

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1878.—Ordered to be printed.

Mr. BOOTH, from the Committee on Patents, submitted the following

REPORT:

[To accompany bill S. 148.]

*The Committee on Patents, to whom was referred the bill (S. 148) to confirm the term, for the period of seventeen years from the date of its original grant, of the patent of Thomas A. Weston, respectfully report:*

That Thomas A. Weston in 1859 took out letters patent in England for his invention in differential pulley-blocks, and that on December 31, 1859, he filed a caveat covering such invention in the United States Patent Office, which was renewed for one year, and which, under section 12 of the act July 4, 1836, entitled him to notice of any interfering application for a patent within two years from December 31, 1859.

That one J. J. Doyle, on December 6, 1860, applied for a patent on an improved "hoisting device," which was fully described in said caveat, and that on June 8, 1861, a patent was issued to him, without notice to Weston.

That on December 14, 1861, Weston filed his application for a patent, which was refused on account of Doyle's prior patent for the same invention. Interference proceedings were twice had to determine priority of invention, and both times priority was awarded to Doyle; but in 1867 they were had a third time, and Weston having changed his attorney, priority was awarded to him. It appears that during the first two proceedings in interference the same attorney was representing both parties, and Weston's case was therefore not properly presented.

The examiner in interference who rendered the above decision of 1867 said:

The fact cannot be denied that Doyle's patent, under the circumstances, no notice having been taken of Weston's caveat, was improperly issued, and that an act of great injustice, unintentionally of course, was perpetrated toward Weston.

On August 6, 1867, as soon as practicable after the above decision, a patent was issued to Weston.

The sixth section of the act of March 3, 1839, provided—

That in all cases every such patent [patent granted after a foreign patent] shall be limited to the term of fourteen years from the date of publication of such foreign letters patent.

Section 16 of the act March 2, 1861, under which the present patent was issued, provides "that all patents hereafter granted shall remain in force for the term of seventeen years from the date of issue," and section 17 provides "that all acts and parts of acts heretofore passed,

which are inconsistent with the provisions of this act, be, and the same are hereby, repealed."

It appears from a certified copy of proceedings of the circuit court of the United States for the district of Connecticut, on file with the case, that it has been judicially determined that Weston's patent expired seventeen years from October 22, 1859, the date of his foreign patent. This is the accepted construction of the act of 1861 by the United States Patent Office, as appears from the decisions of the Commissioner of Patents in the cases of *Hermann vs. Gilmore* and *Eades vs. Jewsbury*. (See Commissioner's Decisions of 1869.)

Mr. Weston was therefore deprived of the use of his patent in this country for a period of about six and a half years after his application by error of the United States Patent Office. It is shown by numerous letters and papers on file and by said decision of the court to be an invention of value to the public, and he is shown by said decision in interference of 1867 and by said decision of the court to be the first inventor.

The committee is therefore of the opinion that Weston is equitably entitled to the relief asked for, and recommend the passage of the bill with the following amendment:

That no one shall be held liable for any infringement of the patent during the period from the date of its lapse to the passage of this act, or for the use or sale hereafter of any specific devices embracing the patented invention made within that period.