

### On Patent Laws.—Selling before the issue of a Patent.

We have received another communication on this subject from a gentleman in Rochester, N. Y. It is somewhat long, but it covers the field in respect to a legal examination of the subject. We will commence the publication of it next week. On no other legal point respecting inventions have there been so many inquiries made of us, as on the right to sell and use previous to a patent being secured. It is perfectly plain to us, that the law allows an inventor to sell and use his invention (if not given away to the public two years before a patent is secured,) without invalidating the patent, nevertheless some of our legal gentlemen, judges among the number, have a different opinion, but which hinges upon "what constitutes giving an invention to the public." We therefore desire as much light as possible thrown upon this subject in order to excite attention and get Congress to make a plain law on this point, that will meet the case, so that judges of the Supreme Courts may not be sustained in decisions that savor of the unjust and unfair English Patent Laws.

We have also a number of communications on hand from legal gentlemen and inventors, in reference to reforms in our Patent Laws, which will appear in due season.

**Messrs. Editors:**—The very great importance to inventors of the topic above indicated, induces me to address to you the following remarks.

1. *Importance of the principle.*—Most inventors are under the absolute necessity of selling before application for a patent, in order to raise the necessary funds for the Patent Office. The expenses which must precede every application, in many instances leave the intending applicant no other way but the sale of the articles to enable him to proceed and mature his right by a patent. When to this we add the delay in the Office through an insufficient clerical force, an inventor would suffer atrocious wrong, if what is understood to be Judge Nelson's decision, were sustained.

2. *The action of Congress in Patent legislation* is enough to stir up the indignation of every honest man. They long refused to provide an adequate force to an institution which not only sustains itself but furnishes a large income to the government. Nothing but the plea of ignorance exempts them from the charge of actual fraud, for surely the citizens who have paid their money have a rightful claim that it be applied for their benefit.

In addition to these acts of omission, they seem to have acted with peevish weakness of indulgence towards a favored few.

3. *Remedy for this evil.*—In your number for July 15th last, you say that the people have the power to remedy legislative mischief, and are alone culpable if they send representatives who attend to party objects and not to their duty. This is true, but it is expedient to point out to them some practicable method by which they can bring their power into action. Let those in every Congressional District who are interested in patents, devote a portion of their time to *inform* their representatives of their rightful claims.

The injured inventors should *make a noise* and *tell* their grievances. You justly state that there is great moral force yet in our country, and if the truth were *made known*, the people would sympathize with the inventors and compel their public agent to do his duty. Let the agent first be made acquainted with the true state of things, and let every inventor refuse to vote for him, if he disregards his duty. Another method of procuring relief, would be to make your paper the organ of well considered amendments of the Patent Laws, previous to the next session of Congress.

I presume that every inventor takes your paper. If he can afford it and does not, he has but little reason to complain of injustice for he neglects the only public organ which represents and vindicates his rights. You are strangers to me, Messrs. Editors, but were I your personal enemy I would take your journal for my own advantage.

4. *Judge Nelson's decision.*—The only record I can find of this case is in the Journal

of the Franklin Institute for 1845—3d series, page 30. The names of the parties were James Wilson vs. Austin Packard. It does not appear whether the case was carried up by appeal or not. It was decided in the Circuit Court of the U. S. for the District of New York. Cannot you, or some of your readers who reside in that district inform the public whether the case was appealed or not, and whether it has been sustained or over-ruled. It would be easy to ask the counsel of either party what was the final issue of the case, and whether the point decided be accurately stated in the following report; and finally whether there be any other and more reliable report of the case. It is by no means improbable that the ensuing statement may erroneously represent the language of the Judges. If so, it is of public importance that the error be rectified and that a correct abstract of the decision be published.

The account first states that the inventor sold a stove (the article patented) two months *prior to his application* for a patent, and that the Judges ruled that "if the inventor or his agent sells the invented article *in the usual way*, he abandons it to the public."—The meaning of this would seem to be that a sale in the *usual way* is a sale *without the declared right of personal reserve*, (as you have expressed it) and that *such* sale is an abandonment. I do not know that any one would have much reason to complain of the decision as thus qualified. But the account proceeds to say that the Court held that "the idea that the person can sell the thing invented without an abandonment to the public is an absurdity." If the Court indeed held this language in an unlimited sense, every candid person must feel indignant at their assumption of legislative power. It was the very intention of Congress to give this power without abandonment.

I have now before me two letters of Judge Ruggles, then of U. S. Senate, and author of the existing Patent Law stating that such was their intention. The first is dated January 29th, *before* the passage of the Act. It says, "It cannot be doubted that the inventor may, *after* application, sell as many of the articles manufactured as he pleases. If the Bill passes, he may sell *before* application, claiming his right of invention, as not abandoning to the public." The second letter is April 28th, 1840, *after* the passage of the Act which is now the existing law. I make the following extract.

"It was intended by me when I drew the Bill to relieve the inventor from the effect of a *public use by any one* prior to the application for a patent by the inventor, limited, however, to two years."—The above letters were addressed to me, and at any time are subject to your order. Every person knows that a similar construction was put upon the act by the Patent Office, and, by every plain reader prior to this astounding decision. I cannot however, believe that a respectable court would so far *legislate* upon a Senate as to veto it upon the ground of its absurdity! The account proceeds to state finally that Judge Nelson charged the Jury that "the patent was equally avoided by the sale of the stove *after he had completed his application, but prior to the issuing of the patent.*"

It is obvious that *if* the Judge used this language, it was a mere extra-judicial dictum not required by the state of facts, for the sale by Plaintiff was *before* application.

I should not have dwelt so long upon so loose a statement of a judicial decision, had not such great excitement, and so much unhappy feeling resulted from it, and were it not of *great importance* that a true report should be had of the actual decision. Permit me therefore, once more to request of some competent person in your district to enlighten the public in regard to the *precise point* decided, and whether there was an appeal. For one, I am free to say that I do not believe that *such* a decision as stated was ever made.

But if it were, and it should be sustained as good law, which is another point which I totally disbelieve, then patentees would be much worse off than they were under the old law.

I have now before me a letter from the former Commissioner, dated Oct. 14, 1837, expressly asserting the power to make a sale af-

ter application and before issue of the patent.

Excuse the length of this communication, which seems demanded by the general dissatisfaction of the community at a reported decision which perhaps, and probably, was never actually made, as stated.

5. Would it not be gratifying to your readers, to inform them what Congress *actually did* in regard to the Patent Law during their recent session. I recollect that it was alleged in one of your papers, that they were about to legislate in favor of Professor Morse in such a manner as to restrict the privileges of the whole body of inventors, was this thing done? Surely the people interested must be stupid, if with all the forewarning they have received they slumber over their rights, and permit their public agents to be swayed to and fro by certain lobby characters who would disturb the order of the planetary system rather than that some favourite invention of their own should not be protected by special legislation.

Maine.

J. M. O'B.

[On Monday last, the 25th, before Judges Betts and Nelson in this city, the case of the patent stove by James Wilson vs. Austin Packard, on the great question whether the patentee could himself sell, for two years before applying for a patent, and still retain his right to the patent, was brought up. On it the Judges were opposed in opinion, and so certify it, that the case may go to the Supreme Court of the United States. This then settles this question for the present. The decision of the Supreme Court will be in favor of the inventor undoubtedly.—Ed.]

### A Great Mechanic Gone.

On the 12th of last month died Mr. George Stephenson, the author of the railway system, the first great practical improver of the locomotive steam engine, the inventor (contemporaneously with Davy) of the safety-lamp, and a man who displayed a vigorous and original genius in every thing which he undertook. He was born on the 9th of June, 1781, [was consequently, at the time of his death, in his 68th year] at a little village near Newcastle-on-Tyne, of parents in the humblest rank of life. His first occupation as a boy was attending to the steam engines used at the mouth of coal-pits. Eventually, he became a coal-viewer, or surveyor and overseer; and distinguished himself in the coal district by an improved mode of carrying on some great works at Darlington. In 1812, a committee which had investigated the priority of the claims of the discoverers of the safety-lamp gave him a public dinner at Newcastle, at which he was presented with a silver tankard and a purse of a thousand guineas. In returning thanks he announced his intention of devoting that sum to the education of his only son, Robert, at the University of Edinburgh. The history of his employment to construct the Stockton and Darlington, the first public railroad, and the Liverpool and Manchester, the first on which locomotive engines were introduced for the conveyance of passengers,—is well known. From the first journey of the locomotive built by the Stephensons over the railroad constructed by them, dates the actual commencement of the greatest mechanical revolution effected since the invention of the steam-engine by Watt. Though self-educated,—scarcely educated at all beyond reading and writing until he had attained manhood, Mr. Stephenson took every opportunity of impressing upon the young the advantages of science and literature. He related at a public dinner at the opening of the Birkenhead Docks how, in his early career, after the labours of the day, he used to work in the evening at mending watches and clocks in order to earn enough to send his child to school. He was the founder and first president of the Society of Mechanical Engineers; and was never better pleased than when assisting by his advice and encouragement the ideas of ingenious artisans. In agriculture and horticulture he made many curious and successful experiments,—and the study of geology was a passion with him. It is feared that the intermittent fever of which he died was occasioned by the damp miasma arising from the fertilizers which he employed with great success in his hot houses. In a brief and hurried notice it is impossible to do justice to *so remarkable a man*. In the

words of a cotemporary writer. "His mechanical genius was of that order that it may without exaggeration be asserted that if Watt had not previously invented the steam-engine he was capable of achieving it. Others before him had prepared the way; others since have contributed valuable improvements in detail; but to George Stephenson unquestionably belongs the proud title of the Author of the Railway System. He gathered the many threads of ingenuity and enterprise and weaved them into the wide-spreading net-work which promises, in its manifold extension, to envelope the whole world in bonds of commerce, civilization, and peace."

### The Wild Man.

Dick Martin, Esq. being at Greenwich Fair, was led, by a very superfluous curiosity to enter a booth whose proprietor professed to exhibit "a wild man." There, assuredly he saw a very wild looking individual, with his head and face covered with a profusion of red, shaggy hair—a regular glib, nearly naked, and with a chain about his waist.—But Mr. Martin, upon observing that the savage seemed to display towards him some uncouth and uneasy signs of recognition, was induced to examine him more closely; and the result was, he recognised in the "wild man" one of his own tenants, and shouted out, with all the indignation becoming a legislator in favor of animals, "Why, then, Flaherty, you blackguard of the world, what is it you're about there, at all, making a beast of yourself entirely, entirely?" "Earning the rent for your honour," was Mr. Flaherty's propitiatory, and, to an Irish landlord, unanswerable, reply.

### Action.

So far from complete inaction being perfect enjoyment, few sufferings are greater than that which the total absence of occupations generally induces. Count Calies, the celebrated French antiquarian, spent much time in engraving the plates which illustrated his valuable work. When his friends asked him why he worked so hard at such an almost mechanical operation, he said—"Je grave ne pas me pendre." I engrave lest I should hang myself. When Napoleon was slowly withering away from disease and ennui together, on the rock of St. Helena, it was told him that one of his old friends, an ex-colonel in the Italian army, was dead. What disease killed him?" asked Napoleon. "That of having nothing to do," it was answered.—"Enough," sighed Napoleon, "even had he been an emperor."

### Origin of the Electric Telegraph.

Upwards of sixty years ago (or in 1787-89.) when Arthur Young was travelling in France, he met with a Monsieur Lomond, "a very ingenious and inventing mechanic," who had made a remarkable discovery in electricity.—"You write two or three words on a piece of paper," says Young; "he takes it with him into a room, and turns a machine enclosed in a cylindrical case at the top of which is an electrometer, a small fine pith ball. A wire connects with a similar cylinder and electrometer, in a distant apartment and his wife, by remarking the corresponding motions of the ball writes down the words they indicate, from which it appears he has formed an alphabet of motions. As the length of the wire makes no difference in the effect, a correspondence might be carried on at any distance. Whatever the use may be, the invention is beautiful."

### Cause of Dark Color of the Skin.

Darkness of complexion has been attributed to the sun's power, from the age of Solomon to this day,—"Look not upon me, because I am black, because the sun hath looked upon me."—and no doubt, that, to a certain degree, the opinion is well founded. The invisible rays in the solar beams, which change vegetable color, and have been employed with such remarkable effects in the Daguerreotype, act upon every substance upon which they fall, producing mysterious and wonderful changes in their molecular state, man not excepted.

"Strike the iron while it is hot," is a striking hot truism.