INVALIDITY OF STATE LAWS REGULATING THE SALE OF PATENTS.

In the Circuit Court of the United States, District of Indiana.

Ex-parte Major J. Robinson—Petition for writ of Habeas Corpus.

Be it remembered, that heretofore, to wit, on the 30th day of May, 1870, before the Honorable David Davis, one of the Judges of said Court, the following proceedings in the above entitled cause were had, to wit:

It appears from the papers in this case, that the petitioner, being the duly authorized agent of the owners of certain patents granted to Henry B. Goodyear, administrator, and to John A. Cummings, offered, on the 23d day of May, 1870, to Harrison H. La Fever, a dentist, in the county of Grant, in this State, the right to use the invention patented, for dental purposes, within said county, for the sum of $100, which the said La Fever agreed to pay. Before the sale was completed, the District Attorney of the county instituted proceedings against the petitioner, under the provisions of an act of the legislature of Indiana, entitled "An Act to regulate the sale of patent rights, and to prevent fraud in connection therewith," which took effect on the 23d day of April, 1869.

These proceedings resulted in the petitioner being committed to the jail of the county, because he had failed, before he had offered to sell the patent right, to comply with the terms of the law.

If the law is valid, he was properly held in custody; otherwise, he should have been discharged. This law declares that it shall be unlawful for any person to sell or barter any patent right in any county within the State without first filing with the Clerk of the Court of such county copies of the letters patent duly authenticated, and at the same time swearing to an affidavit before such clerk, that such letters patent are genuine and have not been revoked or annulled, and that he has full authority to sell or barter the right so patented. Which affidavit shall set forth his name, occupation and residence, and, if an agent, the name, occupation and residence of his principal. A copy of this affidavit shall be filed in the office of said Clerk, who shall furnish a copy of the same to the applicant, who shall exhibit the same to any person on demand. Penalties are imposed for any violation of these provisions.

This is an attempt on the part of the Legislature to direct the manner in which patent rights shall be sold in the State, to prohibit their sale altogether, if these directions are not complied with, and to throw burthens on the owners of this species of property, which Congress has not seen fit to impose upon them. I have not time to elaborate the subject, nor even to cite the authorities bearing on the question, and shall therefore content myself with stating the conclusion which I have reached.

It is clear that this kind of legislation is unauthorized. To Congress is given by the Constitution the power "to promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries." This power has been exercised by Congress, who have directed the manner, in which patents shall be obtained, how they shall be assigned and sold.

The property in inventions exists by virtue of the laws of Congress, and no State has a right to interfere with its enjoyment, or annex conditions to the grant. If the patentee complies with the laws of Congress on the subject, he has a right to go into the open market anywhere within the United States and sell his property. If this were not so, it is easy to see that a State could impose terms, which would result in a prohibition or the sale of this species of property within its borders, and in this way nullify the laws of Congress which regulate its transfer, and destroy the power conferred upon Congress by the Constitution. The law in question attempts to punish by fine and imprisonment a patentee for doing with his property what the National Legislature has authorized him to do, and is therefore void.

The petitioner is discharged.

Improvement in Pencils.

Mr. Henry T. Cushman, of North Bennington, Vt, has invented an improvement in lead pencils, which consists in providing them with a coating of flock, by means of which they are less liable to be lost, and more easily handled than those now in use. The pencils are covered with glue or other adhesive liquid, and then coated with flock of any desired color. This gives the pencil a coating which causes it to adhere to cloth, and thereby prevents its sliding or slipping from the pocket. This improvement does not add to the cost of the pencil, as the rough coating may be applied as readily and as cheaply as the ordinary varnish or polish.

Germano Sommellier.

The death of this eminent Italian engineer was briefly announced in our issue of last week, and we are now enabled to give a few particulars of his life and works.

He was born in the province of Faucigny, in Savoy, in the year 1815, and his parents, having given him a sound preliminary education, perceived his genius for mathematics, and sent him, in his fifteenth year, to the Polytechnic School at Turin. He took high honors at this school, and after spending a few years in traveling through France, Germany, and England, he published a pamphlet, urging the government of the then king (Charles Albert) to arrange with the French authorities for the construction of a tunnel under the Alps. The expense of the project prevented its immediate success; but Sommellier struggled undauntedly for twenty years, and was at last rewarded by seeing the work finally resolved upon, and intrusted to him for execution. There is no need to add to the many descriptions of this enormous undertaking which have already been published; but the entire credit of its execution is due to Signor Sommellier. It was his own offspring from beginning to end. His inventions for tunneling and ventilating have been described to our readers; and his last achievement was the devising a means of maintaining air currents through the tunnel, so as to render it a safe passage for travelers under all circumstances.

He was able to complete his work before he was taken away; but the pleasure of seeing a train run through the Alps was denied him. He gave his life to this work, and exhausted it in its execution.

THE people of Chicago have appropriated one thousand and fifty-five acres of land on the south and southwest of the city, at a distance of some six or eight miles from the business center, for the purpose of a public park; and Mr. F. L. Olmsted has been invited to examine the land and to prepare a plan for the work. The site consists of two tracts, a mile or a mile and a half apart. One of these tracts contains nearly six hundred acres, lying upon Lake Michigan, on which it has a frontage of a little more than a mile and a half; and the other, three hundred and seventy-two acres, entirely inland. The situation is by no means picturesque, but it is hoped that a liberal use of the resources of landscape gardening, under the direction of a competent artist, will do much to remedy that defect.

ONE GRAIN OF WHEAT.—Mr. Login, of the Indian Civli Service, recently forwarded to the editor of *Nature* a photograph of the produce of a grain of wheat, grown in India on the Egyptian system. One hundred and sixty shoots sprang from the grain, of which one hundred and five became ears of corn. The broad cast system of planting, in general use in India, shows seven ears of wheat as an average yield from one grain.

VERY cheap varnish is dosed with a material in great favor with Ole Bull and all other violinists, which they use to prevent he bow from slipping.

PATENT OFFICE DECISIONS.

In the matter of the application of Daniel Pratt for the extension of letters patent, bearing date July 14, 1857, for improvement in Cotton Gins.—DUNCAN, Acting Commissioner.

The invention covered by this patent is a simple device by means of which a spiral movement is communicated to the cotton within the hopper of the gin, the result of which is, that fresh masses of the cotton are successively presented to the action of the saws, and all portions are equally ginned; and, it is alleged, with less injury to the fiber than in the old machine.

The patentee entered upon the manufacture of the improved gin even before the grant of the patent, investing a large capital in the business. Notwithstanding the interruption of his business occasioned by the late civil war, he has built and put upon the market about seven thousand gins. This fact alone demonstrates the value of the invention to the public, and the numerous affidavits placed upon file in relation to its importance, are simply cumulative evidence. Patentee's business was in Alabama, and, as was to be expected, he has suffered severely by reason of its utter prostration caused by the war, losing thereby, not only the profits that would otherwise have accrued upon the manufacture and sale of machines, but also the interest upon the large amount of idle capital invested in his factory and stock, and the interest during the war upon some $400,000 of outstanding credits. These credits he sold in 1866, at an enormous discount, receiving therefor only $50,000.

Applicant describes himself a peaceful, quiet citizen, who remained at home during the hostilities, taking no part in the war; but whether this be so or not, the interruption of his business consequent upon the war was a matter entirely beyond his control. He cannot be charged with any lack of diligence. On the contrary, he has exhibited unusual energy and capacity in the introduction of his invention. Special favor should be shown to the inventor who, having devised a useful improvement, devotes his time and energy and capital to its manufacture and sale. This often has a far more important bearing upon the industrial prosperity of the community at large than does the mere making of the invention.

The examiner reports the improvement to have been new at the time the patent was granted; and, as the balance sheet shows the patentee to be largely in arrears by reason of the invention, in the introduction of which he has shown such a large measure of diligence, it is deemed both just and proper that the extension asked for be granted.

In the matter of the application of Abel Combs for letters patent for alleged improvements in watches.

This appeal is taken from the decision of the primary examiner, who holds that the application embraces several distinct and separate improvements in watches, which for that reason can be considered only when embodied in as many separate applications.

From the specification it appears that the various improvements described may be arranged under the following heads:

1. A safety attachment in connection with the main spring and barrel, to prevent damage to the train from the breaking of the main spring or the failure of the ratchet.
2. The central arrangement of the second hand.
3. The change in the escapement devices, by which, it is alleged, the number of escapements in a given time is reduced to one half the former number.
4. The construction and eccentric location upon the dial of a calendar and the connected mechanism to mark the day of the month.
5. The mounting of the second hand staff and the calendar hand staff upon springs, for producing the requisite friction between the staff wheels and the surfaces over which they move.

This is substantially the classification made by the examiner; and after a careful consideration of the argument presented by the applicant's attorney as well as in applicant's own letter, I fail to see that there is any such connection between the improvements specified, as to make any particular one of them necessary to the presence and successful operation of any or all of the others.

The safety attachment would be equally serviceable in a watch provided with the old escapement; and neither the safety attachment nor the improved escapement has anything to do with the calendar mechanism; and a similar remark is applicable to the second hand mechanism, and to the friction springs.

It may perhaps be admitted, as urged by applicant, that the new arrangement of the second hand has necessitated an eccentric system for setting the hands, and likewise a modification in the construction of the canon pinion; and rightly enough, therefore, these devices may be regarded as properly embraced in the same application. But as regards the devices previously named, there seems to be no other necessary connection between them than that they are embraced in the same article of manufacture.

Is this sufficient reason for permitting them to be patented in a single application?

In Bennet *vs.* Fowler, 8 Wall, 445, the Supreme Court recognizes the difficulty of defining by general rules the conditions under which two or more inventions or improvements may be joined in one application; the language used in the decision is as follows: It is difficult, perhaps impossible, to lay down any general rule by which to determine when a given invention or improvements shall be embraced in one, two or more patents. Some discretion must necessarily be left on this subject to the head of the Patent Office. It is often a nice and perplexing question.

In Linus Yale, Jr. *ex parte* Commissioner's decisions, 1869, 110, the Commissioner of Patents, while admitting by implication that under some circumstances two or more inventions may be covered by one application, still demands that this shall not be done whenever it would disturb that established classification of inventions which has been found necessary to facilitate the work of examination and ensure its correctness.

The reasons assigned for applying this rule to cases that would otherwise call for double examination by different examiners seem equally strong in relation to the established sub-classes under the same examiner.

This subdivision of the subjects of invention is not made arbitrarily by the office.

It follows the course marked out by inventors themselves. A man who, being the first to invent a watch, should ask a single patent upon the several distinctive elements of its mechanism, should undoubtedly be entitled thereto; but when, in the progress of the art, the efforts of inventors have been directed to the separate parts of the watch, and at their request patents have been issued upon such separate parts, a corresponding classification of subjects necessarily arises in the office, and must be observed in considering any subsequent applications relating to the general class; otherwise, the work of examination would be rendered far more difficult, and at best would become uncertain and misleading. It is not alone the convenience of the office that is consulted in the classification which is adopted. Inventors themselves are deeply interested in having a prompt and thorough examination upon their applications, which can only be secured through this very means. As the several improvements in the present case fall into sub-divisions already established by the course of invention, and by the previous practice of the offices, and as these several improvements have no necessary community of operation, it is held that they form the subject matter for separate applications; and therefore that the present application cannot properly be proceeded with until the applicant shall have made such amendment as to confine it to that one of the improvements which he may elect to prosecute therein. Upon this point the examiner's views are affirmed.

SAMUEL A. DUNCAN, Acting Commissioner.

U. S. Patent Office, August 2, 1871.