

these decisions are precedents as controlling of a cause arising since the act of 1883 as prior thereto.

The only new element in the case at bar is found in the provisions of the eleventh section of that act. It is contended that by this legislation the dormant and moribund features of the treaty were revived, strengthened, and made operative. I cannot think that the court would be justified in giving to the broad and general language of the eleventh section a construction so radical and far-reaching. At the date of the act congress found the Hawaiian treaty in full operation,—a treaty affecting a group of lonely and isolated islands far out in the Pacific; a treaty by the terms of which the United States permitted certain articles to enter our ports free, upon the express consideration, however, that the Island ports should be open to a much larger number of articles, the growth or manufacture of this country. No other similar treaty was in operation. The courts had expressly decided that the convention with the Hawaiian Islands did not set in motion provisions similar to the one in question. If not annulled, they at least were suspended and disutilized. Dominican sugar had paid duties for 16 years. The aim of the law-makers was to preserve unchanged and unimpaired the existing state of things. It is hardly supposable that it was their purpose to make a sweeping change in the law; to open our ports, without advantage or consideration, to the products of many countries; to destroy a vast source of revenue; and to encourage fraud, by making the Dominican republic the dumping ground for the sugar and molasses of the West Indies. If this had been their design, they would have said so in language too plain and unequivocal to admit of doubt. It is thought, also, that there is force in the proposition that the provisions of the ninth article of the Dominican treaty amount simply to an agreement between the contracting parties not to discriminate against each other in the future by unfriendly legislation. The action of congress is necessary, and until such action is had the courts must follow the law as it is found on the statute books. *Taylor v. Morton*, 2 Curt. 454, 463.

The questions involved in this controversy are of such interest and importance that they will doubtless be presented for final settlement to the supreme court. Under existing law, however, it is not possible for the plaintiffs to recover. There must, therefore, be a verdict directed for the defendant.

DONOUGHE *v.* HUBBARD and others.¹*(Circuit Court, W. D. Pennsylvania. May 19, 1886.)*

1. PATENTS FOR INVENTIONS—HANDLES FOR CROSSCUT-SAWS.

Letters patent No. 78,653, issued June 9, 1868, (antedated May 19, 1868, to P. Donoughe, for an improvement in handles for crosscut-saws, construed and sustained.

2. SAME—NOVELTY—COMBINATION OF OLD ELEMENTS.

The arrangement of a wooden handle for crosscut-saws, with a threaded shank entering a securing nut in such handle, and having its lower end slotted to receive the end of the saw, a ferrule inclosing the lower end of the handle to prevent abrasion of the latter by the saw, and a washer loosely secured to this ferrule, presents a patentable combination; although each of the elements of the combination was old at the date of the invention, and the combination of several of them in saw handles was also old.

3. SAME—ANTICIPATION—PRIORITY—PRESUMPTION OF, FROM PATENT.

The rule is well settled that an anticipation, in order to defeat a patent, must be clearly made out. A patent raises a presumption of priority which can only be overcome by clear proof.

4. SAME—ASSIGNMENT BY ADMINISTRATOR—TITLE.

An assignment of a patent from the administrator of the patentee gives the assignee the title, unless a better title is shown in another.

On Bill, etc.

George Harding, Francis T. Chambers, and George M. Reade, for complainant.

Bakewell & Kerr, for respondents.

BRADLEY, Justice. This case, though a small one, has given me a great deal of perplexity. The patent sued on is dated June 9, 1868, and antedated May 19, 1868, upon an application which was sworn to October 3, 1865, and filed in the patent-office February 19, 1866. The drawings and model were filed at the same time, the printed copy of the file-wrapper to the contrary being a misprint. The application was at first rejected on the second of March, 1866; but upon a very slight alteration made in the claim, it was authorized to be issued in November, 1867, and was actually issued June 9, 1868.

The patent is for an improvement in handles for crosscut-saws, invented, as alleged, by Patrick Donoughe in 1864 or 1865. The improvement consists, as stated in the specification, in the combination and arrangement of a handle, ferrule, washer, screw-nut, and a shank furnished with an opening for the saw-blade, the whole constructed, arranged, and operating, as afterwards described, with references to the drawings. The handle described is the ordinary upright wooden handle used on crosscut-saws. Into this handle is inserted from below, a rod constituting the shank, provided with a screw-thread, working in a nut fixed in the interior of the handle, so that by turning the handle the rod is drawn up into it, or forced out, at will. The lower end of this rod or shank has a long narrow slot for receiving the end

¹ Edited by Charles C. Linthicum, Esq., of the Chicago bar.