

*The First One Hundred Years of Copyright
in the Supreme Court (1834-1933): The Lost Cases*

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In this work in progress I look at the “lost cases” of the first one-hundred years of Supreme Court copyright jurisprudence (the period from 1834 to 1933). Many cases from this period are “standards” in the copyright repertoire, such as the Supreme Court’s first copyright decision in *Wheaton v. Peters*. But within this time frame are also many cases that have been little heard from again. I focus on these lesser known cases, finding those that have received less attention over time than their better known sisters and brothers.

I begin by presenting data on how cases decided by the Supreme Court between 1834 and 1933 have been cited in the courts and the literature. I then identify and examine two cases the Supreme Court itself has never again cited or discussed (*Little v. Hall* (1855) and *Mifflin v. Dutton* (1903)). Expanding the borders of inquiry slightly, I then identify eleven further cases that the Supreme Court has cited only once or twice each, of which there are seven and four, respectively.

I then turn to examining these thirteen decisions within this grouping (the borders of which are admittedly arbitrary), seeking out doctrinal, policy, and historical explanations for the paucity of citation these cases have received. I then contrast the cases that are more thoroughly discussed in the lower (including state) courts and those given a more complete airing in the literature with those that are largely ignored both in the judicial and scholarly realms. Finally, I examine the cases themselves for insights into current debates in copyright doctrine and policy in the hopes finding some reason to rescue them from the catalog of the forgotten.