

EDITORIAL NOTES.<sup>1</sup>

BY HECTOR T. FENTON.

## MR. JUSTICE BLATCHFORD. IN MEMORIAM.

THE late Justice SAMUEL BLATCHFORD, whose death occurred early in July, 1893, was appointed an Associate Justice of the Supreme Court of the United States by President ARTHUR, March 22, 1882, to fill a vacancy caused by the resignation of the late Justice WARD HUNT, and was allotted to preside in the same circuit. He qualified April 3, 1882, and took part in the decisions of the Court of the then present October Term, 1881, which expired May 10, 1882, and, during that short period of time, delivered the opinion of the Court in five cases, all of them reported in 105 U. S. Reports, beginning with *Leathers v. Blessing*, on page 627, and concluding with *Flanders v. Seelye*, on page 718.

He was born March 9, 1820, in New York City, graduated at Columbia College, and received the degree of LL.D. from that college in 1867. After graduation he served in a semi-public position as private secretary to Governor SEWARD, of New York, afterwards studied law and was admitted to the New York Bar in 1842, and began practice at once in the city of New York; subsequently, in 1845, removing to Auburn, and from thence returning, in 1854, to New York City, where he became a member of a law firm with the late Governor SEWARD. He continued in the practice of the law in that city until May, 1867, when he was appointed by President JOHNSON as United States District Judge for the Southern District of New York. Prior to the formation of the partnership with Governor SEWARD, he began, in 1852, the publication of a well-known series of reports of the decisions of the Circuit

<sup>1</sup> Owing to lack of space and the desire to insert this tribute to the memory of Mr. Justice BLATCHFORD the editors have deferred the continuation of "A Proper Canon of Interpretation for Bills of Rights in a Written Constitution" until the October number.

Court of the United States for the second judicial circuit, comprising the several districts within the States of New York, Vermont and Connecticut, and he continued this work until 1888, covering a period of thirty-six years. The reports are now comprised in twenty-four volumes, and are known as Blatchford's Circuit Court Reports. These volumes early won him great fame and reputation in legal circles, and, coupled with his natural ability in the practice of his profession, displayed during his partnership with Governor SEWARD in New York City, early established his fame as an advocate, and reputation as a jurist. Very shortly after the passage of the Act of Congress authorizing the appointment of circuit judges to hold the United States Circuit Courts in relief of the Supreme Court justices allotted to preside therein, he was retired from the district bench and appointed circuit judge of the second circuit on March 4, 1878, by President HAYES.

Justice BLATCHFORD was conceded to be one of the ablest jurists in this country, of keen and quick perceptive faculties, an innate sense of justice, remarkable intuitive knowledge of the law, and an indefatigable student and worker. His judicial labors on the district, circuit and supreme benches, covering a period of twenty-six years, embraced an enormous number of litigated cases, some of them of paramount public and private importance, in all of which his decisions evidenced careful preparation and thorough research, which is alone productive of clear-cut and incisive decisions, and which, while they pleased the victor, convinced the vanquished by their demonstration. He was not satisfied to decide alone the particular point involved, correctly, but expounded the principles on which the decision rested, and the philosophy of the rule applied, as a guide to the solution of future problems of like nature.

His work as a Federal judge was not confined exclusively to Federal questions. It took in that wide range of litigation involving almost every branch of common law jurisprudence, of which the Federal courts have jurisdiction

by reason of diverse citizenship of the parties, and of which the Circuit Court for the Southern District of New York has a larger proportion than any other. He was noted, however, most eminently for his skill, ability and learning in customs, maritime and patent cases. He was, equally with the late Justice BRADLEY, of the Supreme Court, noted for his great ability and efficiency as a patent judge, possessing, as he did, that rare gift among judges, a masterful knowledge of the theory and principles of applied mechanics. His decisions on the supreme bench, as well as on the circuit, are ever-living evidences of his great genius and ability in this branch of Federal jurisprudence, and constitute land-marks in the law which furnish precedents eagerly sought for and followed by other Federal judges throughout the country; and these decisions were rarely, one might almost say never, reversed by the appellate tribunal. One remarkable exception, however, was the case of *Gorham v. White*, decided by him on circuit,<sup>1</sup> on September 7, 1870, while he was United States District Judge holding the Circuit Court for the Southern District of New York. The decision in this case was reversed by the Supreme Court at December Term, 1871,<sup>2</sup> by a bare majority, the dissenting judges being Justices MILLER, FIELD and BRADLEY, then and since esteemed and ranking as three of the ablest judges of that bench in modern times.

These cases were the earliest, if not the first, apparently thoroughly considered decisions on the subject of design patent law, as it then existed on the Federal statute books, and both decisions, while diametrically opposite to each other in all essential particulars going to make up the judgment or conclusion, displayed equal learning to such a remarkable extent that grave doubts are entertained even at this day by eminent practitioners as to whether the decision on circuit, which was reversed, was not the correct

<sup>1</sup> 7 Blatchf. C. C. Reports, 513.

<sup>2</sup> 14 Wall., 511.

one. On this branch of the law, Judge BLATCHFORD, fourteen years later, and after he became a member of the Supreme Court, delivered the opinion of that Court in the leading design cases of *Dobson v. Hartford Carpet Co.*, *Dobson v. Bigelow Carpet Co.*,<sup>1</sup> and *Dobson v. Dornan*,<sup>2</sup> reversing the decisions, in all three cases, of the Circuit Court for the Eastern District of Pennsylvania, in the last-mentioned case of which three, Justice BRADLEY sat with the circuit and district judges in pronouncing the decision of the Circuit Court. These two last mentioned decisions of the Supreme Court are remarkable in several respects, not only as determinately fixing the status of design patents under the statute, but have so clearly enunciated the rule of damages for infringement of design and other patents that the cases, ever since their announcement, have been and are still repeatedly cited and followed in later decisions, not only by the Supreme Court, but by every Circuit Court throughout the land without a single exception, and were deemed to be so conclusive by eminent lawyers, then members of the Senate and House of Representatives in Congress, as to induce them to offer and pass a statute<sup>3</sup> providing a special remedy for infringement of design patents.

Justice BLATCHFORD'S work on the supreme bench was, however, extremely varied in its scope, and covered a wide field of jurisprudence. He was equally at home on all common law questions as in patent and admiralty cases or in claims arising under the statutes of the United States. Of the five cases decided by him in the Supreme Court during the remaining month of the session or term at which he was appointed, his first decision written involved a question of maritime law on an appeal from the Court of Admiralty for the Southern District of New York; one other of the said decisions was an elaborate opinion on an appeal from the court of claims; and the remaining

<sup>1</sup> 114 U. S., 439.

<sup>2</sup> 118 U. S., 10.

<sup>3</sup> Act of February 4, 1887, 24 Stat. at Large, p. 387.