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NEW YORK, SATURDAY, MAY 29, 1880.

Contents.

(Illustrated articles are marked with an asterisk.)

Table listing various articles such as Abattoir, Paris; Academy of Sciences, New York; Alaska, river scenery; American industries; Apple borer; Astronomical notes; Atlantic seaport in France; Beasts, wild, education of; Bones, fossil; Brown stone as a fire resistor; Canal system, Canadian; Color blindness, legislating on; Copying process, Alisoff's; Cover, refrigerating, new; Cyclones; Dog, pedigree of; Earthquakes, recording; Basel, draughtsman's, new; Electric railway, the; Elevator, Pa. R. R. Co.'s; Eruption of Colima; Fish show, Berlin; Flouring mills, Minneapolis; Galvanometer; Grain crabs; Gun, sporting, new; Hook, self-locking, new; Hose pipe, strong; Inventions, mechanical; Inventions, miscellaneous; Inventions, new.

TABLE OF CONTENTS OF THE SCIENTIFIC AMERICAN SUPPLEMENT No. 230.

For the Week ending May 29, 1880. Price 10 cents. For sale by all newsdealers.

Table listing sections: I. ENGINEERING AND MECHANICS.—Hydraulic Accumulator; The Italian 100-Ton Gun; Austrian Passenger Engine; Capitals from Ste. Chapelle, Paris; A Russian Cruiser. II. ELECTRICITY, LIGHT, HEAT, ETC.—Molecular Change in Wires; Preliminary Note on Magnetic Circuits in Dynamo and Magneto Electric Machines; Second Paper on Magnetic Circuits in Dynamo and Magneto Electric Machines; The Temperature of Space and its Bearing on Terrestrial Physics; Apparatus for Illustrating the Aberration of Light; Improvement in Microscopic Eyepieces; A Man Struck by Lightning. III. GEOLOGY, GEOGRAPHY, ETC.—When Did Man Make His Appearance on the Pacific Coast? Attractions of the Yellowstone National Park; Rau's Palenque Tablet. IV. TECHNOLOGY AND CHEMISTRY.—William England, photographer; The Development of Gelatine Plates; Weighted Black Silks; The Volatile Oil of Almonds; Value of Zinc Powder; Carmelone; Petroleum and Coal Benzines; Formula for Aniline Inks. V. MEDICINE AND SURGERY.—Cure and other Cures for Hydrophobia; The Treatment of Fracture of the Lower End of the Radius. VI. BOTANY, HORTICULTURE, ETC.—Window Gardening in Small Houses; Flowers in Windows; Vegetable Respiration; The Myiitta or Tassar Silk Worm; Rules for the Management of Laying Hens. VII. MISCELLANEOUS.—A New Planetarium; A New feature in Industrial Education; The Education of the hand; The New Diving System; Wheat handling in America.

PATENTS FOR NOT INVENTING.

The constitutional authority for the patent laws of the United States rests on Section 8 of Article 1 of the Constitution, which provides that Congress shall have power "to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

The section of the revised statutes which describes what inventions may be patented carefully limits them to such as are new and useful, and the patentee must in all cases be the inventor or his heirs at law. This has been the policy and practice of the Patent Office from the beginning; and it would seem to be the only one authorized by the Constitution.

The House Committee on Patents, however, appear to think differently, as they have just reported back favorably Mr. Casey Young's bill (H. R. No. 3,041) offering patents to such as are not inventors, for the introduction of inventions which are not new. The bill reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person or persons who introduce from a foreign country any secret art, invention, or process useful and important to the public, and not patented there, and at the time of application not understood in this country, may, upon payment of the fees required by law, and other due proceedings had as in the case of new inventions, obtain a patent therefor. And it is hereby declared that any secret art, invention, or process which has been used or practiced, unpatented, for the period of fifty years last past exclusively in the country where obtained, shall be deemed a secret in the meaning of this act."

As was pointed out in the SCIENTIFIC AMERICAN, January 31 last, this is a radical departure from the policy and purpose of all our patent legislation hitherto.

The propriety of granting such great privileges is as doubtful as is the authority of Congress to do it. And it would certainly be a strange way to encourage progress in the useful arts to place inventors of what is new on a level with the mere importer of what is at least fifty years old. Who it is that desires the enactment of such a law, or for what reason, does not appear.

THE PAGE PATENTS.

Undoubtedly some of the ablest decisions ever given in our courts have been those involving the validity of patents and questions of infringement. In such cases, the trials being in equity, and the proceedings never hastened, the lawyers generally have the most ample opportunity for thorough preparation, and the nicety with which they make hair-splitting distinctions often gives their arguments a most subtle flavor, provided their reasoning be equally close, and the reader or listener be not interested therein in the matter of dollars and cents. Speciousness and sophistry are nowhere else more cunningly introduced, and the courts need to exercise the utmost discrimination to hold the scales with so even a balance that exact justice will be done.

Among the closely reasoned decisions in patent cases which the records of our courts have shown in late years, several which have been rendered by Judge Samuel Blatchford, of the United States Circuit Court for the Southern District of New York, are particularly conspicuous for their keen analysis of the points in controversy, their close application of the law and the evidence, and the subtle reasoning by which conclusions have been reached that were oftentimes disappointing to all the parties concerned. The decision recently made by him relative to a petition for a rehearing in the Page patent case is a paper of this character. We have heretofore presented a pretty thorough exposition of the points originally at issue in the suit of the Western Union Telegraph Company against the Holmes Burglar Alarm Company, as well as the grounds on which were based the petition of the American Union Telegraph Company, and several railroad corporations, for a rehearing, after the decision in the original suit had been rendered, but before the filing of the interlocutory decree. The case in favor of the petitioners was presented by an imposing array of able counsel, but their prayer was denied by the court, in a decision filed on the 7th of May.

In the original decree the validity of the Page patent was sustained as respects its 11th, 12th, and 13th claims, for the retractile spring, armature, and set spring, found in electro-telegraphic machines, and the defendant was declared to infringe by "making and selling telegraphic burglar alarms in which a circuit breaker acts automatically to break the circuit, so that by the movement of an armature to and from which alarms contain the inventions covered by said three claims." Without going over all the points made by the petitioners, it will be sufficient to say that, although the defendant did not use the inventions named on long or main circuits, and their application by the defendant was somewhat different from the way in which they are used in general telegraphing, yet the petitioners feared a decree would be issued which would enable the plaintiff, the Western Union Telegraph Company, to enjoin them from the use of somewhat similar devices in a quite different way, and for other purposes. It is no unusual result of a long-contested patent suit to find a successful plaintiff applying for injunctions against a much wider field of alleged infringers than he had first contemplated as coming within the scope of his patent, and making it appear that the decision in his favor is far more general in its application than a strict legal construction of the language employed by the court would warrant. Looking at the matter in this light, the presentation

of the petition, the offers to show proof on points not fully presented in the original trial, and the able arguments made, will undoubtedly serve a useful purpose, even though the prayer of the petitioners has been denied, for the manner in which the court suggests the limitations of the previous decree, defines the points upon which it was made, and refers to the record, will make it difficult for the plaintiffs to give it any wider application than in the matter of these burglar alarms, which the defendant has, except to a small extent, ceased to make in the way specified.

The court, it is true, refuses to indicate what would be its decision in case suit was brought relative to infringement in an apparatus used for telegraphing on long or main circuits, but, while pointing out that the petition is before the court from corporations not parties to the suit, who would have ample and proper opportunity to defend themselves when directly sued, when their new and additional evidence might be legitimately introduced, makes the following significant declaration: "It is quite sufficient to say that whenever the defendant shall use what is suggested in connection with a long or main circuit for telegraphing, and shall be proceeded against for doing so, an issue will be raised which it will be proper then to consider, but that no such issue has arisen." The court takes no cognizance of the proposed new evidence, and points out that it is in no way substantiated by oath whether there is any new evidence or not, or "what knowledge or information is had or not had," that was not before in possession of the court; the offer is only as to a solicitor's "best knowledge and belief," and "the best knowledge, information, and belief of the solicitor may be none at all." The matters of fact and of law sought to be raised by the petitioners are declared to be not in issue in the suit, and it would be a wrong to the plaintiff to consider them in any way to give such construction to the patent as does not legitimately arise from the record, and it is held that a new suit, where the petitioners are parties in interest, will afford the only opportunity to bring in these further issues.

HONORS TO AN INVENTOR.

The authorities of the city of Blois, France, have determined to erect a monument to Denis Papin, an ingenious inventor of the seventeenth century, for whom it is claimed the honor of having made the first useful application of steam power. Whether this claim can be substantiated or not is doubtful, for, besides uncertainty as to the stories about Papin's inventions, there are prior inventors with more or less vague claims of the same kind. The difficulty of determining who is first with inventions of our own day and generation is increased immeasurably when a question of priority is raised as to devices two hundred and more years old. However, whether Denis Papin made the first steamboat or not, he was certainly an ingenious and useful inventor, who, with others, paved the way for the many useful applications of steam to industrial work since devised, and it is conceded on all sides that he at least invented the lever safety valve. His story is that, being a victim of religious persecution, he left his native country, and, while living in Germany, about 1707, invented and constructed a steamboat, on which he and his family embarked, with the intention of exhibiting it on the Weser and then taking it to England. His invention was destroyed by the Mariners' Guild of the Weser, who had the monopoly of navigating that river; but his native town of Blois has now determined to erect a monument commemorating his inventive genius, and Mayor Chavigny writes to one of our daily newspapers asking the co-operation of America in honoring him. The Public Ledger properly adds: No injustice need be done Newcomen, Savery, Watt, Fitch, Oliver Evans, Fulton, Stevens, or others who, within the next hundred years, reinvented and improved engines and steamboats until really practicable and useful types of each were produced. Great inventions are almost always growths, the earlier stages of which can scarcely be recognized, but every one who helps them along is deserving of a fair share of the honor too often paid only to the man who gives them the finishing touch. Without going into questions of priority, Blois has abundant reasons to honor the memory of the almost forgotten Denis Papin.

THE ELECTRIC RAILWAY AN AMERICAN INVENTION.

On page 137, present volume of this paper, appeared illustrations and descriptions of Siemens' electrical railway motor, which was operated at the Berlin Exhibition in 1879. Since that publication our attention has been directed to a similar plan described in the SCIENTIFIC AMERICAN as long ago as September 25, 1847, which reads as follows: Mr. Lilly and Dr. Colton, of Pittsburg, Pa., have invented a new method of railway propulsion, which is both novel and ingenious. The machine is a small locomotive, and is placed upon a circular railway, around which it is driven by electricity. The power is applied not to the locomotive, but to the track, in a very curious manner. Two currents of electricity, negative and positive, are applied to the rails, and by them communicate to the engine. The latter is provided with two magnets, which, by a process of alternate attraction and repulsion, drive the car over the track. A piece of lead is placed on the locomotive, making in all a weight of ten pounds, and on the application of the battery, the machine moved with astonishing rapidity up a plane inclined about five degrees. Heretofore the propelling power had been used on the car itself—in this instance, however, the power is placed on the rails, and an engineer