention, and supporting the expense of litigation and thus defraud him of the fruits. They have persevered, even after the preliminary injunction very properly granted by the District Judge:

Let a decree be entered for complainant for a perpetual injunction; and a Master, appointed to take an account accordingly to the prayer of the bill.

R. C. Grier, Judge.

NOTE.—The passage referred to by Judge Grier in his former decision, 3 Wallace, p. 290, adopted as applicable to this case was as follows:

"It is usually the case, when any valuable discovery is made, or any new machine of great utility is invented, that the attention of the public has been turned to that subject previously, and that many persons have been making researches and experiments. Philosophers and mechanicians may be in some measure anticipated in their speculations as the possibility or probability of such discovery or invention; many experiments have been successfully tried, coming very near, yet falling short of the desired result. They have produced nothing beneficial. The invention when perfected may truly be said to be the culminating point of many experiments, not only by the inventor, but by many others. He may have profited directly by the unsuccessful experiments and failures of others, but this gives them no right to claim a share of the honors or the profit of the successful inventor. It is when speculation has been reduced to practice, when experiment has resulted in discovery, and when the discovery has been perfected by patient and continued experiments, when some new compound, article manufacture or machine has been this product which is useful to the public, that the party making it becomes a public benefactor and entitled to a patent.

"And yet when genius and patient perseverance have at length succeeded, in spite of sneers and scoffs, some valuable invention or discovery, how seldom is it followed by reward! Envy robs the inventor of the honor, while speculators, swindlers, and pirates rob him of the profits. Every unsuccessful experimenter who did or did not come near making a discovery now claims it. Every one who can invent an improvement or vary its form claims a right to pirate the original discovery. We need not sanctione Morse, or Blanchard, or Woodworth to prove that this is the usual history of every great discovery or invention.

"The present case adds another chapter to the long and uniform history."—2 Wallace, U. S. Reports p. 2[illegible]

CAUTION.

The public is cautioned against employing persons other than the regularly authorized Agents of the Company, since the Roberts Patent cover the use of the Torpedo and all explosive materials for oil wells, and the use of such materials by other parties is a direct infringement of their rights. Any parties infringing any of the ROBERTS PATENTS will be dealt with according to law, and as acting willfully and knowingly in defiance of law and the decisions of the Courts

The Company have re-organized their business with a view to accommodate Oil Men in every part of the Oil Region. They have employed the most efficient Agents and Assistants that can be procured for the business. Each Torpedo is labelled with the date of patents, together with the price of the Torpedo, and signed by an officer of the Company. Every Operator wishing a Torpedo may know the price and whether it came from our office.

Operators will confer a favor by reporting to the Office any negligence of Agents.

The following named persons have been appointed Agents and Assistant Agents for the Oil Regions of Pennsylvania and West Virginia.

LIST OF AGENTS.

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TITUSVILLE, CHURCH RUN AND VICINITY—HUGH THOMAS. Office and address, Mansion House, Titusville, Pa.

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