

Case No. 6,685,

[1. MacA. Pat. Cas. 334.]

HOPKINS v. BARNUM.

Circuit Court, District of Columbia.

Sept., 1854.

PATENTS—APPEAL FROM COMMISSIONER'S DECISION—JURISDICTION OF
CIRCUIT JUDGE—INTERFERENCE.

{The judge of the circuit court for the District of Columbia has no jurisdiction of an appeal by a patentee from the decision of the commissioner, in an interference proceeding, awarding priority of invention to a subsequent applicant, and granting him a patent. *Pomeroy v. Connison*, Case No. 11,259, followed.}

{This was an appeal by Lansing E. Hopkins from a decision of the commissioner of patents, in an interference proceeding, awarding priority of invention to Daniel Barnum, and granting him a patent.}

J. J. Greenough, for appellant.

W. N. P. Brown, for appellee.

MORSELL, Circuit Judge. On the 23d of December, 1853, Daniel Barnum filed an application in the patent office for letters-patent for improvements in making hat-bodies, which was declared to interfere with a patent granted to the said Lansing E. Hopkins in December, 1852, and for the trial of the issue so formed. The parties were allowed to take their testimony, which being done, and the said matter fully heard, the commissioner on the 16th of May, 1854, awarded priority of invention to the said Daniel Barnum; from which said decision the said Lansing E. Hopkins hath appealed and filed his reasons of appeal. The commissioner has laid before the judge the grounds of his decision in writing, with the original papers and the evidence in the cause; and a time and place being appointed for the hearing of said appeal, the parties by their counsel filed their respective arguments in writing, and submitted the case. The appellee's counsel objected to the jurisdiction of the judge, being, as before said, an appeal by

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a patentee from a decision of the commissioner, not refusing or rejecting, but granting, the application for letters-patent. The arguments on each side on this point have been read and considered. The point being the same which was decided by Judge Cranch in the year 1842 in the case of Pomeroy v. Connison [supra], on very full consideration, and ever since followed by me, I feel that I ought to consider the point as settled; and am therefore of opinion that I have no jurisdiction in this case; and which I do hereby certify to the honorable commissioner, and shall return the papers to the patent office, together with this my order that the said appeal be dismissed.

{Patent No. 9,484 was granted to Lansing E. Hopkins, December 21, 1852. For another case involving this patent, see *Burr v. Duryee*, Case No. 2,190. Patent No. 11,805 was granted to Daniel Barnum, October 17, 1854.}