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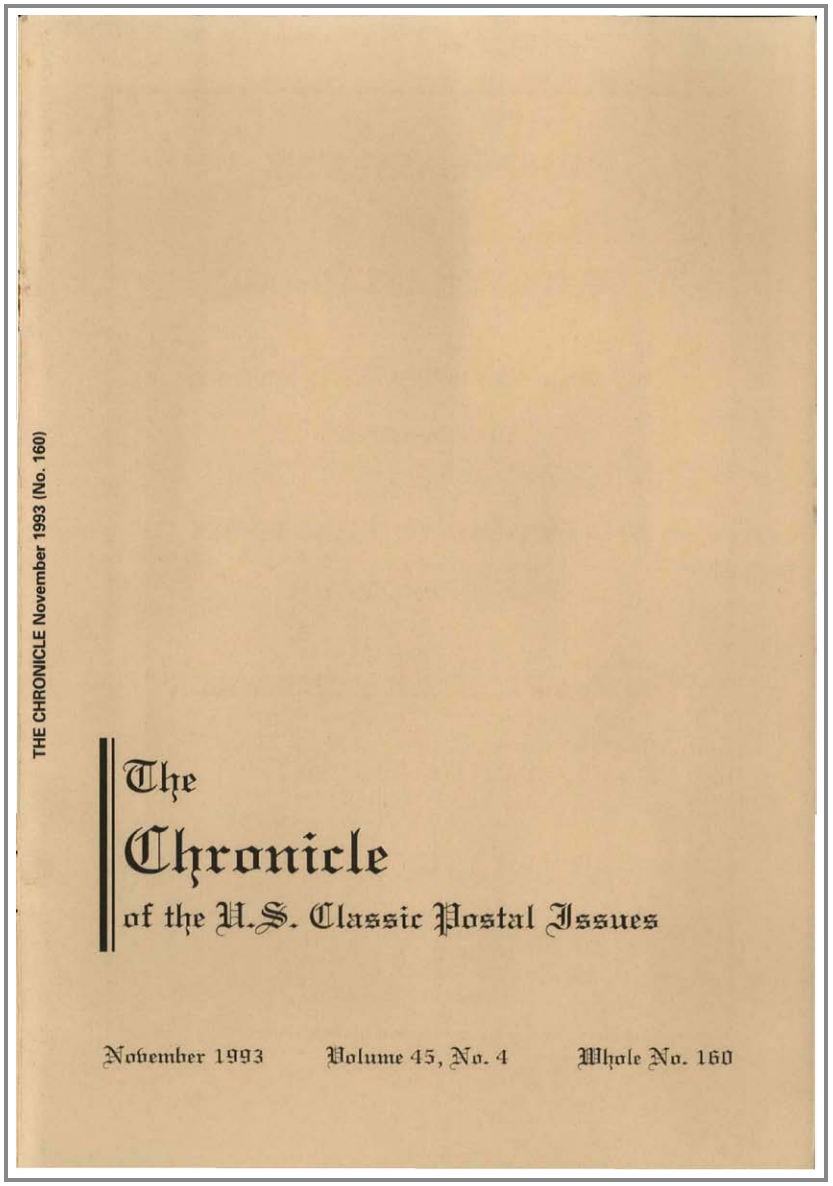

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DUPLEX HANDSTAMPS, MARCUS P. NORTON AND PATENT CANCELS OF THE 1860s

RICHARD B. GRAHAM

(Continued from *Chronicle* 158:111)

Norton Patents in Court

As far as I know, Norton and his assignees were involved in two or three important court cases or more involving his patents of 1862 and 1863 claiming the duplex handstamp. The first of these cases was an action of his assignee, Shavor & Corse, at Albany, New York, against Edmund Hoole of Mount Vernon, New York. Hoole had been vigorously manufacturing duplex handstamps under government contracts to supply them to large post offices. The suit was initiated in the United States Circuit Court for the Northern District of New York and trial held in October 1864. The suit against Hoole was for infringement of the Norton patent granted April 14, 1863, reissued August 23, 1864 (No. 38,175).

Although Hoole, in his statements and affidavits filed at the time, brought out that General Dix (then New York City Postmaster) and others had developed and used duplex markings, and Norton's patent of 1859 in no way covered the solidly constructed integral handstamps, Shavor & Corse won. On the surface of the matter, this does not make much sense as the Norton patents of the 1860s, notably that upon which Shavor & Corse sued, were obviously applied and granted long after the solidly constructed duplex handstamp had been in wide use for some time.

Why Shavor & Corse prevailed does not come out until the second major court case involving the patent culminated before the U.S. Supreme Court in 1881. Norton had sneaked a purported prior claim, dated in 1854, into the files for his patent which supported his claim of being the original inventor of the duplex handstamp. This was first noted by Thomas J. Alexander in *Chronicle* No. 126 (May 1985), pages 103-104, and it explains what was previously difficult to understand — why Norton's claims were so readily accepted by all concerned in the 1860s.

This will be discussed at greater length later, when the Supreme Court case is reviewed.

An interesting aspect of the successful suit of Shavor & Corse against Hoole is that Hoole was immediately given a license to continue manufacturing duplex handstamps for Fairbanks & Co., then the direct contractor, to be supplied on the Post Office Department contract of 1863.

As noted, all this is taken from documents printed as part of Executive Document No. 27 of the 38th Congress, 1st Session, and other documents. In one of the affidavits of Shavor & Corse, dated January 12, 1865, they noted they had made application to Congress to purchase the designs and patents, with improvements. This was referred to "the appropriate committee" but nothing was done because of Norton's patents being challenged as to validity, details not given. They also noted that the judge in the trial at Albany of *Shavor & Corse v. Hoole* was N.K. Hall. Hall, as is known, was Postmaster General of the United States as a Whig under President Fillmore.

In 1866 and again in 1872, Norton and his assignees attempted to obtain compensation by Congressional enactment for the continuing use of the duplex handstamps by the Post Office Department. Both attempts are documented in committee reports, the first in House of Representatives, 39th Congress, 1st Session, Report No. 98, dated July 24, 1866, and the second in Senate Report No. 186 of the 42nd Congress, 2nd session, dated May

15, 1872. Both reports shed additional light on the continued use of duplex handstamps and verified their advantages to the government.

In the 1866 report, made by Representative Thomas White Ferry of Michigan for the Committee on the Post Office and Post Roads, it was stated that the duplex handstamp invention, patented April 14, 1863 and surrendered and reissued August 23, 1864, had been in use since April 1, 1863,

> ...without compensation whatever to said *patentees*, nor upon any other stipulation than their consent that the same might thus be used until its utility and advantage to the government should be effectually tested, when a fair and equitable compensation for either its use or the patent should be made to them by the government.

Which was all very well, except that the Postmaster General offered $20,000 plus $12,282.70 for their developmental expense plus interest, while Shavor & Corse's idea of a "fair compensation" was $125,000. This was based upon Post Office Department estimates that the labor time saved by use of the duplex handstamps was equivalent to the salaries of 254 clerks at $800.00 per year, for the three years the devices had been in wide use, or a total of $609,600. Shavor & Corse declined this offer, so the Post Office Committee asked Congress to offer $50,000, on condition that if the offer was not accepted within 30 days from the Congressional approval of the resolution the case was to be sent to the U.S. Court of Claims.

The claim was not resolved at that time; in 1872 this claim came up again, this time in the U.S. Senate. A report of Abijah Gilbert of Florida (a New Yorker who had moved to Florida in 1865, served one term in the U. S. Senate and then moved back to New York) consisted mostly of a long rehash of the claims by Norton. The Senate Committee on Post Offices and Post Roads recommended the matter be referred to the U.S. Court of Claims.

Its utility, facility, and economy are so far established that it is being introduced to the larger post offices of the States as rapidly as they can be supplied. The government has contracted for their manufacture with Messrs. Fairbanks & Co., of New York, at the price of six dollars each, and is now supplying offices at the average rate of five hundred per annum. From the interruption of postal facilities, growing out of the late rebellion, the southern States have not been supplied, but will be, as stated by the Postmaster General, as fast as the department can effect their introduction.

The Post Office Department seems committed to their general and continuous use, so long at least as no other improvement shall commend supersedure. The nearest approach to a practical substitute for this invention is one of English device, manufactured by Turner & Co., London, and to be seen at the Washington post office. This is a more complex and expensive stamp. Its only novel merit is self-inking. The stamp employed is the same combination of stamping and cancelling covered by the "Norton patent," and is claimed by him to be an infringement of his invention, and that he holds a patent for his like combination stamp under the English crown of date February 4, 1863. The similarity of the two stamps, in this respect, is quite obvious. The cost of this English stamp is one hundred dollars, ninety-four dollars more than the Norton make, and, by the complication of its structure, must by use be subject to frequent repairs. A trial of the two methods of execution, fairly tested in the presence of your committee, attested the superiority of the Norton stamp. The same number of letters (100) was stamped and cancelled by the Norton stamp in twenty-eight seconds, which by the same operator required forty-five seconds with the English stamp. The Norton stamp is therefore deemed the most perfect and serviceable device extant. The government in consulting its interest has fully committed itself to its adoption, and over three year's use determines it an indispensable requisite to the safe, rapid, and economical operation of marking, stamping, and cancelling in the postal department.

Figure 19. From House of Representatives Report No. 98, 39th Congress, 1st Session, discussing a comparative test of the Norton duplex handstamp with a self inking duplex device made in England.

The 1866 House report contains some interesting information, reproduced in Figure 19, about the duplex handstamps, including a comparison test made to a similar British handstamper at the Washington Post Office, presumably shortly before the committee reported.

In Figure 19, the subject is, of course, the Norton patented duplex handstamp, vintage of the 1860s. The excerpt shown indicates that 100 letters were postmarked with the English handstamp made by Turner & Co., London, which had a self-inking feature. (Steps are being taken to locate a copy of the Turner patent to determine, if possible, the details of the handstamps produced by the Turner duplex. If any of the hundred letters with the Turner marking have survived, and assuming these were regular mail rather than dummy envelopes, there may be a very rare marking identified by this situation.)

During this period, handstamps of the duplex style continued to be furnished to the Post Office Department equipped with various styles of killers. Many had the sockets for corks, but some equipped with steel 4-ring target killers apparently were also produced. Figure 20 shows a comparison of a handstamp in the possession of Donald B. Johnstone, which he loaned me to photograph and examine. This handstamp, with a single line CDS of Castleton, Vermont, was in use circa 1863-1871, per an article by Dr. Johnstone in *The Vermont Philatelist*, February, 1989, No. 131.

The interesting aspect is that the Castleton, Vermont handstamp, shown at the right in Figure 20, with a tracing of the marking below it, has on its crossbar, stamped into the steel, "Pat. Aug. 9, 59," which is the date the patent on the device shown in the drawing, adapted from the patent drawing, was granted. The lack of similarity between the two devices is striking. From this, however, we may conclude that the Castleton device was made in 1863, as suggested by Dr. Johnstone, and is thus probably one of the early examples of the steel type duplex markings. Most of the early duplexes with 4-ring steel target killers were made with a larger double circle type postmark, but this device shows no sign of any inner circle.

The Chief Inspector's Opinion of Norton

David B. Parker had been in charge of the mails for the Federal Army of the Potomac during the Civil War and was later a Post Office Department Special Agent. During portions of the 1870s and 1880s, he was Chief Inspector of the Post Office Department. Thus, he would have been familiar with the activities of Norton, at least during the 1870s and while the second and more famous of the court cases involving the Norton patents took place.

In his biography, *A Chautauqua Boy in '61 and Afterward*, pages 213 *et seq.*, published as reminiscences by Small, Maynard & Co., Boston, in 1912, Parker devotes seven pages to Norton's activities. These are published here in full, as they provide some information on the subject as well as give us the viewpoint of the Post Office Department officials toward Norton and his licensees.

> Whenever there was a change in Postmaster Generals (and there were six while I held the position of Chief Post-Office Inspector), I tendered my resignation, suggesting that, as the position was a confidential one, the Postmaster General might desire to name someone he knew, but I was continued in the position until I resigned voluntarily. While the work of the Inspectors was partially to investigate complaints and losses of letters and detect violations of the law, they also had many other duties, investigating complaints of every character against the service, negotiating leases for post-offices, investigating and recommending as to changes in mail routes, and, in fact, doing anything that the Postmaster General's authority and the law authorized them to do in connection with the correction of evils and improvement of the postal service.
>
> Many matters pertaining to the service came to my lot to handle that were interesting. I will speak of one case. During the war and while I was an army officer, I had

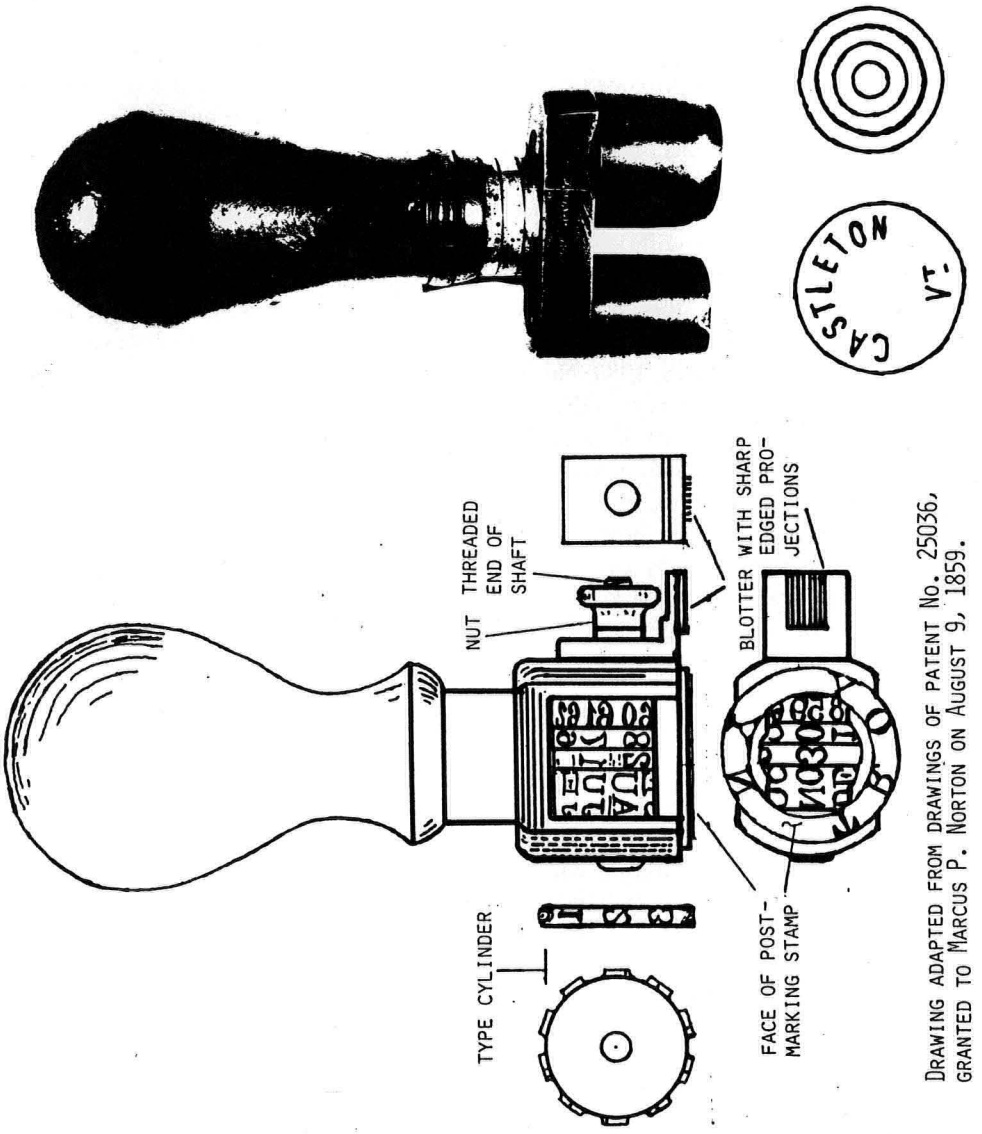

Figure 20. The handstamp patented by Norton in 1859, as derived from the drawings with his 1859 patent, compared with a government furnished duplexed handstamp of the 1860s, manufactured by Hoole, but bearing the date of the 1859 patent. The Castleton, Vt. duplex marking with target killer made by the handstamp is also shown in tracing form, courtesy Donald B. Johnstone.

much to do with the Third Assistant Postmaster General, Mr. A. N. Zevely, as the postage stamps for the army were procured from him. On one occasion when I was in his office, he said to me:

"You will find somebody else in this office maybe the next time you come."

I knew that he was one of the very best men in the Government service and had been in the Post-Office Department before the war and that he was a Southerner, and I naturally inquired:

"What is to happen, Mr. Zevely?"

"There is a rascal," he said, "trying to enforce a claim against the Government which is pure robbery, and I went before the House Committee on Claims yesterday and gave my opinion of the matter, and last night, late, a friend came to my house and said that Marcus P. Norton, the claimant in the case, threatened my removal, and that he had the influence to secure it; that I was a Southerner and it would be easy to bring it about."

"Mr. Lincoln would not permit an injustice to be done you."

"I don't think he would if he knew it, and I think I will go to him, if necessary," said Zevely, but he was very much cast down. He then gave me a history of the case. He said that when postage stamps were adopted in the forties postmasters were furnished with a small steel stamp to cancel the postage stamp with and a large steel dating stamp which gave the name of the post-office and the date to stamp also upon the letter. Every inventive postmaster in the whole country immediately began to fasten the two stamps together, so that one blow would cancel the stamp and affix the postmark. Then the Department began to manufacture and issue a stamp which was a combination of the two, a bar crossing and holding the two stamps.

"Now," continued the indignant Zevely,"after all these years this scamp turns up with a patent on it which he obtained years ago and has had renewed once, never presented it to the Department until now he thinks everybody is dead and gone who would know about it. He presents it with able attorneys back of him and is trying to get a law through Congress to purchase the patents, and I understand that the Committee on Claims, Roscoe Conkling, Chairman, has offered him $250,000 and he has refused it." At this juncture Mr. Zevely's recently appointed chief clerk, William M. Ireland, came into the room, and Mr. Zevely introduced me to him and then continued his story of the stamps, and Ireland interrupted:

"I was a stamp clerk in the Philadelphia post-office when the postage stamps were first adopted, and I had the two stamps joined together and used them that way, and we had them all fixed that way."

"Yes," said Zevely. "There's proof now that his patent is of no value. I have been here a great many years, and sharks like that hang around Washington, perfectly familiar with the patent and all other laws, and ready to put up a conspiracy to rob the Government."

I thought no more of the matter, but in 1877 or 1878, about fifteen years later, while I was Chief Post-Office Inspector, I called upon the postmaster at New York, Thomas L. James, and as we sat talking, the United States Attorney, General Stewart L. Woodford, came in and said to Postmaster James:

"Well, there is nothing more to be done in that Norton case. I have had all the adjournments possible, and the case will come to trial next week before Judge Wheeler in Vermont, and we have but little evidence to resist it with. I have written the Postmaster General time after time and always get the same answer, that they are unable to furnish me with any evidence. It is an outrage, and I have no doubt but they will get a judgment against you and then proceed to ascertain the damage." He went out, and Postmaster James told me that it was a suit against him as postmaster for the use of a patent device to postmark letters and cancel the stamps, and that the claimant had patents running back a great many years, and had a syndicate of powerful capitalists and an ex-Attorney General of the United States for his attorney. I immediately recalled that interview with Mr. Zevely, and told the postmaster that I was astonished that such a claim should exist and not be referred to my bureau in Washington. We had never heard of it and did not know there was any such suit, but I was very sure, if I had

known of it, I could have obtained some evidence, because I remembered something about it fifteen or sixteen years before. I hurried away to my train and came out home in Western New York, and the next day went to a friend's farm near Jamestown to stay overnight. In the night I was called up by a Deputy United States Marshal from Jamestown, who had accompanied a Deputy Marshal from New York, who had followed me and who wanted I should get up and hurry to Jamestown and sign an affidavit that he could take back to New York to the United States Attorney upon which to base an application for an extension of time in the suit referred to upon the ground of newly discovered evidence. I rode to Jamestown and made the necessary affidavit, and he caught the train and left for New York. The application was made to Judge Wheeler, and a postponement of thirty days was granted. I returned by way of New York and set about getting the evidence. I knew Mr. Ireland still lived in Washington, although not in Government service, and I found him quickly and told him what I wanted. He refused to have anything whatever to do with furnishing evidence, said the Government had treated him badly, and turned him out of the position in the Post-Office Department, and that he owed the Government nothing, and felt very sore. At length Mr. Ireland yielded to the appeals to serve the Government, although he put it on the ground of personal regard for me. We went at once to Philadelphia. We found one old clerk who was the chief stamping clerk when Ireland was employed there as a boy of sixteen, and this old gentleman remembered those stamps and told us of another very old man still in the post-office who would know something about it. This second old man said, "Why, there is a candle box full of those old stamps down in the cellar. I took a couple of them home to my grandson to use as chucks in a tubing lathe." We found that box, and we got some of the stamps with the holes drilled in the sides where they had been attached, and one of them had the steel dating type rusted in it, so that it could not be taken out, and it gave the year and the date. Then we found the son of the locksmith who attached these stamps, and his father's books showed when he did the work for the postmaster and what he was paid, and the whole description of the work done. Eventually three very old men were found who had had to do with the stamping at that time. On inquiry I found that the Patterson Mills retained all letters from their Philadelphia office, and we found letters of that time on which measurements showed that the two stamps were always the same exact distance apart and therefore must have been attached. All this was before envelopes were invented. The evidence seemed to be complete. I arranged to take all these gentlemen on to Vermont and accompanied them as far as New York, whence they proceeded to Vermont on subpoena. When the case was tried, the Court was asked to set aside all of this testimony, and an effort was made to discredit it and every one of the witnesses. The very old men were somewhat confused under cross-examination by skillful attorneys. Mr. Ireland was a remarkably young-looking man. I have never seen a person who bore so little evidence of age as he did, and the Court was plainly asked to discredit his testimony because he could not have been a clerk in the Philadelphia post-office as long ago as he testified. By discrediting this and all other evidence of prior use, judgment was given against the postmaster at New York, and a Master appointed to ascertain and report the amount of damage accruing from violation of the patents on the part of the postmaster at New York during his term of office. The testimony taken in New York showed that the use of this double stamp enabled one man to do the work of two, and a very large number of stamp clerks were employed. Facilitating the dispatch of mails was considered, but not fixed in the amount. The Master's report, however, gave a very large sum as the amount at which a judgment against the postmaster at New York alone should be fixed. It was said that two hundred other suits would be brought immediately, so an enormous sum would be mulcted from the Government, but the District Attorney at New York appealed this case to the Supreme Court of the United States on the ground that the Court in Vermont had erred in discarding the evidence of prior use. The Supreme Court of the United States reversed the judgment and declared the patents void, and no other suits were commenced.[1] Ten years later I saw Norton in Boston, and saw from the newspapers there that he was suing the city of Boston and other cities for a patent fire hydrant for

which he had had patents for many years covering hydrants that were used by all the cities. I think he eventually failed in these suits. I was told that the different capitalists who induced him and two other men to continue his litigation supported him and his family for a great many years in an expensive way. On investigation at the Post-Office Department, I found that the chief clerk who opened the mail for the Postmaster General had been given a memorandum when he came into office that all letters pertaining to this claim of Norton's should be referred to a certain clerk, and he had always so referred them, and from examining the letter books, I found that all inquiries regarding this case for very many years had answers prepared for the Postmaster General's signature by this clerk. It was easily established that Norton stayed at this clerk's house when he came to Washington, and presumably controlled the correspondence.

[1] *James v. Campbell*, 104 US 356, argued in January, 1881, by Charles Devens, Attorney General, and S.B. Clarke, Assistant District Attorney, for the Southern District of New York, for the Government, and ex-Attorney General Williams and Benjamin F. Butler, for Norton.

Understandably, as a former Chief Inspector of the Post Office Department who had also been told, while in charge of the mails for the Civil War Army of the Potomac, of Norton's tactics to get his handstamps accepted, Parker was quite biased in his viewpoint. However, his reminiscences do demonstrate the attitude of the Post Office Department concerning Norton and his licensees. Obviously, Post Office Department officials who had been there for several years were convinced that Norton neither invented the duplex style handstamp nor that he was anything more than an unscrupulous promoter. It is possible that Parker, although he does not mention it in his book, also knew that Norton had resorted to chicanery in obtaining his revised patent of 1864 by sneaking a spurious claim into the Patent Office files in 1864 that purported to date from 1854.

Other comments regarding Parker's viewpoints are also of interest. First, when Parker was relating the discussion of his visit with 3rd Assistant Postmaster General E.S. Zevely, part of what was said does not necessarily jibe with what we believe today, as specialists in Philadelphia postal history and markings may well attest. This concerns the use of the duplex handstamp, which was not used at Philadelphia to cancel stamps and postmark simultaneously but to rate letters.

The use considered took place in the 1840s when the U.S. 1847 stamps were in use, but the Philadelphia handstamps, with either a "10" or a "12" attached, are not known used to cancel the stamps as far as I know. In *A Catalog of Philadelphia Postmarks*, Part 1, compiler Tom Clarke lists only the version with the "2" attached as being in use after the 1847 stamps were available. Thus, what Parker and the Chief Clerk of the Office of the 3rd Asst PMG, William M. Ireland, were discussing was the use of a duplex marking for any purpose, not just for canceling stamps in connection with the postmarking. Actually, had they known, there was another and earlier precedent in the attached "datewheel" type handstamps used in New England in the 1820s and 1830s, which had a rotatable rating wheel attached to the sides of postmark handstamps. However, that was not as rigidly attached, which was also a consideration. The date of the alleged conversation, reported by Parker as being while he was an Army officer handling the mails for the Army of the Potomac, has to have been in or after August 1864 when Chief Clerk Ireland was appointed. Actually, Parker had just left the Army as an officer but had been appointed a special agent to continue handling the mails for the Army of the Potomac. Parker's later encounter with those holding the Norton patents was as Chief Inspector of the Post Office Department, a post in which he was quite involved with the lawsuit of *Campbell v. James*. He relates the background of the case, in which Campbell, the licensee of the Norton

patents at that time, was suing Postmaster Thomas L. James of New York City for unlicensed use of the duplex handstamps. James later became Postmaster General under Garfield in 1881 and served until the end of 1881.

Campbell v. James; James v. Campbell; Clexton v. Campbell

The case of *Campbell v. James* was, as Parker noted, originally decided in a Federal Circuit Court in Vermont against James. Thus, as Parker also commented, Norton's licensees, Campbell and others, would have been in a position to have instituted suit against every postmaster in the country who had been using the duplex devices and would obviously have been awarded very large sums of money. However, James, with U.S. Post Office Department backing, appealed and the case went to the U.S. Supreme Court. It also involved other parties, presumably represented by Clexton, who, feeling they were not to get enough of the swag, sued Campbell. In January 1881, the U.S. Supreme Court reversed the decision of the Circuit Court, not only finding in favor of James but also voiding Norton's patent.

The record of the case, 104 U.S. 356, in the legal tomes recording such activities of the Federal courts, comprises some 30 pages of printed text full of information and testimony about Norton and his patents. The key information is, of course, the points and rulings of the Supreme Court decision and its summary of the events leading up to the case being heard before the Supreme Court. The introductory paragraph of the 30 pages of text is shown in Figure 21 and the syllabus for the Court's opinion is shown in Figure 22. Both need a bit of discussion.

> MR. JUSTICE BRADLEY delivered the opinion of the court.
>
> This case is founded on a bill in equity filed by Christopher C. Campbell, the complainant below, against Thomas L. James, United States postmaster in and for the city of New York, to enjoin him from using a certain implement for stamping letters, which the complainant claims to have been patented to one Marcus P. Norton, by letters-patent dated April 14, 1863, and surrendered and reissued on the 23d of August, 1864; and again surrendered and reissued on the 3d of August, 1869, and again, finally, on the 4th of October, 1870. The complainant claims to be assignee of Norton, the patentee. Other persons claiming an interest in the patent were made parties to the suit. The Circuit Court rendered a decree in favor of the complainant, and adjusted the rights of the several parties to the amount of the decree. The defendant, James, appealed. The other parties, not being satisfied with the decree as it affected their mutual interests, also appealed. The case is now before us in all its aspects. Supposing the court below to have had jurisdiction of the case, the first question to be considered will be the liability of the principal defendant, James, to respond for the use of the machine or implement in question.

Figure 21. The introduction to the Supreme Court opinion in *James v. Campbell*, 104 U.S. 356, providing a brief of the background to the case.

The decision was delivered by Justice Joseph P. Bradley, possibly at the time the most respected member of the Court from the standpoint of his legal knowledge and judgment. The portion of his introduction shown in Figure 21 gives the background of the case and notes the Court considered the question of whether a government official could be sued for actions taken in behalf of his government function, of great importance.

JAMES *v.* CAMPBELL.

CAMPBELL *v.* JAMES.

CLEXTON *v.* CAMPBELL.

1. Norton's reissued letters-patent, dated Oct. 4, 1870, for an improved post-office stamp for printing the post-mark and cancelling the postage-stamp at one blow, are void, by reason of not being for the same invention specified in the original.
2. If letters-patent fully and clearly describe and claim a specific invention, complete in itself, so as not to be inoperative or invalid by reason of a defective or an insufficient specification, a reissue cannot be had for the purpose of expanding and generalizing the claim in order to embrace an invention not specified in the original. *Burr* v. *Duryee* (1 Wall. 531) reaffirmed.
3. In such case, the court ought not to be required to explore the history of the art to ascertain what the patentee might have claimed: he is bound by his statement describing the invention.
4. A patentee cannot claim in a patent the same thing claimed by him in a prior patent; nor what he omitted to claim in a prior patent in which the invention was described, he not having reserved the right to claim it in a separate patent, and not having seasonably applied therefor.
5. Letters-patent for a machine cannot be reissued for the purpose of claiming the process of operating that class of machines; because, if the claim for the process is anything more than for the use of the particular machine patented, it is for a different invention. *Powder Company* v. *Powder Works* (98 U. S. 126) reaffirmed.
6. The government of the United States has no right to use a patented invention without compensation to the owner of the patent.
7. *Query*, Can a suit be maintained against an officer of the government for using such an invention solely in its behalf; and must not the claim for compensation be prosecuted in the Court of Claims.

APPEALS from the Circuit Court of the United States for the Southern District of New York.

The facts are fully stated in the opinion of the court.

These cases were argued at the last term. *Mr. Attorney-General Devens* and *Mr. Samuel B. Clarke* appeared for James. *Mr. George H. Williams*, *Mr. M. P. Norton*, and *Mr. Benjamin F. Butler* appeared for Campbell. *Mr. Edward D. Bettons* appeared for Clexton.

Figure 22. The Supreme Court's syllabus for its opinion in *Campbell v. James*, 104 U.S. 356.

The summary of the Court, shown in Figure 22, involves several points of interest regarding the Norton Patent of 1863, No. 38,175, which had been surrendered and reissued three times, the last date being October 4, 1870. Item 1 in the decision voided the

patent in its entirety as not being the same invention originally claimed. This was enlarged upon in Item 2, stating that an original invention, with claims insufficient or defective, could not be enlarged upon with broadened claims by subsequent reissues.

The decision reaffirmed that the United States has no right to use a patented invention without compensation to the owner of the patent, but it also questioned that a suit could be brought against an officer of the government as a private individual when the alleged patent infringement is solely in behalf of the government. Rather, such situations should have been settled in the Court of Claims.

> Now, if Norton had, as he pretends, invented, as early as 1854, the stamps for which he took out his subsequent patents in 1862 and 1863, it is hardly conceivable that he should have taken out the patents for 1857 and 1859 in the form in which they stand. The fact that he did take them out reduces it almost to a demonstration that he had not invented any such stamps at this time.
>
> It is true he produces a caveat filed by him in 1853, which has, or had, an amendment bearing date " Tinmouth, Vt., Aug. 7, 1854," which amendment contained a full description of the double stamp as finally exhibited in his patent of 1863, and the reissue thereof. But this amendment was shown to have been surreptitiously introduced by him amongst the papers of the office certainly as late as 1864, ten years after its pretended date. In his examination as a witness in this cause he admitted that he made the paper referred to in the summer of 1864, when his assignees, Shavor and Corse, were applying for a reissue of the original patent now in question, and that it was used in that application; but he pretends that it was a copy of a paper which he made and sent to the Patent Office in 1854. No such original paper, however, has ever been found in the Patent Office, and on a regular charge for the offence of making the surreptitious paper and introducing it amongst the files, he was found guilty in September, 1871, and debarred, by order of the Commissioner of Patents, from further access to the papers of the office.

Figure 23. From *Campbell v. James*, 104 U.S. 356, at pages 365-366, describing Norton's chicanery in introducing a spurious prior claim into the Patent Office application for his reissued patent of 1864.

Of interest, also, are the names of the attorneys in the case, which included some very prominent ones. Charles Devens was Attorney General of the United States and thus a cabinet member at the time, and George H. Williams had been Attorney General under President Grant. Benjamin F. Butler was the prominent Massachusetts politician and Civil War general best described as notorious rather than admired, and, interposed between them, was M.P. Norton, who, I suppose, was the inventor himself. Norton was known to be a patent attorney, but it is a bit surprising to see his name as practicing before the Supreme Court. This is especially interesting in view of the Court's comments (pages 365-366 of 104 U.S. 356) regarding his patented device of 1859, shown in Figure 20, and his later versions of the duplex handstamp patents. These are reproduced in Figure 23, commencing after quoting Norton's description of the device patented in 1859, taken from his patent issued at that time.

The Court noted that had Norton actually invented the device (as it appeared in 1864) as early as 1854, his patent of 1859 would have taken a different form. To this comment we may add that there was no real need for the duplex device as early as 1854. The fact that Norton had, as the Court phrased it, "surreptitiously introduced" the paper allegedly showing his claim of the duplex handstamp in 1854 into the papers at the Patent Office ten years later was also taken by the Court as an admission that he did not consider himself the true inventor of the duplex handstamp as it was being used in the mid-1860s and later.

Some writers on this subject have commented that Norton was deprived of his patent rights because of "technicalities." Actually, of course, it is quite basic to a patent being granted that the applicant be the actual inventor of the device for which a patent is desired. Patented concepts also have to be specific in terms of the construction of a device, and, in fact, patents are based on "technicalities." Thus, a difference in configuration that to a layman seems trivial can cause a patent to be granted or rejected. The difference here was that the "blotter" of Norton's patented design of 1859 was attached and not part of the instrument. Furthermore, the cutting feature of the 1859 patent was never really made effective, nor was his other claim, the datewheel cylinders, granted at that time, as the basic idea had already been patented by Robertson. Norton was later able to get the feature patented, probably because Robertson's device had no wheel for year dates and Norton's did.

Norton, as a patent attorney, obviously knew his 1859 patent was not quite in tune with what was needed as required by the order of 1860 that henceforth separate cancels other than the postmarks be used to cancel the stamps. However, after 1860, when many postmasters seized upon the idea, he could no longer apply for a separate patent, as Hoole, General Dix and others probably could have had equal justification for being granted a patent for a rigidly connected duplex handstamp. In fact, Hoole, in his lawsuit of the early 1860s, attempted to make such a claim — that others than Norton had invented the device.

No one in these cases made any mention of the duplex devices, such as the Liverpool "spoon" cancels, having been in service in England so that they appeared on letters to the United States in the mid-1850s and earlier, as was noted in *Chronicle* No. 151 (August 1991), pp. 180-81.

As noted previously, Hoole and others soon accepted the idea in 1864, when Shavor & Corse sued Hoole for patent infringement, that Norton really had conceived the idea of the duplex handstamp. This acceptance obviously has to have been based upon the fictitious paper supporting the claim that Norton had actually tried to patent the design of 1864 in 1854.

The outstanding examples of this viewpoint are a letter written by New York Postmaster Abram Wakeman in January 1863 (see *Chronicle* No. 157, page 39) and an affidavit by General John A. Dix (see *Chronicle* No. 152, page 236) dated February 4, 1864. Wakeman accepted Norton's having invented the duplex handstamp, and obviously was discussing the duplex devices then in use at the New York Post Office, rather than the "datewheel" design of 1859. Dix's affidavit obviously accepts Norton's having invented the duplex, assuming that Norton had already patented it by the time that Dix himself developed the idea in the fall of 1860. There was no reason for them to doubt Norton's claims at that time.

Probably Arthur H. Bond and Thomas J. Alexander have summed it up best regarding Norton, in their articles in the *Postal History Journal* of June 1963 (Whole No. 10) and in *Chronicle* 126 (May 1985). Bond commented that Norton permitted his dreams of riches to overcome good business judgment. Alexander agreed and added that Norton's greed caused him to claim far more than he invented. □