

**THE ARGUMENT OF MR. EDWARD N.  
DICKERSON: WITH HIS NOTES AND  
EXPLANATIONS; THE CHARGE OF JUDGE  
NELSON; AND THE VERDICT  
OF THE JURY, IN THE CASE OF SICKELS VS.  
BORDEN, DEFENDED BY "THE NOVELTY IRON  
WORKS" AND MR. HORATIO ALLEN; PP. 1-63**

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The Argument of Mr. Edward N. Dickerson: With His Notes and Explanations; the charge of Judge Nelson; and the verdict of the Jury, in the case of Sickels vs. Borden, defended by "The Novelty Iron Works" and Mr. Horatio Allen; pp. 1-63 by Edward N. Dickerson

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**EDWARD N. DICKERSON**

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A R G U M E N T  
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MR. EDWARD N. DICKERSON,  
WITH HIS NOTES AND EXPLANATIONS;  
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CHARGE OF JUDGE NELSON;  
AND THE  
VERDICT OF THE JURY,  
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SICKELS vs. BORDEN,  
DEFENDED BY  
"The Novelty Iron Works" and Mr. Horatio Allen.

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TRIED IN THE CIRCUIT COURT OF THE UNITED STATES, IN THE CITY OF NEW-YORK,

NOVEMBER TERM, 1856,

BY

MR. CHAS. M. KELLER AND  
MR. EDWARD N. DICKERSON,  
*For Plaintiff,*

AND

MR. FRANCIS B. CUTTING AND  
MR. E. W. STOUGHTON,  
*For Defendants.*

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**N E W - Y O R K :**  
JOHN S. VOORHIES, 20 NASSAU STREET.  
1856.



## P R E F A C E .

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Numerous applications—from friends and strangers—at home and abroad—made personally and by letters—for copies of the proceedings in this case, have exhausted all the newspapers containing them which I had reserved, and no more can now be procured; another publication, therefore, is needed.

The charge of his Honor Judge Nelson, which, in the judgment of the many lawyers who heard it delivered, is the ablest and most accurate statement of the law of patents which that very able Judge has ever made, is eminently worthy of preservation and publication. To present it in a convenient form to the public is another motive for this publication.

And the exhibition which this case makes of the persistent bigotry, and determined resistance, of such a concern as the Novelty Works to the progress of improvement, is instructive to the public, and teaches in an impressive form, the difficulties which men of genius have to encounter, and the trials through which they earn their scanty rewards. My friend Mr. Cutting, speaking for the Novelty Works, several times during the course of this trial, said: "You can not compel people (meaning engine-builders) to use your improvements." That *we* knew too well, but the *public* did not know it before; and I hope it will render the condition of the inventor more tolerable, if such a concern as the Novelty Works, which *can* "compel people to use" what they please, know that when they interpose themselves between the public and the improvements which it is the public interest to have adopted, the public understand their motives, and *may* perhaps correct the evil, by employing those who *will* submit to adopt the best thing, even at the risk of being considered "*engine-builders*,"

and not *engineers*. To present this state of things, in the very form, which "the Novelty Works," both by the testimony of Mr. Horatio Allen, and the repeated assertions of their counsel, has chosen to give it, is another object of this publication.

And one more motive actuates me: I have heard from some friends of "the Novelty Works," and of Mr. Horatio Allen, complaints that I had gone further than necessary for my case, in exposing the conduct of Mr. Allen as an engineer, and its fatal consequences, to public gaze for public judgment; and as I think these complaints unjust to me, I will now explain my position, which I think will for ever silence them. I now know from the Jury, that my speech was unnecessary: the able argument of my friend Mr. Keller, and the testimony of Mr. Allen, had settled the case before I was heard. But this I could not know in advance; and I could not conscientiously omit the exercise of so much power as would place success beyond doubt. But I did not use one tenth part of the material presented to me by Mr. Allen, which might have been used with much more terrific effect upon him *personally*, than any thing I did use:—such as the suppression of the Bennett model and the substitution of one entirely different;—the alteration of the model of the machine of defendants after the suit was brought, so as to produce an erroneous impression in respect to its operation;—the discrepancy between the drawings attached to the patent of Allen and Wells, and Mr. Allen's statements, etc. etc. But as these acts affected him personally, and not as an engineer, and as I was only trying him in his professional capacity, I did not think it necessary to use them then, and do not now refer to them except to prove that I have been actuated by no ill feeling to Mr. Allen personally, and was only performing a plain duty to my friend and to the public in exposing him professionally.

This controversy, ending so disastrously to Mr. Allen and "The Novelty Works," we did not bring about. Our experience in asserting the titles to Mr. Sickels' many improvements, has taught us to prefer any field of contest to that afforded by the law; and therefore we invited Mr. Allen to the trial on the Metropolis itself. My letters, written a *year* ago, and now published here, show how urgent we were to adopt that mode of settling the matter. We offered to improve the running of the Metropolis, at least twenty per cent., for a sum of money which the alteration would cost, *payable* when the result promised was realized, and not before. No answer was ever made to my letters in writing, and I shall not say what answers were given orally, as a contradiction might raise a question of veracity between some of the parties and myself, which would not be agreeable. It



is enough to say the offers were rejected. No other course was then open to us but the law, and we adopted it. And further, after the testimony in this cause had been closed, and Messrs. Keller and Stoughton had spoken, leaving it to Mr. Cutting and myself to close the argument, I made another attempt to save Mr. Allen from the consequences of his own acts. I called on my friend Mr. Cutting, and after showing him that Mr. Allen had realized out of the sale of Mr. Sickels' invention at least thirty thousand dollars, (for it was proved on the trial, that, not content with using it himself, Mr. Allen had been retailing it to others, and had received from one single firm \$4000 for *his* permission to use it,) I informed him that my sole object was to have justice done to Mr. Sickels—that I had no ill feeling towards Mr. Allen, and did not desire to injure him, or his establishment—that if Mr. Allen would *now* pay Mr. Sickels \$25,000 out of the money he had put into his pocket for the use and sale of the invention in question, Mr. Sickels would release him and all the infringers he had induced to follow him, and give them all a license to use the invention to the end of the patent term, and that I would not speak; but that if he did not, I should use all the power I possessed, to exact the *full* measure of justice, which I then offered to abate so largely. I told Mr. Cutting that I gave this notice in order to place myself right hereafter, so that if any complaint of cruelty should be made, I might have a proper defense. Before I spoke, Mr. Cutting gave me Mr. Allen's answer—he would not pay.

Under these circumstances I think the most exacting charity would not require me to smother up the facts proved by Mr. Allen himself in regard to his own conduct—the re-statement of which in my speech, and the newspaper report of it, have led to the complaints I am now answering.

It may be interesting to the reader to know the result of the verdict. A motion for injunction was made, and resisted by the Bay State Steamboat Company to the utmost—who defended it on the ground that Mr. William Borden, their agent, was not their agent for the purpose of being sued, or of indemnifying the public for the wrongs committed by the company, but only for other purposes more agreeable or profitable to them. This defense compelled me to make my friends the captain and engineer of the boat parties, (to whom, in the name of the law, I must apologize for the quibble which made it necessary to summon them,) who are undoubtedly *technically* liable, although mere agents of the Company, much less interested than Mr. William Borden. The motion was then renewed against the defendants, and resisted by Mr. Cutting, on the ground that the Com-

pany had no boat to take the place of the Metropolis, and was under a contract to carry the mail, which would be broken if the boat were enjoined. I then offered to license the boat at the price found by the Jury, so that it became only a question of money; but that was not accepted, and upon the representation and promise that the Company were about to take off the improvement from the boat, and to resort to some old-fashioned method of working the valves, his Honor ordered an injunction to issue, giving the defendants time to make the necessary change, provided they paid \$12 a day for the use of the invention weekly, to Mr. Sickels, while they were preparing another boat to take the place of the Metropolis, which Mr. Cutting thought would occupy two weeks—under which order the matter now stands.

The persistent determination to crush these improvements of Mr. Sickels, found its bitterest expression at the conclusion of this business, when my friend Mr. Cutting announced, that in consequence of the manner in which Mr. Sickels had pressed his claim, his clients, and himself *personally*, would use their utmost endeavors to prevent the Sickels cut-off being employed on any vessel whatever, and he authorized me to publish that amiable declaration, as I now do. My friend Mr. Sickels hopes that his inventions will survive this addition to the army which for years past has been engaged in the attempt to ruin them; but suggests that he is unable to perceive how he will be any *worse* off, when they utterly abstain from using his property, than he is now when they take it without license, and refuse to pay for it; however, it must be remembered that he is not a lawyer, and is unable to see distinctions as clearly as we of that profession do. The position of the Novelty Works and the Bay State Steamboat Company (under whose banner my able and distinguished friend Mr. Cutting now announces himself as a recruit) is this, that if Mr. Sickels will permit them to violate his patents with impunity, and will not tell of it, they will not go out of their way very far to injure him, but if he *presumes* to assert his title and to ask for an injunction, they will use their utmost power to prevent others from buying his inventions—to *their* damage much more than to Mr. Sickels'. This exhibition is a warning to young men of genius, not to presume to make improvements, or if they do, not to endeavor to live out of them by means of a patent, unless they have money and friends enough to meet such a power as this. It will cost the Bay State Company or the Novelty Works, probably \$2000 to change this cut-off for a worse one—besides the risk to boat and passengers always incurred in tampering with the valves of so large an engine; and yet, rather than that Mr. Sickels should receive one cent until the law gives it to

him a couple of years hence, they will waste that money and subject life and property to Mr. Allen's experiments again. Whatever happens by this desperate act, we wash our hands of it, as *we have not been asked* to license the use of the machine, which Mr. Sickels would be very glad to do for a reasonable sum—much less than the Jury would give him.

Mr. Sickels finds some consolation, however, in the reflection, that, "when the fight is over," and all of us are forgotten, or only remembered, as the lawyers and judges in the Watt contest now are, with admiration or regret, as the friends or enemies of his inventions, they will be just entering upon an existence as enduring as the steam engine, and as immortal as any work of man ever can be.

EDWARD N. DICKERSON.

*New-York, Nov. 24, 1856.*