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Natural Right of Man to his Invention.

Our views on this subject seem to be the reverse of those advanced by the Commissioner of Patents in our last number. We have examined the question from a different point of observation, hence this may be the reason of the difference in our opinions.

The question before us is not, strictly, "has man the *natural right* to the use of his own invention," but "has he a natural right to prevent all others from imitating, re-producing a like machine, or article of invention." Judge Mason takes the affirmative and we the negative view of this question; he assumes the position that a patent is "a natural right;" we contend that it is simply the instrument of a civil contract—the *bond* of a *legal right*.

In the communication of the Commissioner, the views of J. W. Scott, presented on page 205, appear to be acquiesced in, viz., that the Indian who builds his wigwam in the forest has *no right in nature* to prevent others imitating him. This admission is favorable to our view of the question, for, according to the provisions of our patent laws, as a civil contract, he could become possessed of the power to prevent others imitating him for a limited time. The wigwam would be considered a new and useful manufacture, a product, and patents are granted for such, and not only such, but also for articles of design, such as some peculiar ornament on the front of a house. We cannot suppose that a patent could or should be granted to the Indian as a natural right for placing an ornament on the entrance to his wigwam, and yet he be denied a patent for the invention of the wigwam itself. We agree with Judge Mason in his views regarding the natural right of a person to an Island which he had caused to arise from the bosom of the ocean; but such a right does not confer upon him, as a *natural right*, the power to prevent others imitating him in making like islands, which is really the question under consideration. The man who first constructs a machine as wonderful as Alladin's lamp, cited as an illustration by Judge Mason, has a natural right to its use, and he will be protected in that right without the aid of a patent. To forcibly dispossess him of that machine, is theft in the eye of "Common Law,"—a crime for which the thief would be doomed to punishment and a prison.

The inventor and maker of a machine has a natural right to do with it anything he pleases. He can sell it, break it, give it away, or use it in secret or public; no one denies his natural right to such disposal of his property. "But," says James S. Stimpson, of Baltimore, in a letter to us, advocating the natural right of inventors to their inventions (in answer to our article on page 205,) "you are speaking of a machine—an invention consists of *an idea*, a machine is mere matter giving form to the idea." It is true that a machine is a product resulting from acts of the mind, called "ideas," but patents are not granted for ideas but for veritable machines and articles.

It is impossible to make *tangible* property of an idea. One man communicates an idea to another, and the recipient receives it into his mind, he cannot keep it out—it forces itself into it, and becomes his possessively, as much as his who communicated it to him; and at the same time, he who has communicated it, also retains possession of it. The same idea can thus come into the possession of a million of persons, and they cannot be dispossessed of it by any process of law. How then can there be property in an idea? It is impossible. Jefferson is very clear on this point: he says, "if nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself, but the moment it is divulged, it forces itself into the possession of every one. Its peculiar character, too, is that no one possesses the less, because every other possesses the whole of it. . . . Inventions, then, *cannot in nature* be a subject of property. Society may give an exclusive right to the profits arising from them, as an encouragement to men to pursue ideas which may produce utility."

The act of society referred to by Jefferson, granting exclusive civil rights to encourage inventors, is the Patent Law. The Government, in the name of the public, on the one hand, agrees to prevent any person making, using, or selling a certain machine, or article of manufacture (without the consent of the patentee,) for a period of fourteen years, upon the condition of the inventor revealing his secret, and informing the public how to make and use it. This is the contract entered into between the public and inventors, when they choose to obtain patents, which are legal bonds, bearing the broad protective seal of the Government.

Patents are legal rights arising from an advanced state of society. In olden times, inventors stood upon their *natural rights* (some do so now,) and many excellent inventions were then made and used in secret, and those secrets died with their authors. As civilization advanced, and governments became more enlightened, they adopted the principle of encouraging inventors to reveal their secrets for the public good, hence the origin of Patent Laws for the promotion of science and art.

The first general patent law for new improvements in the arts, enacted by any nation, only dates back to the reign of James I. of England. This law was not made either to create or protect natural rights, but simply to promote the progress of science and art. Our Patent Law is based upon that Act. The language of the U. S. Constitution, in reference to patent laws, is as follows: "Congress shall have power, &c., to promote the progress of science and the useful arts, by securing for limited times to authors and inventors the *exclusive* right to their writings and discoveries."

Patents are not granted on the fundamental idea of natural rights. In the case cited by Judge Mason, of two persons coming before the Patent Office at the same time, with like machines—each applying for a patent, we agree with him that it would not be just to grant a patent to the one who was not the inventor; but why? Not on account of natural right, but because he had not complied with the terms of the civil contract embraced in the Patent Law.

Let us quote a *bona fide* case, not a supposable one, to prove that our Patent Office does not grant patents on the principle of the natural rights of inventors to the exclusive use of their own inventions: Three men apply at the Patent Office at the same time for patents on churns, each having made oath that he believes himself to be the original and first inventor. Three separate models, alike in every respect, are presented with the applications, and no one of the applicants ever saw or heard of the others, or their churns, before—each invented his own churn independently, without any knowledge of the efforts of the others. What is to be done in this case? If a patent involves a natural right in the thing invented; *i. e.*, that every inventor has the *natural right* to the exclusive use of his own invention, then each of these applicants must be granted a patent for the exclusive use of his churn, which must entirely destroy the principle of exclusiveness, as each patent would contain the feature of excluding the others. But the Patent Office, instead of granting each applicant a patent, upon the principle of natural right and exclusive use to his own churn, grants only one patent, and that to the person who proves, by disinterested witnesses, that he had invented his churn *first*. In this case, the two rejected applicants, instead of being protected in the natural right to their churns, are deprived of them for fourteen years, and their property in their respective churns held in abeyance for that period to the *first* inventor as a matter of national policy. The patent, in this case, is granted on a simple question of *time*. Such cases are continually being brought before the Patent Office. Such cases effectually dispose of the question of *natural* rights in patents, and places it upon the basis of the civil contract.

If patents were to be granted on the fundamental idea, that every inventor had the natural right to the exclusive use of his own invention, a vast number of patents would have to be granted every year for the very same invention, and confusion worse confounded, regarding patents, would soon reign throughout the Commonwealth.

That which is called "patent property," is entirely different in its nature from that of real estate, like a house or a farm. The two are often placed on parallel lines and compared together. This, we contend, should never be done. The person who purchases a farm of one hundred acres, cannot prevent another person from purchasing and using a like farm. The farm cannot be re-produced, and ownership in it does not involve the exclusive principle contained in patents, which prevents the reproduction by others than the patentees, of like machines to those described in their patents. Owners of real estate and their legal heirs are never dispossessed of their property, upon the principle of expediency, without a full equivalent paid in return. Patent property is so entirely different from that of real estate, that when a patent expires, no act of dispossession takes places towards the patentee; he simply loses the *power* of being able to *dispossess* others of tangible property which he never owned. Upon the basis of the civil contract he ceases to wield the power of exclusion. He and his heirs have still the natural and moral right to make and use his invention, and of this they are never dispossessed.

Our views on this subject are the same as those entertained by the ablest writers on the subject. We have already quoted that of Jefferson, who was a member of our first Patent Board, for several years, and who had examined the subject thoroughly. Thomas Webster, an English Patent Barrister, in his work on Patent Laws, says, respecting patents:—"The conferring of patent rights may be considered as having the following objects in view: to reward the inventor for his ingenuity, and for the benefit which he has conferred on the public; to secure to him a suitable remuneration for his outlay of capital, and to encourage and stimulate invention and improvements. . . . The monopoly should only be temporary; for the inventor has no *natural inherent right* to his invention." That is, to prevent others imitating him. Willard Phillips, of Boston, in his essay on the Legislation of Patent Rights, says, "In respect to things that can be visibly and exclusively possessed, the *producer*, or first *occupier*, is acknowledged by the laws of nature to have established his right of property by his possession, and the laws supervene to guarantee and protect that right. But the exclusive use of a discovery in the arts must originate in a conventional law; the law must be expressly passed or tacitly recognized before the right of property can exist."

Referring to the supposed natural right of patent property, he again says, "No such natural right exists. Indeed, there is no plausible ground whatever on which to rest such a right, since the fact of one person being the *first* inventor or discoverer affords no pretence for disfranchising others (the churn case for example,) of the right, in their turn, of making and using the same discovery." Renouard, the able French author of a work on patents, clearly establishes the conclusion, that no such natural right exists. Curtis, although not so explicit on "natural right," is perfectly clear on the civil contract view of the question. He says, "his secret, the inventor undertakes to impart to the public when he enters into the *compact*, which the grant of a patent principle embraces."

We are well aware that there may be much honest difference of opinion regarding the principles of patents, for this branch of law is so intricate that Renouard calls it "The Metaphysics of Jurisprudence." We have devoted much attention to such subjects during the last twelve years, and the foregoing conclusions have not been hastily adopted. We consider every patent to be a sacred civil contract entered into between the public and the inventor. That contract should be faithfully kept by the public, for it loses nothing and gains much by the bargain. We look upon patent laws as a grand invention in themselves for rewarding inventors, inasmuch as they encourage men to make new inventions, and to introduce new arts. Patent Laws exhibit a wise national policy, and we do not hesitate to assert that France, England, and America, owe much, if not most of their physical prosperity—their rapid advancement in science and the arts—to such laws.

Patent Extensions.

There are now before the Patent Committee in Congress no less than seven applications for the further extension of as many different patents. We herewith subjoin a list of the same, with dates, for the benefit of the public and of all parties concerned:—

William Woodworth, Planing Machine. Patent originally granted Dec. 27, 1828. Extended by the Commissioner of Patents for seven years from Dec. 27, 1842. Extended the second time by Congress for seven years from Dec. 27, 1849. Expires, unless now a third time extended, on Dec. 27, 1856. Two applications to Congress for this third extension have been before refused.

C. H. McCormick, Grain Cutting Machine. Originally patented June 21, 1834. Expired June 21, 1848.

Nathaniel Hayward, Manufacturing Rubber with Sulphur. Assigned to C. Goodyear. Patented Feb. 24, 1839. Expired Feb. 24th, 1853.

James Harley, Casting Chilled Cylinders and Cones. Originally granted March 3, 1835. Expired March 3, 1849.

Joseph Nock, Pad-lock. Originally granted July 16, 1839. Expired July 16, 1853.

Isaac Adams, Printing Press. Originally granted March 2, 1836. Extended by the Commissioner of Patents for seven years from March 2, 1850. Expires March 2, 1857.

J. A. & H. A. Pitts, Thrashing and Winnowing Machine. Original grant dated June 29, 1837. Extended by Commissioner of Patents for seven years from June 29, 1851. Expires June 29, 1858.

It will be observed that several of the above patents have already expired, and are now public property. Their extension at this time would involve the establishment of an unjust and dangerous precedent. When a patent ceases it belongs to the people, and all persons have the right to engage in the manufacture of the article. To take this right away from a private citizen under any pretence whatever, after he has invested in it his capital and labor would be a deliberate robbery. We cannot for a moment suppose that Congress will be induced to assent to such a monstrous proposition; and therefore deem further remark unnecessary.

Mr. C. H. McCormick strikes out on a new path to obtain an extension. His patent, it will be noticed, expired some *eight years* since. Application was made to the Commissioner for extension, previous to that time, but refused. The inventor now comes before Congress and alleges that said rejection was made purely on technical grounds, and prays that authority be given to the Commissioner of Patents to review the case, receive new testimony, and decide afresh, the same as if it had never been adjudicated. This is, certainly, a curious mode of whipping the devil around the stump. Mr. McCormick ought to file a caveat upon it. Modest man! Allow his patent to expire and go into extensive public use for *eight years*, and then ask its extension, or rather for a re-adjudication, which is the same thing!

We are opposed to this whole system of Congressional patent extensions. It is without any foundation either in right or equity It grants monopolies and privileges to the rich which it denies to the poor. It opens wide the door of temptation to fraud and dishonesty. The poor inventor, who, if any one, deserves an extension, has no money or friends to urge his claims. But the rich inventor, grown strong through the money derived from his monopoly, has hosts of backers, and a wide influence. His patent, though he is undeserving, is extended without difficulty. Misrepresentation, falsehood, and money, appear to be the three great staples required for patent extensions. Whoever furnishes the largest supplies of these stands the best chance of success.

If it is right for Congress to extend one patent it is equally just to extend all. Far better