

For the Scientific American.

The Telegraph.

GENTLEMEN.—In your editorial columns under the date of the 16th inst., you have the following remarks in relation to the action of the Patent Office with reference to the application of Alexander Bain for a patent for an improvement in the Telegraph, viz :

"Our readers will perceive among our weekly list of patents, one granted to Mr. Bain for his Electro-Chemical Telegraph. It is an American patent for one granted in England in 1843. Mr. Bain applied for a patent on his improved Telegraph, patented in 1846, which was contested by Professor Morse and decided against the former by the Commissioner. It was our opinion all along that Mr. Bain should have received a patent for his improved apparatus, as he had undoubtedly a right to it, and paying \$500 for it he wished to secure the one that extended to 1860. Instead, however, of being able to do this, he had to deposit a second \$500 and accept a patent (to protect his rights) which will expire in 1857."

(1.) As you have given it as your opinion that Mr. Bain "had undoubtedly the best right" to the improvements in the Telegraph claimed both by him and Professor Morse, and thus impugn the decision of the Commissioner of Patents in that matter, do you not owe it as well to that office as to the public, to state the facts on which you base your opinion? In view of the fact that the public papers are now teeming with misrepresentations, I do not say intentional,—in relation to the controversies going on between the several competitors in telegraphic invention, and particularly with regard to the action of the Patent Office, you, professing to be the organ of inventors, and the advocate of the just claims of all of them, and by interest at least, bound to sustain the Patent Office when its action is right. Under such circumstances I say, you ought to state the grounds of your opinions when you thus summarily reverse the decision of the Commissioner of Patents and decide against the rights of the American Inventor, by whose efforts telegraphing was first introduced into this country, and in favor of the claims of a foreigner who has done nothing to entitle him to anything more than simple justice—certainly not to our particular gratitude and regard.

(2.) As I know something of the matter, with your permission, I will for the benefit of your readers, state the circumstances under which, I understood, the Commissioner of Patents decided against the claims of Mr. Bain, based upon his English patent of 1843, and in favor of Mr. Morse. The facts are these: In January, 1847, Professor Morse filed in the Patent Office a caveat setting forth the precise invention claimed by Mr. Bain and patented in England in 1846-7—the English patent being sealed in December 1846, and the specification enrolled in June 1847. In January 1848, Professor Morse filed an application for a patent for the same invention, which he had deposited in the secret archives, as he had a right to do. Early in the summer of 1848, Mr. Bain applied to the Patent Office for a patent for his alleged invention. Of course, these applications came in conflict, and an interference was declared by the Commissioner between the two conflicting claims.

(3.) Thus you see the Commissioner decided that Bain's improvement was patentable and of course, Morse's was, it being for the same thing. And the only remaining question for the Commissioner to decide was, which of the claimants of the invention was the first inventor? The proof on the part of Mr. Morse carried his invention back to the time of the burning of Niblo's Saloon, in November 1846. His caveat filed in January 1847, was irrefragable proof of the invention by him at that time. When Mr. Bain was apprised of the interference, he intended to rely upon his patent of 1846-7, and other proof prior to its date. But the question whether or not he could go behind the date of his English patent for proof of priority was raised, and with the consent of both parties, submitted by the Commissioner to the Attorney General of the United States, who, in a clear and luminous opinion, decided that he could not. Another question also arose which was, whether

the date of the enrollment of the specification, which was the completion of the patent in England, was not the true date of the patent? That question was decided by the Commissioner, under the previous decision of the Attorney General, in the affirmative, it being clear to his mind that the word "patented" in our law means the completion of the patent. But the Commissioner relied upon the well known general principle of law which makes the true date of a legal instrument, the day on which it is delivered, not the actual day in the instrument. That decision limited the date of Mr. Bain's proof, in the event of his relying upon the patent of 1846-7 to June 1847, five months subsequent to Morse's caveat, and seven months subsequent to his parol proof.

(4.) But when Mr. Bain returned to this country, to contest Morse's claim, he informed the Commissioner that he should rely for proof of the priority of his invention, upon his patent of 1843. That patent, was therefore, carefully examined, and it was found not to cover the invention claimed by him under the patent of 1846. It was for a very different thing, viz: copying surfaces by means of the electric current and chemically prepared paper. It was the dispensing with the local current and the cumbrous machinery, which constituted the invention. As Mr. Bain's patent of 1843 did not set forth, nor claim the invention, priority had of course to be decided in favor of Morse, or the law and the testimony must both have been disregarded by the Commissioner.

(5.) To what other conclusion could the Commissioner arrive upon the state of facts before him? If you have any other reasons why the decision should have been in favor of Mr. Bain, your readers, myself among the number, would be obliged to you if you would give them to the public. But, at the same time, will you not enlighten your readers on this point? Why did Mr. Bain get a patent in England in 1846-7, for an invention which he claims in this country to have fully secured in his patent granted in England in 1843? And why, in 1846-7, did he make an oath or declaration in England, as the law there requires, that his invention was new, and never before known, if he had actually invented and got it patented in 1843? Your readers would be glad to have you explain these inconsistencies in Mr. Bain's conduct.

(6.) It is true that a patent has been granted to him for one of the several inventions set forth in his patent of 1843. It is a different thing from his invention patented in 1846-7 which he now claims to be the same, and it is an invention which Morse does not claim, nor approve. It is for copying surfaces as before stated, by the electric current, chemically prepared paper, slow and cumbrous machinery, and even the use of the magnet, and, it is believed, will never be available in practice for telegraphic purposes.

(7.) In conclusion, permit me to say, that I am confident, after you shall have acquainted yourselves with the facts of the case, you will notwithstanding the summary opinion which you have expressed in behalf of Mr. Bain, become satisfied that justice has been done to Mr. Bain, and that the action of the Commissioner of Patents upon his application has been correct.

FAIR PLAY.

P. S. As you profess to be acquainted with science and the progress of the arts, it is not necessary to remark for your benefit, although it may be for the information of some of your readers, that, long before the date of Mr. Bain's patent of 1843, letters or signs had been made on chemically prepared paper by means of the electric current. Therefore, not their use, but the new methods by which they are used, are now patentable.

We will answer the postscript first. Any of our readers who have paid attention to the articles published in our columns recently on the Telegraph, will find it plainly stated that Mr. Bain does not claim to be the first who made telegraph marks on chemically prepared paper.

(1.) We will give our views at the end of the chapter why we consider Mr. Bain entitled to the patent now in controversy. As for

the misrepresentations with which the papers have been teeming, the friends of Prof. Morse and Mr. Bain have gained for themselves much acrimonial distinction—we are not able to decide which of the parties are entitled to the jack knife. When we consider the action of the Patent Office right—no political chicanery would induce us to say it was wrong, our whole course of conduct is a living evidence of this fact; but if from information in our possession, our faith leads us to think different from the decision of the Patent Office, then we as freely and frankly express our opinions. The just claims of the inventor are the objects of our advocacy and defence, be that inventor a Professor Morse, or a stranger Mechanic without friends or fortune like Mr. Bain. In a question of justice we never ask what a man has done heretofore, not where he comes from, but "has he justice on his side?" In this light, we have made up our minds respecting the claims of the inventors spoken of. It is very evident however, that "Fair Play" in viewing the claims of each, has not instituted an *examen*, but weighed them with a false balance. He took all the previous inventions of Prof. Morse and threw them into the one scale, and then leaped in himself with his prejudice against the foreigner and down came Mr. Morse's scale tossing Mr. Bain to *gingle di cootch*, if he could be thrown so far.

Before the Commissioner makes a decision he no doubt asks the council of his Examiners—they are his ministry. It cannot be expected that he can minutely examine into every specification. This is the duty of the examiners—they are there for that purpose. In a letter which Mr. Page addressed to the Tribune of this city, he used the very epithetical terms which Fair Play does in reference to Mr. Bain. We were sorry to see such prejudice exhibited, but as he is an old friend of Prof. Morse, much may be allowed for a friendly feeling towards that gentleman. But every man of a polite education should use the term *foreigner* with great discrimination. It may mean a *Feejee Islander*, or it may mean a polished son of France. Fair Play uses it epithetically and so did Mr. Page. Mr. Bain is a Scotchman, a practical mechanic—a Clock-maker by occupation and therefore a cousin in craft to our Yankee friends. As far as it relates to the land of his birth, we presume that he had no choice of that when he was born. If we used an epithetical term towards him respecting his country, we would be afraid that the gifted Prof. Henry, would accuse us for throwing stones at his father's grave. All the world is bound by some tie of gratitude to Mr. Bain. Why he is the inventor of the Electric Clock, the Railway Signal Telegraph and the Printing Telegraph, and these are public property to our citizens. His Electric clock and his Signal Telegraph, will yet be used by all our railways, and will be found to be nearly of as great benefit to our country yet, as the marking telegraph. As it respects his Printing Telegraph, he made a present of that to the world. Fair Play may say, that it is a poor invention." Prof. Morse called it "the most ingenious printing telegraph yet published" this was in January 1847, intended we suppose as a special compliment to his countryman, the ingenious Royal E. House.

(2.) As Fair Play states that "Mr. Morse filed a caveat in 1847, setting forth the precise invention claimed by Mr. Bain," will he be so good as to inform us why Mr. Morse was so mysteriously silent about it in his letter to the Philadelphia Ledger of January 8, 1847. In that letter he states that he was then "taking measures to secure by patent some recent modifications simplifying his telegraphic alphabet." Not a word about a chemical telegraph in it from beginning to end. We presume that his chemical telegraph caveat stated that he had not then completed his invention.

(3.) We have carefully read the opinion of the Attorney General, and we consider it no legal decision for the Commissioner to make the new Rule to suit the new case. It has been the rule of the Patent Office heretofore to date the American with the English patent, why was it altered in this case? In legal confusions, where the law is not plain, custom rules, but if the custom is wrong, it is the

practice to remedy it by a law before another conflicting case is acted upon. It would have looked better in the eyes of the people had this course been pursued in this case by the Patent Office. If the word "patented" in our law, means the enrolment of the English patent—does not the application for a patent, not the caveat, mean the completion of the patent also. Mr. Bain's patent was enrolled June 12, 1847, Mr. Morse's January 1848. On the 19th June 1847, Mr. Bain's specification with drawings was published to the world and was sent from London to the Scientific American one month after—and about 7 months before Mr. Morse made application for a patent. Where then lies the direct and presumptive evidence of priority of invention?

(4.) The reason why Mr. Bain when he returned to this country changed the mode of contesting Prof. Morse's claim, is explained in our paragraph quoted by Fair Play. The decision of the commissioner forced him to do this. We ask Fair Play if he has not over-shot the mark in stating that Mr. Bain's Patent of 1843 and his patent of 1846 does not both embrace the copying of surfaces. Mr. Bain's specification of 1847 states that it is for improvements on his invention of 1843, it also mentions the local current to move the paper by a magnet. The dispensing with a magnet and local current then, is the grand point of conflict between Prof. Morse and Mr. Bain. Well be it so as Fair Play knows.

(5.) As for Mr. Bain's declaration, of "new and never before known," he and Fair Play have different views upon the point of confliction.

(6.) Mr. Bain claims as the basis of confliction—the using of a single circuit to copy surfaces on chemically prepared paper. Fair Play says that the basis of confliction is the dispensing with the local current to move the paper by a magnet. Let the two explain the difference, we come to stronger ground for the opinions we have previously advanced.

(7.) We have acquainted ourselves with one fact relating to this case, which Fair Play is apparently ignorant of, viz. that if a Patent were granted to Professor Morse tomorrow, it would become void within 24 hours afterwards in the eye of the law. Now we like to see patents granted that will stand the test of legal scrutiny—this gives dignity to the Patent Office. Fair Play states that Prof. Morse had evidence of inventing his Electric Telegraph which reached back as far as October 1846. But we have evidence of an Electro Chemical Telegraph invented in February 1846, which used no local circuit nor magnet. This chemical telegraph was tested and made with a single circuit marks on small strips of cloth prepared with the prussiate of potash, through an iron fence 1000 feet long. A description of this telegraph was read before the Royal Scottish Society of Arts in Feb. 1846, and published in May of the same year with a drawing. This was eight months before Prof. Morse filed his caveat, and yet Mr. Bain was granted a patent in England after this—the Patent Office there not considering it a confliction with his claims while our Patent Office considers Mr. Bain's claims to conflict with those of Prof. Morse. If Mr. Bain does not receive a patent, the end of this controversy will be, that an electro chemical telegraph, simple and effectual will soon become the public property of the whole people of the United States. The description and drawing is now in our possession published 8 months before Prof. Morse filed his caveat, and sent to the Editor of the Scientific American as a present with some scientific works from a respectable foreign mechanic. We could say a great deal more on this subject to clear it up but our space forbids us to do so at present. What we know of Mr. Bain is derived from public documents; with the exception of seeing him five times for a few minutes each time, while he was describing some of his inventions. He is a mechanic possessing a head, the inventive powers of which cannot be limited, and he has hands that can execute what his head can conceive in Machinery. Even in the midst of all this controversy, he has invented a most beautiful improvement on his machine which is to be used on various lines. He is a man we believe that it would be for

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