

Commissioner of Patent's Report for 1853.

[Concluded from page 232.]

The large number of models belonging to rejected applications would therefore still be left in their present condition, which is constantly growing worse as their number continues to augment. The law requires these to be arranged and preserved in the same manner as those of patented inventions. If a discrimination were allowed, some of these, being mere duplicates of other models, or representing contrivances wholly unpatentable, might be dispensed with, which would partially relieve their present crowded condition. But a considerable proportion of these rejected models are almost as useful as those of patented inventions. They show the different shapes in which, what the office would regard as the same invention substantially, may present itself, and often furnish a far more satisfactory reference on which to reject a new application than could be otherwise obtained. For these reasons those models should, if possible, be brought from their present dark and incommensurable recesses in the basement, and exposed to the clear light of the upper day, suitably arranged for convenient and ready examination.

There seems no other practicable way of effecting this object than to get possession of the large hall, now principally occupied by curiosities brought home by our exploring expeditions. These curiosities have no natural connection with the Patent Office, and would find a much more appropriate resting place within the walls of the Smithsonian Institution. There is plenty of room within that building for their reception and proper arrangement; and the only obstacle in the way is the expense attendant upon the care and custody of these various articles, which those who have the management of that institution do not feel authorized to defray out its limited income specially appropriated to other purposes. A small annual appropriation for this purpose by Congress would remove the difficulty that now prevents the restoration of this large hall to the use for which it was designed. It is respectfully submitted whether the dictates of sound policy, and even simple justice, do not require this small expenditure, in order that room should be provided in the Patent Office for the full exhibition and complete arrangement of all our models. If this were done, not only could all our models be properly disposed of, but specimens of fabrics and other manufactures and works of art, might be classified and arranged in the manner which the law requires, but which requirement absolute necessity has always compelled the Office to disregard.

The rate of fees required to be paid into the Office needs a thorough revision. Perhaps they will require to be somewhat augmented; since, while the salaries and the number of persons in the Office have been all the while increasing, the fees have remained unchanged.

But an augmentation in amount is not so important as changes in other respects. It is believed that a tariff might be adopted which would be quite as acceptable to the inventors as the present, and at the same time bring a much greater income into the Office. If, for instance, the whole system of withdrawals were at once abolished, so that the inventors could keep their money in their own pockets until it was required to be paid, and when once paid it were never to be withdrawn, the fees might be even less than they are at present, and at the same time the available amount paid into the treasury would be greater.

Such an arrangement would be much more convenient for the Office, saving some labor, and the transmission of a considerable amount of money from the Office back to the unsuccessful applicants, and enabling us to know at any time the exact condition of our reliable finances, instead of having, as at present, near \$50,000 lying idle in the treasury without a known owner. That money might have been much more usefully employed at home until it was wanted here.

Another change connected with this subject which seems to be imperatively called for, relates to the fee required of foreigners. That fee seems to the undersigned enormous and indefensible upon my principle of justice or sound

policy. If a Patent is to be regarded as a down right gratuity conferred by the Government on the inventor, simple equity dictates that we should not impose more onerous conditions on the subjects of other governments than those governments exact from our own citizens.—The stern rule of retaliation would ask for nothing more than such reciprocity.

Within the last two years Great Britain has greatly diminished her former high rates of Patent fees. It is believed that in no country in Europe are our citizens taxed for these purposes as severely as we now tax theirs. It is well known that some European governments impose a lower rate of fees on an American citizen than he would be required to pay by this Office; and yet we continue to charge a British subject \$500, and any other alien \$300, for that which we grant to our own citizens for \$30.

But the granting of a Patent is not a mere gratuity by the Government: it is the recognition of an evident right in the inventor. No title to property can be more just or valid than his who has created that property. The rule of natural justice is the same in this respect whether the inventor be a citizen or an alien. It is right that the Government should charge the patentee with the expense of securing him in his title to what was before rightfully his own; but it is questionable whether a revenue should be sought from this source except in cases of great necessity. Is there any sufficient reason why the general rule should be departed from in the case of an alien?

It may seem reasonable that we should charge an alien the same fee that his government would charge one of our own citizens under like circumstances; but it should be recollected that European governments make no discrimination between natives and foreigners.—The high or low rates are the same for all.—Under such circumstances retaliatory measures are not resorted to by us in regard to any other subject.

The oppression to which an alien is subjected at home has never been held as a reason for oppressing him here, even prior to his taking steps to become a citizen. If he holds real estate, we do not levy extraordinary taxes thereon commensurate with what that same property would be taxed if owned in his country by one of our citizens. Why should a different rule be followed in regard to property in an invention?

But there is a reason, founded in sound policy, why greater liberality should be exercised towards a foreign inventor than towards the alien owner, of tangible property. He pays a consideration, which the other does not: by taking out a Patent, he makes the subject thereof public property at the end of fourteen years. The benefits of the invention are then secure, and can never be lost to the world.—High charges deter inventors from parting with their secrets. Many an invention is thus strangled in its birth, which, under other circumstances, might have been developed into something of vast consequence to the world.

There are no lost arts under a liberal and well-regulated Patent Office system; and this is one of its great advantages. If foreign nations choose to place these chief means of human progress in subordination to the requirements of their respective exchequers, we are forbidden to imitate them, both by the condition of our treasury and the well-established policy of our government.

Finally, while we extend the free and full benefits of all our institutions to the alien who comes hither to seek them, should not a course equally liberal be pursued in regard to inventions,—the creations of his ingenuity? Why should these be subjected to incapacities and discriminating taxation? In regard to them should not the whole world be regarded as one republic, of which we should seek to render our Patent Office the capitol, wherein every region should be permitted a free representation?—We tolerate no onerous discriminations against the foreign exhibitors in our Crystal Palaces.—At the cannon's mouth we extend the protection of our flag to the alien who has simply declared his purpose of becoming a citizen, in the same manner as though he were native born.—Ought we to levy a discriminating tax upon the

offspring of genius that seek our shores for the express purpose of being naturalized among us?

From the preceeding considerations it seems evident that a great change should be made as to the fees required from foreign applicants.—It is respectfully submitted whether the most convenient, wise, and beneficial rule will not be to abolish all distinctions growing out of geographical considerations, and to charge every applicant a fair remuneration for the trouble given by him to the Office, but no more.

Such a course would be just, generous, and noble; seeking to raise no revenue from those who are the special instruments of human advancement, showing a confidence in the capability of our own inventors to cope on equal terms with those of all the world besides, and taking no inconsiderable step in bringing about that great brotherhood of nations for which a higher civilization is gradually preparing the world.

A change in the manner of taking testimony to be used in cases pending before the Patent Office seems indispensable. There is at present no power to compel the attendance of a witness in such cases, nor to oblige him to answer questions; and it is even doubtful whether he can be punished for perjury. It will not be difficult to provide a remedy for this defect. It will be even practicable to enable a party to obtain a compulsory affidavit, or, in other words, to take an ex-parte deposition, to be used the same as an affidavit, which would often be a matter of very great consequence.

The present mode of appealing from the decisions of the Office is extremely inconvenient, and in many respects objectionable. The Patent Office should possess within itself the entire power to act upon a case up to the time when a Patent issues. The whole matter should then be turned over to the Judiciary. If it be thought expedient to have the action of a strictly legal mind brought to bear upon a Patent before it issues, that mind should form a portion of the Patent Office itself, and be made to exercise a supervisory influence upon all the Patents that are issued by the Office. At present the appellate power is vested practically in either of two highly respectable and intelligent judges, either of whom, under proper circumstances, would no doubt be able to exert a salutary supervisory influence over the Office and its decisions. But the two do not act conjointly, and therefore unity of decision is hardly possible. A few cases go up by appeal out of the hundreds that are decided by the Office. The appellate, and therefore controlling power, cannot be expected under such circumstances to give tone and character to the action of the Office. Besides, under the present practice, the drawings and models have to be removed from the Patent Office to the office of the respective appellate judges: away from the custody of their proper keepers, they are often injured, and always liable to be destroyed or lost.

If it is thought expedient to have as wide a range for appeals as at present, it is believed that a much more convenient and judicious arrangement would be found in having a judicial officer to hear appeals from the decisions of the examiners, with the power of ultimate appeal to the Commissioner.

Many other minor improvements in the practice of the Office might be suggested; but they would look to a general change in the existing laws on the subject. Should such a course be thought expedient, suggestions can readily be made to those having the matter in charge.

There is one very important question, entirely surrounded with difficulties, which deserves a passing notice. It relates to the practicability of preventing the protracted and expensive controversies that are almost sure to absorb a great portion of value of every truly valuable patent during its proper lifetime, and which lay the foundation for many of the claims for extension presented to this Office.

To remedy this evil some have proposed that notice of the pendency of applications for Patents should be published, and that the Patent afterwards obtained should convey an absolute unquestionable title. But on the other hand it has been contended that this would introduce greater evils than it would cure; inasmuch as

it might work a great injustice to many who would never hear of the notice, or who might not then be in a condition to engage in the controversy. Others have only proposed that after such a notice the Patent should be incapable of being collaterally brought into question, and, like a judgement at law, only be liable to be assailed by a direct proceeding, which would cut off much of the present litigation.—But in opposition to this it has been objected that by giving such notice many a poor inventor would be harrassed and prevented from procuring his Patent, which, if once obtained without the knowledge of evil-disposed opponents, might be at once turned to account. This objection has no small weight.

The least objectionable course on this subject (if any thing is to be done) would seem to be to allow the patent to issue without notice, as at present, and to possess only its present validity; but that the applicant, either in the beginning or at any subsequent time during its lifetime, should be permitted, if he thought proper, to have the notice given; and that the Patent, if afterwards obtained, should not thereafter be capable of being collaterally assailed.

It will be seen that the usual reports of examiners are herein omitted. This has been done in part because it was believed that their time might be more usefully employed; and in part because such reports rendered it almost impossible to avoid invidious distinctions between patentees who suppose themselves equally meritorious. It was thought a better course to give a clear and brief description of each patent, without further comment, and leave the public to make the proper discriminations. A mere publication of the claims, as has hitherto been done, conveys in most cases no adequate idea of the different inventions. It is confidently believed that the advantages resulting from having the Patents more fully described, and those which required it, or which could in that manner be made more perspicuous, accompanied by a cut showing the parts referred to, would be amply sufficient to justify the expense attending upon such an arrangement.—The report has therefore been drawn up with a view to such an illustration of the different Patents. Being, however, unwilling to assume the responsibility of providing the cuts necessary for this purpose, a conditional agreement was made with Messrs. Page, Greenough & Fleischmann, by which the cuts are in readiness for use, if Congress feel disposed to purchase them for that purpose. It is earnestly hoped that such a course may meet the ready approbation of your honorable body.

The attention of Congress is invited to the importance of providing some adequate means of preventing attempts to obtain patents by improper means. Several cases have occurred during the past year wherein persons interested in pending cases have sent or offered money to the examiners having those cases in charge, for the purpose of securing favorable action upon their respective applications. This has sometimes apparently been done through ignorance or thoughtlessness, but in other cases evidently with a premeditated corrupt intent. In cases of this kind it seems proper and necessary that penalties commensurate with the enormity of the offence should be visited upon the heads of wilful transgressors.

Respectfully submitted,
CHARLES MASON, Commissioner.
HON. DAVID R. ATCHINSON,
President of the Senate.

Maine Mechanics Association.

We have received the circular of this Association, giving notice of a Fair and Exhibition for premiums to be held in the city of Portland, on the 19th of next Sept., (1854.) It is intended that this shall be a large and creditable affair, and mechanics and artisans from the various States and the British Provinces are cordially invited to become exhibitors. Information respecting the rules and regulations, can be obtained by addressing the ex-Committee of which H. C. Barnes, Esq., is Chairman.

Dr. Marshall Hall, of London, is at New Orleans, and, in a series of communications is proposing plans for the draining of that city.