# IN RE JANNEY.

Case No. 7,209.

{1 MacA. Pat. Cas. 86; Cranch, Pat. Dec. 143.}

Circuit Court, District of Columbia. Dec. 13, 1847.

PATENT OFFICE APPEALS—JURISDICTION OF JUDGE—REFUSAL OF COMMISSIONER TO REVIEW DECISIONS OF PREDECESSOR.

[The decision of the commissioner that he will not review or revise the action of his predecessor in rejecting an application, is not a ground of appeal to the judge under the acts of 1836 and 1839 (5 Stat. 117, 353), and such an appeal must be dismissed.]

[Cited in Greenough v. Clark, Case No. 5,784.]

Appeal from refusal to grant patent.

This is an appeal from the decision of the commissioner of patents, in the following words, contained in a letter from him to Mr. Janney, dated patent office, October 28th, 1847:

"Sir: It appears by the records of this office that your application for letters-patent for alleged improvement in machinery for sawing stones[1] was examined and rejected, for reasons assigned, on the 3d of August, 1843; that on the 7th of September following the case was reconsidered, and the decision was again revised and affirmed. All these actions took place under the administration of the late Commissioner Ellsworth. Under these circumstances the decision heretofore made cannot be disturbed, and your application must stand rejected. Respectfully, yours, Edmund Burke.

"Edward Janney, Esq., care J. J. Greenough, "Washington, D. C."

From the commissioner's answer:

1. I decline to entertain the request to again take up and examine the application, on the ground that it had been solemnly adjudicated and settled by my predecessor. The principle upon which I determined to settle the practice of the patent office in such cases is, that when it shall satisfactorily appear that my predecessor had upon mature and serious consideration decided upon the merits of an application for a patent adversely to the claim of the applicant, the decision should not be disturbed, and the question should be considered as finally settled. And as a general rule of evidence in such cases, I further determined that the proof of such final decision should be two rejections of the same case. Of course any other proof sufficient to show the fact would be equally satisfactory.

2. The only matter decided (if it can be called a decision) is, that I will not take up and reopen the application for any purpose whatever. I have made no decisions on the merits of the case, i. e., whether or not the applicant is entitled to a patent as originally claimed by him nor as set forth in his proposed new claim, which has never been properly before me for decision.

3. This official act, from which this appeal has been taken, is not a judicial but an executive act. It is not an act of which the honorable chief justice has jurisdiction, but it is an act for which I am only amenable to the supreme executive power of the government. The appeal must not be dismissed for want of jurisdiction.

4. The right to establish reasonable rules of practice, not inconsistent with law, to regulate and facilitate the transaction of business is incident to every court and public officer. The reasonableness of the rule laid down by me in this case is apparent when it is considered that without some such rule rejected applications would never be considered as finally settled, and would be liable to be brought up for reconsideration at any time, however remote in time, to the great and continued prejudice of the regular business of the office.

5. Assuming, however, that the court has jurisdiction, yet, according to the practice of the executive officers and of other departments of the government, which have been decided by several attorneys-general to be in conformity with the true intent and meaning of the constitution, the commissioner is right in refusing to re-examine applications which have been solemnly adjudicated and settled by his predecessor. 2 Op. Attys. Gen. 8; 3 Op. Attys. Gen. 1.

6. Other grounds failing, the appeal must be dismissed for the reason that no patent has been refused Mr. Janney Pomeroy v. Connison {Case No, 11,259}.

7. The applicant's remedy is by filing a new application.

J. J. Greenough, for appellant.

W. P. N. Fitzgerald, for commissioner.

CRANCH, Chief Judge. The last application for a patent was made on the 27th of October, 3847, some small amendment having been made in the specification not affecting the merits of the claim, so that it was, in effect, an application to the present commissioner to revise and revoke the two decisions made by Mr. Ellsworth, the former commissioner. His refusal so to revise and revoke these decisions is not a ground of appeal under the acts of 1836 and 1839. The act of 1839 gives the right of appeal to the judge only in cases where an appeal was by the previous act allowed from the decision of the commissioner to a board of examiners, and then only when a patent was refused. In the present case he has not refused a patent. He decides only that

he will not examine the merits of the claim, which has been twice rejected after a full examination by his predecessor in office. This refusal was not a ground for appeal to examiners under the seventh section of the act of 1836, and therefore is not a ground of appeal to the judge.

Having no jurisdiction of such an appeal, it is not for me to say whether the refusal under the circumstances of the case was right or wrong. There is no limit of time as to the appeal, and I do not perceive any reason why Mr. Janney may not now appeal from the decision of Mr. Ellsworth, and have the merits of his invention decided. I understand the merits of both applications are alike. Having no jurisdiction of this appeal, I suppose it must be considered as dismissed.

[1] [Cranch, Pat. Dec. 143, gives "stoves."]