

THE LAW OF PATENTS.

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THE

LAW OF PATENTS

FOR

USEFUL INVENTIONS.

BY

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IN THREE VOLUMES.

VOL. I.

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TO MY COLLEAGUES

IN THE

FACULTY OF THE YALE LAW SCHOOL,

FRANCIS WAYLAND, SIMEON E. CALDWIN, JOHNSON T. PLATT,
AND WILLIAM K. TOWNSEND,

I DEDICATE THIS TREATISE,

IN COMMEMORATION OF THE INTIMATE PERSONAL FRIENDSHIP
WHICH, FOR SO MANY YEARS, HAS INSPIRED AND
LIGHTENED OUR UNITED EFFORTS TO
ADVANCE THE LEARNING
OF THE LAW.

TO THE READER.

THE present work was undertaken in the conviction that a period had at last been reached when the Law of Patents could be successfully treated as a department of jurisprudence whose doctrines were derived by logical processes from established principles, and not as a mere body of legislative enactments verbally interpreted by the decisions of the courts. Patent Law governs those rights and obligations which are connected with the temporary monopoly in an invention. The fundamental principles on which it rests are in part rules of law, and in part facts in nature and the arts. These legal rules are identical with those applied from time immemorial in courts of law and equity, and have always been within the knowledge of persons learned in the law. Some of these facts have also long been known, while others, especially those relating to the essential attributes of an invention and the intrinsic character of the inventive act, have never, till a recent date, been fully understood. Ignorance concerning these formerly rendered the solution of many of the difficulties of Patent Law by any scientific method impossible, and led to nearly all the mistakes and perplexities which then arose in the administration of the law. But during the present generation a deeper research and a more exact discrimination have dispelled this ignorance, and though obscurities of detail still remain, yet whenever questions of Patent Law are now presented to our courts the factors of the problem lie before them, certain and intelligible, requiring only careful distinctions and accurate reasonings to attain impregnable results.

Acting upon this conviction the author commenced his labors by reading the various treatises on Patent Law, and all the English and American statutes and decisions bearing on the subject which had been published prior to the year 1882, extracting from them whatever statements, discussions, and explanations appeared to him of special value, and reducing the remainder to separate propositions of law or fact, — thus accumulating a wealth of material which for extensive knowledge, profound thought, and lucid explication can find no parallel in any other department of the law. The classification and collation of this material placed before him everything that has been said, decided, or conjectured concerning any question of Patent Law, and enabled him to formulate its doctrines with a completeness and correctness limited only by his own powers of comprehension and expression, while the material itself, enriched by the addition of the cases published during the progress of the work, and arranged in notes accompanying the formulated doctrine, now serves to explain, confirm, or perhaps to modify, the assertions and conclusions of the text.

This study of the Law of Patents in its sources demonstrated to the author that the fundamental principles on which it rests are these: —

I. That under our existing civilization public policy requires the state to encourage the exercise of inventive skill by conferring upon inventors a temporary monopoly in their inventions, and by securing to them its enjoyment.

II. That the grant and acceptance of this monopoly creates a contract between the inventor and the state, obliging the former to an immediate and complete disclosure of his invention to the public, and the latter to the legal protection and vindication of the monopoly in the invention thus disclosed.

III. That this contract is to be interpreted and enforced by the same rules of common law and equity which are applied to other contracts.

IV. That the terms "invention," "inventor" and "monopoly" express definite and permanent ideas of objects, persons, and relations which cannot be departed from in construing and protecting the rights of the respective parties to the contract.

V. That the mind and purpose of the legislature in enacting patent laws, and of the court in administering them, must be assumed to have been governed and directed by the four preceding principles; and hence that every statute and decision is to be read in their light and regarded as a correct enunciation of the law only when their distinctions and logical consequences are properly observed.

It is upon the basis of these principles that the system of Patent Law developed in the following pages has been erected. To these, as to infallible criteria of truth, have been brought the statements of text-writers, the provisions of statutes, the judgments, definitions, and discussions of the courts, and whenever one has been found inconsistent with these principles, its errors have been pointed out and its authority has been denied. It may surprise the reader, as it has excited the wonder and admiration of the author, to discover in how few out of all the abstruse and puzzling cases submitted to our courts any substantial divergence from these principles has occurred, and with what fidelity to duty our judges have receded from their unsound positions wherever a more mature consideration has convinced them of their error.

It is obvious from what has been already stated that the author does not regard the decisions of the courts in patent cases as simple judgments on the issues presented by the pleadings. On the contrary, they are, in numerous instances, elaborate essays, sometimes almost treatises, either on the whole body of the law or on a special topic, emanating from the minds of learned jurists, after long investigation and a close analysis of the conflicting arguments of acute lawyers and skilful experts, and announcing with carefulness of diction and thoroughness of statement the conclusions of law or

fact at which the writers have arrived. Such opinions are of priceless value to the author of a treatise and his readers. Although for the most part perhaps *obiter dicta*, so far as the controversy at bar was concerned, they are the true treasure-house of Patent Law to which student and teacher, counsel and court, must alike continually recur for the definition, confirmation, and exposition of the doctrines which they endeavor to comprehend and apply. Illustrious in the eyes of their professional brethren at large as are the judges from whom these opinions have proceeded, their highest honors are and ever have been won from those who are familiar with their efforts to develop and elucidate what one of the greatest of their number long ago aptly called "the metaphysics of the law." The author feels that he need offer no apology for his profuse citations from decisions of this character, and that not one will be found superfluous by any reader who desires to understand the subject he considers.

While thus declaring his appreciation of the value of these decisions the author recognizes that his readers may need a word of caution in reference to their use. One of the most common sources of error in all human affairs is the partial statement of a truth. Such a statement is correct as far as it goes, but if adopted and repeated by the hearer as embodying the whole truth, it scatters the seeds of many subsequent mistakes. Some of these decisions are open to this criticism. They are not and they do not purport to be exhaustive discussions of the topics which they treat, but merely the presentation of them in such aspects, and to such an extent, as may be important or appropriate for the determination of the questions actually decided. When such opinions are regarded by later courts as covering the entire subject, and the limitations, extensions, or modifications which in the case then pending may be essential to bring them within the principles of the law are overlooked, error is of course inevitable. Instances of this as well as other forms of misuse of authorities are pointed out and corrected in the notes.

The notes which form so large a portion of these volumes consist mainly of monographs on subjects treated more briefly or from a different standpoint in the text, of the extracts just referred to, and of the propositions of law or fact gathered from statutes and decisions in the manner heretofore described. To these propositional notes the author has devoted particular attention. In a treatise like the present, where the text sets forth only the conclusions resulting from a study of the notes, the ordinary method of citation by page and volume would have been comparatively useless, and it was therefore deemed expedient to frame the notes in digest form that the reader might at one view have the entire topic at his command. To ensure their correctness the author has revised all such notes since they were in print and believes they can now be depended upon as exact statements of the doctrine of the cited cases. No notice is taken of one case as overruling another, for the reason that the direct reversal of the whole decision in a patent case rarely if ever occurs, and because any discrepancy between the cases must be apparent to the reader who examines all.

With one or two exceptions the details of the work require no explanation. The first volume is occupied with the consideration of the nature of the patent-monopoly, the invention which it protects, and the inventor on whom it is conferred. The second treats of the letters-patent, their grant, repeal, construction, and transfer. The grant of letters-patent, being regulated partly by statute and partly by Patent Office rules and customs, involves matters of transitory as well as permanent obligation. It has been the endeavor of the author to separate between these, and confine his discussions to the settled law and practice of the Office. This separation, however, is not and cannot be complete, and as the rules are changed from time to time by the Commissioner, there is no other method open to the reader than to make himself acquainted with the current official rules and judgments and be guided by them where they disagree with those set forth

in the author's pages. The third volume contains an examination of the wrongs against inventors, patentees, etc., and their remedies. These are considered at length except as to those rules of procedure in the courts of law and equity which are common to all controversies, and which are mentioned here only in order to preserve the continuity of the subject and enable matters peculiar to infringement suits to be discussed in their proper place.

The Index covers the notes as well as the text. This was necessary to render them available for purposes of reference, but had each note been indexed under all its appropriate headings the space occupied would have been equivalent to another volume. Usually, therefore, a note appears in the index but once, and if not found under the heading first consulted can be discovered by turning to the other headings cited at the conclusion of the first.

It was the intention of the author in citing cases to mention in every instance all the reports in common use in which the case appears. Generally this has been done, but in the handling of so large a mass of materials omissions have occurred which it is one object of the Table of Cases to supply. In referring to the Table the reader should remember that a case often goes by different names, most of which are abbreviations of the longer and correct title given in the Table itself.

In the Appendix are collected and digested the cases published since the work went to press in the spring of 1888. So far as was possible these were inserted in the notes, but as no complete statement of their propositions could thus be made it seemed advisable to add them in this manner by themselves. It is the present design of the author, in cooperation with his son, George W. Robinson, of the New Haven Bar, who has been associated with him during the past five years of his labors on this treatise, to issue similar digests of cases involving questions of Patent Law, with suitable annotations, at such intervals as the profession

may require until the work itself may need enlargement or revision.

In conclusion the author begs the indulgence of his brethren toward those errors which are to be expected in a treatise of such extent and character. Commenced at a late period of his own life, he did not feel at liberty to publish a tentative volume, trusting to the labor of future years to fill up to its due proportions the outline thus presented; and the difficulties of a writer who undertakes to cover the whole field of research and deduction at a single effort, however earnest and prolonged, can be learned only by experience. If length of days to which he has no natural right are given him, he hopes to bring his literary offspring to a higher degree of development and usefulness. If not, he leaves it in the hands of men and scholars through whose additions and corrections he is confident that it will not suffer loss.

WILLIAM C. ROBINSON.

YALE UNIVERSITY,
August, 1890.

NOTE. — A collection of the Acts of Congress concerning patents for inventions, chronologically arranged and annotated from the cases prior to 1861, may be found at the end of Law's Patent Digest, edition of 1877.

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