

PRIZE ESSAY.

Essay on the Patent Laws.

WITH SUGGESTIONS OF ALTERATIONS AND ADDITIONS FOR THEIR IMPROVEMENT.

By Edmund Maher, Civil and Mechanical Engineer, Washington, D. C.

No branch of Jurisprudence, has stronger claims upon the attention of the Legislative Department of any country; none is better founded in justice, and sound public policy, and none more intimately connected with the advancing prosperity and welfare of society than that branch known as Patent Laws. It is designed to be, and in its practical operation has been, a power universally diffused, and putting in operation a vast amount of intellectual machinery, for the discovery and production of new and useful things to enrich and beautify the land—and it seems to be equally true, and much to be regretted, that a policy so important is not generally understood, and is not, therefore, duly appreciated. Men find no difficulty in perceiving the propriety and necessity of laws for the protection of tangible property—with this they are generally familiar, and their importance is a part of the practical experience of all. But from a want of equal familiarity with the nature of property in inventions, and its true relation to, and bearing upon, public and private prosperity, they find more difficulty in comprehending, and less inclination to acknowledge the true magnitude of the policy involved, in the laws for the security of property, consisting of combinations of thoughts.

That laws protecting and encouraging inventions are founded in pure justice, and calculated to arouse the productive energies of genius, more for the benefit of society generally, than for the benefit of the inventor, is obvious to any one who will notice the true relation which the inventor holds to the government, and the extent to which society has already availed itself of the products of his skill.

Patent Laws are the legitimate offspring of civilization and intelligence. They belong to an age of light and knowledge. Ignorance can neither comprehend the extent of their utility, appreciate their importance, nor be expected to sanction their existence.

They are designed to prescribe, and establish, the relation of the inventor to the public, in fixing and determining their respective legal rights to the invention. They establish a relation in the nature of a mutual understanding, between the inventor and his government—the one being in consideration of the other.

To properly appreciate the strength of the inventor's claims to adequate protection of law, the true nature of this understanding should be noticed. The inventor on his part actually has something in his possession which the public is destitute of. He has practically created it, and has it in his own possession, and under his own control, and he is not bound by his allegiance to the sovereignty, on any principle of patriotism, to surrender it; and he may of right disclose it, or not, as he pleases. He has of his own will and labor formed the combination of thoughts constituting the invention, and which are only to be embodied by mechanism, or mechanical action, to render it of great value. If he retain it, it will die with him, and the world will still remain without the advantages of it. But if he divulge it, the public will be enriched, the country honored, and mankind at large receive the benefit. At this point the public through the instrumentality of the Patent laws, propose an arrangement to secure the disclosure, and consequent benefit of his own invention. And what arrangement do they propose, and what does it offer as a consideration for this new and useful thing? Does it offer anything special—anything extraordinary?—No, far from it. He is offered barely protection in the right to use his own article, as his own property, for the term of fourteen years, and on condition that he will then surrender it to the public for the benefit of the world.—It is obvious, therefore, that the relative rights of the inventor and the public, established by

the operation of the Patent Laws, is such as to make it greatly for the benefit of the latter.

The inventor is the party who adds something more to what previously existed; who has something of value to dispose of, which society has not. He imparts, and the public receives. He comes forth in his application for a patent, laden with the rich fruits of his genius, the accumulation, perhaps, of many years of toil and deprivation, and makes a donation of it to the public, reserving to himself only, the right to it for fourteen years—and how small is this reservation, in comparison with what he confers upon society? He is to have barely the right of taxing the invention with a profit for this limited time, while society is to have the benefit, for all time to come. How would the country resound with eulogistic applause, if like liberality were displayed by a citizen, in making to the public a like donation of lands, and money, accumulated by his own industry?

In view then of this relation between the inventor and the public, so beneficial to the latter, can any one doubt the justice and propriety of affording adequate protection to him, for the limited time specified; and should it not be the pride, and to the honor of every intelligent citizen, and every legislator, to tax his attention, and contribute his influence, in securing such protection. The more effectual this protection can be made, the greater will be the encouragement to the exercise of skill, and consequently the greater will be the public advantages derived from this source of wealth and improvement. And who can measure the magnitude of such advantages? Who can carry his thoughts far enough back, to find the period in which were performed their daily routine, without the productions of inventive genius? Who can so far divest himself of the refinement, and habits, engendered by the developments of genius, as to imagine himself in that state of helpless barbarism, from which his race has been raised, chiefly by the resistless power of the inventor's skill.

In the organization of the several Departments of our government, and the framing of laws for the proper carrying out of the trusts reposed in their several officers, the Legislative branch of our country, has been sadly at fault, in overlooking to a comparative great extent, until within a few years past, the rights of inventors, and their relation to the government, and not providing a suitable code of Laws, which shall at once protect them in the results of their genius and toil, brought about in many cases at the expense of long and anxious study, bodily health, and costly experiment, and have the effect to encourage, and stimulate invention, in the mechanic arts, and develop improvements in the various degrees and occupations of life, to keep pace with the co-extensive elements of civilization. These effects can only be produced by a manifestation on the part of Congress, through their laws, of a sympathy with inventors, and a desire to encourage their exertions, and otherwise assist them to the extent of their power, in the development of improvements, in arts, manufactures and science, and these objects can be attained, only by the passage of laws, affording a full governmental protection by Patent to the conceptions of Inventors, in the forms of new and useful mechanical constructions, combinations or arrangements, or other patentable differences, either of a mechanical, or chemical nature,—defining in terms, clear to the understanding of all, what shall constitute a patentable subject; and otherwise facilitate the progress of the useful arts, by discriminations in the selection of officers, to interpret and carry out the Laws, in accordance with their design.

The neglect of Congress to provide suitable laws for this purpose, has not arisen wholly from a non-appreciation on their part, of the important services rendered by Inventors, toward the mass of mankind, economy in the domestic affairs of the nation, and the other beneficial effects produced by the results of their thoughts, but is mainly attributable to ignorance of the many evils, to which the poor inventor, who may have wasted years of his life, in perfecting a valuable invention, is subjected. In the absence of information on the subject, from the proper source,—the inven-

tors themselves—they seek for it from the Commissioner, and subordinate officers, of the Patent Office, who, being naturally desirous of possessing as much controlling influence, as they can, are apt to recommend the enactment of laws, augmenting their powers, and making the duties of their offices as congenial to their tastes and desires, as their comforts may suggest.

The mere fact of the passage of a law, by a Legislative body, for the avowed protection of an inventor's interest in an invention or discovery, is an acknowledgment on their part, that it, and all the benefits accruing therefrom, is his property, by as strong a right, as any other description of property is held, notwithstanding that law may fail, in fully accomplishing the object for which it was designed, and it is the duty of that body, in case of such failure, to pass a law, giving the projector of the invention, the same right of possession, and power of disposal, as is enjoyed by the owners of other acknowledged property, as well as to pass other laws, through which he can obtain legal authority to hold, and possess, this result of his thought as property, subject to the same restrictions and restraints, as other property, with as slight trouble and expense to himself, as the nature of the proceeding will admit of.

In view of this right, and with a laudable desire to render all necessary protection to inventors, in the offspring of their genius, Congress enacted a code of Patent Laws in 1836, repealing all other laws on the subject, in existence previous to that date, and subsequently, at different periods, viz. 1837, '39, '42 and '48, passed additional Bills, for the further protection and encouragement of Inventions in the useful arts, and in a manner amendatory of the laws passed at previous dates. It is to these laws, forming when combined, the compact or code, for the guidance of the Inventor, and the conferment of an exclusive privilege to him, in the invention or discovery, having an origination from himself, that I shall at once, without further preliminaries, turn my attention, and shall in my examination, take the several sections containing objectionable features and deficiencies, in the order in which they are arranged, except where two sections, in a manner relevant to each other, are situated out of the regular order of numerical progression.

The 6th section of the law of 1836, provides—"That any person or persons having discovered or invented any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement on any art, machine, manufacture, or composition of matter, not known or used by others before his or their discovery or invention thereof, and not at the time of his application for a patent, in public use or on sale with his consent or allowance, as the inventor or discoverer, and shall desire to obtain an exclusive property therein, may make application in writing to the Commissioner of Patents expressing such desire, and the Commissioner on due proceedings had, may grant a patent therefor."

This clause is indefinite, inasmuch as it does not define with sufficient clearness, what forms a patentable subject, but leaves the discriminating power of judgment, ostensibly, with the Commissioner of Patents, who cannot from the multifarious duties of his office, have time to examine one case out of fifty, but in fact, with the Board of Examiners, who under the powers granted them in the succeeding 7th section of the law, of the same date, on the ground that one invention, (though possessing advantages over another, and of course different in some particular, to produce such a result,) is substantially the same as the first; or because of a difference of opinion with the inventor on the question as to whether it really is an improvement on the original, reject the application for a patent for the difference forming the alleged improvement, and require the applicant, in case he is not satisfied with the decision, to appeal to the Chief Justice of the District Court in Washington, to decide the question between the respective parties at issue, which properly belongs to the mechanic arts, or chemistry, and should be left to those skilled in the art to which it appertains, and not to a Judge of

Common Law, lacking the knowledge essential to the proper decision of a question in either of those branches of the arts.

(To be Continued.)

LITERARY NOTICES.

Autobiography of Henry C. Wright.

This is a neat volume of 414 pages by the author of a Child, a Youth, a Man—the biography of Mr. Wright by himself. It is sold by Fowler & Wells, the well known publishers in Nassau st. this city. In looking over the pages of this work—reading a chapter here and a chapter there, one thing struck us most forcibly, viz. the spirit of the author, he must have a beautiful mind. This is our opinion, although in some things our ideas are very different from his. It is a book that no man can read without being benefited.

The "Portland Transcript," a very excellent literary Journal, commences the 13th volume with a new dress, and makes an excellent appearance. The Transcript is very ably edited, and we regard it as one of our most interesting exchanges. We wish the proprietors success.

The May number of the Ladies National Magazine, has been sent us by the Publisher, C. J. Peterson, Philadelphia. The embellishments are "Coming from the Bath," which is very beautifully executed, the "Fashions for May" and "May Day in olden times" together with the usual variety of interesting matter by such popular authors as Mrs. Stevens, Mrs. Moreton, Mr. Peterson and Mr. Shelton. The Proprietors promise excellent serial Plates for July. Terms \$2.00. Dewitt & Davenport, Agents, N. Y.

Sartain's Union for May is a superb number. It contains a splendid mezzotint, by Sartain, after a painting by Rotheimel, of Ruth and Boaz, also "Tre Dove," by Rice, "Nazareth," by Devereaux, "Dan Tucker in Love," "A Tournament in Utopia," besides several others of sterling merit. The literary contents are varied and interesting. Among the contributions we notice a capital article entitled "English Characteristics," from the pen of Mrs. Kirtland. We think with Prof Hart (the editor) that the reader must be difficult to please who does not find something to suit his taste in this number. As a guarantee for this, it is only necessary to mention the names of Longfellow, Dr. Durbin, Herbert, Arthur, Mrs. Sigourney, and many other popular authors, as contributors.

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