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THE SCIENTIFIC AMERICAN SUPPLEMENT

No. 217,

For the Week ending February 28, 1880.

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PASSAGE BY THE HOUSE OF REPRESENTATIVES OF A LAW FOR THE ENCOURAGEMENT OF SWINDLING.

In the SCIENTIFIC AMERICAN of January 3, and again January 17, the injustice and mischievous tendency of certain bills for the protection of such as purchase patented articles and processes from parties unauthorized to sell, were pointed out and discussed at considerable length. The bills referred to are still with the House Committee on Patents.

Meantime bills of similar purport have been introduced and referred to the Committee on the Revision of the Laws, which appears to have been more favorably disposed toward schemes of that nature. At any rate the bill approved by this committee (H. R. No. 4419, introduced as a substitute for House bill 3767), covers the same ground as the bills of Messrs. Baker, Colerick, and others above referred to, in providing that "hereafter in any suit in any court having jurisdiction in patent cases for an alleged use or infringement of any patented article, device, process, invention, or discovery, where it shall appear that the defendant in such suit purchased the same in good faith for his own personal use from the manufacturer thereof, or from a person or firm engaged in the open sale or practical application thereof, and applied the same for and to his own use and not for sale, if the plaintiff shall recover a judgment for $5 or less as damages the court shall adjudge that he pay all costs of suit; and if the plaintiff shall not recover the sum of $20 or over the court shall adjudge him to pay all his own costs, unless it shall also appear that the defendant at the time of such purchase or practical application had knowledge or actual notice of the existence of such patent; provided that nothing contained herein shall apply to articles manufactured outside of the United States."

On February 9 Mr. Thomas, of Illinois, moved to suspend the rules and discharge the committee from the further consideration of the bill quoted, and that the bill be passed; which was done without discussion.

The alleged object of this bill is to keep farmers from being swindled by sharpers who, fraudulently pretending to own patent rights, offer to sell what they have no power to deliver, thereby making the unwary buyers liable to suits for infringement when the rightful owners of the patents come along.

It is said that actual owners of patent rights have sometimes entered into conspiracy with such swindlers, the one selling without right, the other following and collecting a second payment. Speaking of the proposed law as a remedy for such practices, the New York *Herald* says:

"Nothing but such a law—unless it be a properly handled shotgun—will dispose of the numerous sharpers that have played into each other's hands so successfully that many people, particularly farmers, are afraid to purchase patented articles of any kind. No citizen who is not a special student of Patent Office records can be expected to know anything about infringements or how to guard himself against them; therefore the power which makes the right of a patentee absolute should defend honest purchasers. A better method of defense could hardly be devised than the bill that is now awaiting further action, for the profits of sharp practice would be brought down to nothing if the wily prosecutors were compelled to pay the costs."

It is safe to say that no honest patentee would object to a law, however stringent, for the suppression of "sharpers" and "sharp practices" of the sort alleged. It is equally safe to say that the swindling practices so volubly described by the advocates of the proposed law are purely imaginary. They have no real existence—certainly not to anything like the extent pretended by those who make them a pretext for legislative interference with the property rights of patentees. We have yet to hear of the first well-authenticated case of the sort, and confidently challenge the friends of this bill to produce one. And even if there were such conspiracies, and they were as numerous as they are said to be, they would still fail to furnish any justification for this bill.

Years ago a similar swindle was practiced with horses. A man would ride into town with a handsome horse, which, on one pretext or another he would offer to sell for much less than the animal's real value. Some "innocent" buyer would pay the price and chuckle over his bargain. As soon as the seller could get well out of the way his confederate would appear in pursuit of the alleged stolen horse, prove his property, and ride on to divide the proceeds of the fraudulent sale, and repeat the trick. For a time this sort of business was a paying one. It was ultimately broken up, not by a law making purchase in good faith a bar to the rightful owner's claims, but by compelling purchasers of stolen animals to surrender them and look to the thief for the return of the money. It did not take long for men to discover the impolicy of buying horses without plentiful evidence of the seller's right to sell. Suppose that, instead of letting the evil correct itself in this legitimate way, a special law after the model of this bill had been passed; would anybody have been benefited except horse thieves and dealers in stolen horses?

In like manner, who but infringers and those who wish to use inventions without paying the inventor's royalty, would be benefited by the law proposed in this bill? To forestall a few swindlers and protect their innocent victims, is put forth as a pretext for the wholesale invasion of inventors' rights; the real purpose of the bill is as clear as the motives of the wolves in the fable, when they volunteered to stand guard over the lambs.

The great majority of patent rights rest upon inventions the products of which are individually of small cost, though of great utility and practical value. In many cases an infringer can produce and put upon the market such articles under conditions which make it next to impossible for the rightful manufacturer under the patent to find him out. The manufacturer's only recourse then is to spoil the market for such fraudulent goods by proceeding against their users. This reasonable protection is barred him by the proposed law, which makes him pay all the costs of suit, however culpable the defendant may be, when the damages do not exceed $5; and his own costs, when the damages are less than $20, except when he is able to prove that the infringer actually knew he was infringing.

Such a law substantially says to intending purchasers: "Go on; the chances are all in your favor. Buy anything that is offered without question. Ignorance is innocence. It will cost the patentee a great deal more to sue than he can get from you in damages, even if he succeeds, and the probabilities are that he will not bring suit with such heavy odds against him."

With a safe market thus made for his goods, the infringer need have no fear of success, so long as he skillfully covers his tracks.

Meanwhile the inventor, we suppose, is expected to toil on patiently, inventing for the fun of it, or because he cannot help himself; and to continue to take out patents which he can defend in the courts if he has money enough to pay his opponent's lawyers as well as his own.

Fortunately the Senate will have a word to say about such proceedings, and it is to be hoped that the friends of inventors and of just laws will lose no time in presenting the facts of this case to their senators in such a manner as may prevent in the Senate a repetition of the hasty action of the House.

The argument that people cannot be expected to know anything about patent infringements, and therefore should be protected in their unwarranted purchases of patented articles and processes, is pure childishness. No man can be expected to know the owner of every horse in the United States; but he can be and is expected to find out whether the would-be seller of any horse he wants to buy has a legal right to sell. If he does not take that trouble, the risk should be his and not that of the real owner, in case the horse has been stolen.

No man can be expected to know all the bonds and other papers of value that have been lost or stolen; but every man is expected not to buy such property without a sufficient guarantee that the seller came honestly thereby. To pass a law shielding men from loss in case they violate this plain rule of trade would simply put stolen bonds on the same footing in the markets as honest property, and remove the chief disadvantage which burglars and pickpockets labor under. They would heartily approve of such a law, no doubt, and so would all dealers in stolen property; but how would it suit the honest owners of financial paper?

If such a law would favor the dishonest and react injuriously upon the honest when applied to horses, or bonds, or any other form of property liable to be misappropriated, it would be not less unjust and mischievous when applied to patent rights.

Besides, the proposed law is open to the objection of being unnecessary. If we mistake not, there are already in force laws against conspiracy to defraud, whether the means employed are patent rights or anything else, quite sufficient to deal with the swindlers whose operations furnish a pretext for a new law. There would, however, be no occasion even to appeal to such laws, if men would simply learn not to buy anything from unknown and irresponsible parties.

But, as we have intimated again and again, the ostensible object of this bill is not its real object. Its actual purpose is so to hamper the patentee in the defense of his rights as to make it impossible for him to sustain them in connection with any article of small cost and general utility that farmers and others wish to use without payment of royalty.

In addition to its needlessness and injustice, the law proposed is open to the serious objection that it is a special law, designed to affect a limited range of persons and cases. If we must have a law of the kind, let it be a general law, applicable to all departments of trade. Such a law might run somewhat as follows:

"Hereafter, in any suit brought in any court for the collection of lawful debts, or for the recovery of the value of goods sold, or for the recovery of damages for the felonious procurement, possession, or use of any description of property unlawfully held or used by another, if the plaintiff shall not recover a judgment for $5 or less, the court shall adjudge that he pay all the costs of the suit; and if the plaintiff shall not recover the sum of $20 or over, the court shall adjudge him to pay all his own costs; provided that nothing contained herein shall apply to articles manufactured outside the United States."

It is respectfully suggested that the foregoing, or something of like effect, be submitted as a substitute for, or amendment of, the more limited bill (H. R. No. 4,419), which has come up to the Senate for consideration.

FLOUR VS. BRAN.

At a recent meeting of the National Association of British and Irish Millers held in London, a most interesting discussion took place relative to the comparative merits of what was styled the "old school" system of making flour and the new methods now being so largely adopted. There was a large attendance of the leading millers of the United King-