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PATENT LAW AND EQUITY

We lately referred to suggested amendments to the patent law at the Senate hearing in relation to bill No 4412, which passed the House several weeks ago, and the text of which we gave in our issue of March 6. The amendments suggested by members of the committee themselves during the hearing, plainly indicate that this particular bill will never be approved by the Senate in its present form, yet we do not know but, outrageous as it was, its introduction, and even its passage through the House, has been productive of some good, for it has opened the eyes of those interested in patents to the necessity of constant watchfulness, if, in the present state of the public mind, they would protect their property, and the discussion it has provoked has assisted to spread among the community a better knowledge of the principles of patent law. But taking it for granted that here, as Mr. Playfair says is the case in England, there is now "a general *concensus* of public opinion, that it would be dangerous to national interests to abolish patents for inventions," as bill No. 4412 would practically have done in many cases, there can be no doubt but that *some* change in our present law, or in the equalized methods of practice thereunder, is now generally called for.

Perhaps the principal fault found with the law as it now stands arises from the fact that, in so many cases, people buying what is openly sold are afterward compelled to pay again to other parties for what they had already bought, or supposed they had bought of those who had a right to sell. This is where the opposition to the present law has heretofore derived its principal strength in the popular mind, and without this support, from those who honestly think they have been aggrieved, all the efforts of interested parties in opposition to the rights of patentees would be of little avail.

Next to this complaint, probably, would come that of taxation for patents on things long in common use, where the patentee could make out a case of infringement only by a great stretch of his claim, but would expect parties to pay a small tax rather than "go to law" about it. This class of cases are best met by the clubbing together of the defendants to share the expense of a defense, a course which has frequently been adopted in the Eastern and Middle States, and which affords, under the law, a ready means of obtaining justice at but moderate cost to each one of the defendants. Much less is now said against the patent law on this score than was formerly urged, so feasible and practical has this mode of defense proved.

Added to the above causes of complaint, and as a later issue, there has been developed an increasing tendency among a certain proportion of the legal fraternity to charge excessive costs for proceedings which are really only *pro forma;* that is, where the cases are so plain that the defendant would not, with any proper notification, allow them to go to trial, or be brought at all, the lawyers have, by a little sharp practice, been able to collect ten times the royalty charged by the patentee, *as costs,* where no expense at all had been incurred. We have heard of cases where those who had unwittingly infringed, upon calling to pay the regular royalty, were victimized by the attorneys, without the consent of the patentee, and charged many times the sum they should have paid, although the lawyers did not know they had infringed, and did not know against whom to make out the papers, except as they obtained the particulars from the one who had called to pay up, when the papers were made out while their victim was waiting. We suppose that, where the latter cannot prove these facts, the business is all done "according to law," though it is certainly very far from equity, and it is a kind of practice which injures the patentee as directly as it robs the public.

As to those who are called upon to pay for a patent a second time, after having once bought a supposed right, there probably can be no law framed which would completely obviate the evil. The issuing of the patent gives the patentee a *prima facie* claim against any one using the patented article, device, process, invention, or discovery, without the consent of the patentee or his representative. Whether this claim is good, should the presumed infringer decline to recognize it, the United States courts must decide. Many cases of this kind, usually brought as equity trials, take from two to five years, and costs thousands of dollars, when perhaps the royalty charged by the patentee, or the damages which might be obtained from one infringer, would be trifling; but injunctions will not be issued by the courts against manufacturers or users until the case has been decided, and irresponsible parties may, meanwhile, manufacture and sell indiscriminately, with no practical remedy in the hands of the patentee. The latter may, and generally does, give notice through the papers that users of such-and such an article, device, or process, are infringing, but the manufacturer, or those interested in denying the validity of the patent, generally circulate counter statements.

Now, in all such cases, it is probably safe to say that at least nine-tenths of the infringers know that there is a patent on the article, and when they purchase without acknowledging the rights of the patentee, they virtually "take chances" on the question of the ability of the latter to make good his claim in the courts: if they lose, we do not see what right they have to complain, as against the patentee. Although they may have good cause for saying that the manufacturer, or the one of whom they had bought, misrepresented the matter to them, that is a thing for which neither the law nor the patentee can be blamed, always supposing that the latter has given due public notice of his claim, as one who is conducting a tedious and expensive litigation through the United States courts would unquestionably find it his interest to do. As the principal features of the law become generally better understood, we find that complaints on this score are steadily diminishing.

As to the last issue, touching excessive costs where there has been no expense, there was considerable discussion in the late Senate hearing, and here the point was particularly brought out that it was entirely unnecessary to injure the rights of the patentee in seeking a remedy—that, in fact, this was an extremely roundabout and impracticable way. It is only the mode of practice here which needs amendment, and Mr. Storrow, of Boston, with the evident approval of the committee, urged that a bill be framed which should provide that the defendant might come into court and confess judgment before suit, and then be excused from costs or have to pay only such as had been actually incurred to that time.

This is, of course, in cases where it is not sought to question the validity of a patent, and no claim is set up in the way of a genuine defense to make it to the interest of the lawyers of the patentee to have the costs as light as possible. Some such law as this would be likely to do away with much entirely unnecessary litigation, and we do not see why its provisions should not apply as well to all cases brought in the United States courts. It would be only carrying out the doctrine of the common law, and ought to be made so as to bring down the costs in patent cases, where no genuine defense was set up, so that they would not exceed the costs of suits for similar amounts in the local or State courts.

TWO METEORITES.

We are indebted to M. John Isaac, of the San Bernardino (Cal.) *Times,* for an excellent photograph of a large meteorite, found at Ivanpah, near that place, a few months ago. It is the second specimen hitherto found in California. It weighed 128 pounds, and is nearly pure iron. It is covered with curious cup-shaped cavities, which in more than one case may be called holes. On one end a natural face shows a network of well defined crystals. A slab has been cut from the large mass, and the polished surface acted on by dilute nitric acid, by which treatment Widmannstattian figures of remarkable beauty were developed. This is the only holosiderite found on the Pacific coast as far as known, which yields these curious markings.

A small mass of meteoric iron was found in California in 1871, and was described by Prof. Silliman in the *American Journal of Science and Arts* for July, 1873.

In a communication on the last found specimen, Mr. H. G. Hanks, of the State Geological Society, refers to the large masses of meteoric iron which have been found in Mexico, New Mexico, and Arizona, and to the tradition among the inhabitants of Tucson, Arizona, that a shower of meteorites fell in the Santa Caterina Mountains about 200 years ago. The Smithsonian Institution has the 1,400 pound Irwin-Anisa meteorite found near Tucson. Another specimen from Tucson, presented to the city of San Francisco, by General James H. Carleton, is now at the rooms of the California Pioneers. A description of it may be found in the proceedings of the California Academy of Science, vol. 3, folio 48, and a full analysis by Prof. Bush, of Yale College. In the same volume, folio 30, Prof. Whitney has shown that a belt or path of meteorites lies nearly in a line from the Colorado river at La Paz to San Luis Potosi, in Mexico, possibly fragments of the same meteor. A mass of metallic iron was found by Dr. Evans on Bald Mountain, near Port Orford, in Oregon. San Barnardino is in the same general direction, and Mr. Hanks suggests that it might be well to look for other fragments along the same line.

Photographs of the Westville (Ind.) meteorite have been kindly furnished us by Mr. W. C. Ransbury, of that place, with an account of the circumstances attending its fall, about the first of November, 1876. It was not found until the following spring. While preparing a corn field for plowing, Mr. G. D. Wright, of Westville, La Porte county, came to a place where the ground had been furrowed for several feet since the previous year's cultivation, and in the western end of the furrow the meteorite lay. It is described as a dark, irregular mass full of cavities and irregular projections. It weighs 324 pounds, and measures 25 by 24 by 16¼ inches. It has not been analyzed. It appears to contain iron (in great abundance), copper, and nickel, also silica and mica. The stone is still in the possession of Mr. Wright.

HOUSEHOLD FUNGI.

At a recent meeting of the Buffalo Microscopical Club, Mr. Jas. W. Ward exhibited a piece of glass which had been over a picture on one of the walls of his residence. It was covered with a very peculiar and interesting species of fungus, which withstood the action of soap and water in attempting to remove it. He attributed the growth to the exhalations of the breath of persons who had been in the room, and since noticing this fungus on the glass, he had examined several of a similar nature in other rooms and found them alike.

In the discussion that followed, Dr. Lucien Howe thought the fungus similar to that which attacks the common house fly, producing the well known contagious disease of flies. Dr. W. C. Barrett likened it to the fungi which permeates the walls of hospitals and other public buildings; and since then, according to the *Journal of Microscopy,* the president of the club, Prof. D. S. Kellicott, has found the same fungi on the windows of the Central School Building, and the