

Correspondence.

Preservation of Live Fishes.

To the Editor of the Scientific American:

In your issue, December 10, 1887, you mention "A Newly Patented Mode of Preserving Live Fish," saying: "It was discovered by Mr. Walter G. Murphy, of New York, the patentee, that fish could be kept alive for some considerable time," etc.

Now, it has long been the practice of fishermen in this section to keep their minnow bait alive in stone jugs corked tight. I have forgotten how long I have known of it, but if anybody wants to know how long, at least two of our sportsmen have known and practiced it. I refer them to Col. J. B. Rudolph, Pleasant Hill, Dallas County, Ala., and Mr. Virgil G. Weaver, Selma, Ala.

If the Hon. U. S. Fish Commissioners want to use the mode, Mr. Murphy's patent will not be in the way.

W. E. BOYD.

Selma, Ala., January 1, 1888.

Ivy Poisoning and its Cure.

To the Editor of the Scientific American:

The article signed S. E. R., of January 7, was of special interest to me, as this portion of the country, *i. e.*, Steuben County, N. Y., is infested with the various members of the genus *Rhus*, and the inhabitants are frequent sufferers from its peculiar action.

From the frequent calls for relief from this poison, I found it necessary to make an especial effort to obtain some certain means of relief. This has been by no means an easy thing to do, and I had about decided to try the experiment of the internal use of the plant itself, when a case came to me which knocked that idea higher than Gilderoy's kite.

It was that of a man forty-seven years old, who had inadvertently picked up a piece of the ivy root and eaten some of the bark. He was as handsome as an Ashantee warrior; his tongue swollen until it protruded from his mouth, his lips of enormous size and rolling out for about two inches, his cheeks were puffed to double their natural size, and the peculiar blisters with the soapy discharge over it all.

As a specimen of ivy poisoning it was a beautiful case, but as a member of the human family he looked a failure. I shall watch the gentleman, and if he succeeds in handling the vine with impunity hereafter, then S. E. R. can try it as a good cure, provided he does not care for the few drawbacks above mentioned. I shall, however, continue to use the following remedy:

R. F. ex. Grindelia robusta,
Aqua..... aa.

Mix and apply locally every two hours.

The amount of water may be diminished if necessary, or the drug may be used clear. I have yet to see it fail to relieve the itching and burning, reduce the swelling, and hasten the return of health. G. S. GOFF, M.D.,
Cameron Mills, N. Y.

The Driven Well Case and Amendments to the Patent Laws.

To the Editor of the Scientific American:

In your journal of December 24, you note the fact that Senator George has introduced into the Senate of the United States a bill to protect innocent purchasers of patented articles from suits for infringement. After stating the nature of the bill and the remarks of Senator George, you say that you think it will bother the Senator to find any great number of persons who have been sued by owners of patents for infringement of their patents, for using articles bought in the open market.

Your experience cannot be that of men who have been observing trade in the country very much. Take the driven well patents as an example. Judge Benedict, in the Cormon case, said that there were about 120 patents issued for appliances used in making and for making driven wells. And in the trial of the Hovey case it was stated that up to October, 1886, there had been nearly 200 patents issued upon driven wells and for appliances on all the phases of the same. If any one has been through Iowa, Nebraska, Kansas, Colorado, and some of the other States, he will find at least 500,000 driven wells, and that they have been put down by a great many different persons, each claiming to have a patent for his particular process. Thus it will be found that the farmers who have these wells had them put down by men who claimed to be protected by a patent issued by the proper department of the government.

It was stated by myself, in the argument of the Hovey case before the Supreme Court, that there were at least one thousand suits then pending in the various circuit courts that would in practice be determined by the decision of the Supreme Court in that case. The attorneys for the plaintiffs said there were at least two thousand such cases. Each of these suits were against men who had purchased their well of men who claimed to have the right to sell the same, and were selling the same in the open market.

You could take the case of the barbed wire fence patents.

Thousands of men are using this article who bought the wire of merchants who expose it for sale, and claim that their wire is protected by a patent.

Now, if the Supreme Court had held the driven well patent valid in the Hovey case, or if they hold the barbed wire patents valid, as held by Judges Drummond and Blodget in the Washburn & Moen vs. Haisk case, decided in Chicago a few years ago, then suits will be brought against each of these farmers, and they will have one of two alternatives—to pay the royalties demanded or go from one to three hundred miles to defend a suit. This is the fact, as it is shown in Illinois, Iowa, Missouri, Minnesota, Nebraska, Kansas, and Colorado, and I do not know how many other States are affected in like manner.

In the same issue you copy from the *New Jersey Law Journal* comments upon the uncertainty of the law, and cite the decision of the Supreme Court in the driven well case as a sample.

In those comments, as stated, the writer has fallen into some grave errors.

The patent to Green was not granted by the Department of the Interior, but was rejected by that department on several grounds, and among those was one for the prior use of the thing he claimed to have patented.

This decision Green was not willing to accept, but appealed to the Supreme Court of the District of Columbia, and the patent was granted on the order of that court.

This patent, it is true, was tried in many courts, but in none of them was the defense set out that by reason of others having used the device more than two years he had forfeited his right to a patent.

That was first plead by myself in the Hovey case and other cases that were to abide the result in the Hovey case. I also plead that Green knew of this use. But had both of those pleas in the answer.

In our proof, we showed that several hundred wells were made by other parties than Green between 1861 and 1866.

We also showed by five witnesses that Green knew of the use of several of these wells.

The writer of that article is mistaken in another fact. The construction that was put upon the law of 1839 as added to the law of 1836, by the Supreme Court, was put upon that law by Judge Blatchford in *Egbert vs. Lippman*, while he was circuit judge.

The Supreme Court in that case, when it reached them, said it was not necessary to construe that section, as it was conceded that Borns, the patentee, knew of the use, that the court held was sufficiently public to invalidate the patent.

Judges Blatchford and Love had agreed upon the construction of the law as adopted by the Supreme Court before this case was appealed.

Congress should amend our patent law so that innocent purchasers are protected, and so that in proving the prior use of a patent, the patent should be taken only as the oath of the patentee that he was the original inventor of the article, and believed himself to be the first. He swears to that fact to get his patent, and the grant of the patent by the government should not be held as proving anything more than the testimony of the patentee to the facts stated to get the patent.

As it is, the circuit courts have construed the granting of the patent to require the defendant who pleads a prior use of the thing patented to prove that use beyond a reasonable doubt, and some judges have held that the defendant must prove the use beyond all doubts.

This is unjust and unfair to the defendants. Not only should Senator George's bill, or a bill like that, be passed, but one enabling the defendant to show prior use by a preponderance of evidence only, and not require him to prove it as fully as the State is required to prove the commission of a crime before it can convict one of a criminal offense. The people should have their rights protected as well as inventors.

One other thing might be done. Congress might provide that no patent should be issued for improvements or some little change in a machine or its operation.

No patent should be allowed to issue for what might be termed mechanical ingenuity in changing a perfected machine. The Patent Office should be restricted by law in the patents it is allowed to issue.

Take this driven well patent business. If there are 150 patents, many of them must cover the same matters, and I know that there are several covering the same thing as covered by Green's patent. Others are slight variations from that, and then there are many others, that in fact cover but some slight change that could not be detected by one not a mechanic. The same thing applies to the great number of patents that have been issued in the barbed wire cases.

Yet, if you read the specifications and claims, you would think that the whole matter was covered by the patent unless you were used to examining patents. In this respect, the public ought to be protected by some act of Congress restraining the issuing of so many patents.

It is to be hoped that Congress will amend the patent laws in some of these respects. J. M. LAKE.
Independence, Iowa, January, 1888.

[Our correspondent does not quote us nor Senator George correctly. The Senator said, as reported in the *SCIENTIFIC AMERICAN* of Dec. 24: "As far as I can learn, there has been more wrong and injury done under the patent laws, by suits against men who go into open market, into the stores and warehouses of the country, and buy in good faith articles which they suppose the seller has a right to sell, and then are afterward brought up before a court fifty or a hundred or two hundred miles from their homes to account for it." The evident aim and intention of this statement is to convey to the public the idea that when a man innocently buys a patented article he is liable to be sued, then arrested, and dragged perhaps two hundred miles away from his home and family and brought before a court.

No such law or practice has a basis under the patent statutes; and in our reply of Dec. 24, we said we thought Senator George would find it difficult to produce any considerable number of examples of persons who had suffered in the manner asserted.

When a man infringes a patented article, he is liable to suit, and if he chooses he may defend. But he is not subject to arrest, and is not brought away or compelled to leave his home. This the Senator knows full well, and so does our correspondent.

Our correspondent, in his statement before the Supreme Court, to the effect that there were at least 1,000 cases concerning driven wells then pending in the various circuit courts, all of which would in practice be determined by the one Supreme Court decision, meets his own arguments excellently well. Several thousand cases had been brought in the circuit courts, and had not been made weapons of blackmail, but had quietly been held in abeyance until the highest tribunal decided as to the validity of the patent. Nothing could be more equitable than this. Any one can bring a suit for any thing. If his basis of action is unjust or imaginary, he loses his case and has for penalty the statutory costs it may be, or perhaps only his lawyer's bill.

In most cases the law affords only a very insufficient retribution to the party unjustly sued, if it affords him any. This is a valid complaint against all human justice. To do away with unjust patent suits by substantially abolishing patents would be equivalent to curtailing personal rights in order to prevent unjust prosecution for their violation.

The barbed wire cases are also cited. The writer thinks that a hardship would be incurred by farmers paying royalties after purchasing wire fencing from parties whom they presumed were authorized to sell it. The hardship would be the same as that borne by an innocent purchaser of stolen goods who was obliged to restore them to their owner. If the innocent purchasers of patented articles should be protected, then protection for the innocent accessories of thieves should also be provided.

As for the balancing of proofs of prior use, that suggestion if carried out would lead to endless trouble. Nothing could be more inequitable than to declare a probability of prior use enough to invalidate a patent. The people's rights should certainly be protected. But when an inventor contributes to the sum of the world's possessions a new invention unknown before, his consideration, a seventeen years' franchise, should be rigorously guarded. The invention never existed before the inventor's conception; he has added to the world's wealth. As the producer of a new thing, his rights should precede those of the public whom he has benefited. The public would never have known of the invention but for him.

Congress should avoid tampering with the patent laws. It is utterly futile to attempt to make the Patent Office in any sense a final arbiter of what constitutes invention. A patent merely gives standing in the courts to the patentee, and limits sharply what he can claim there. Hence patents should be granted to all except those utterly unable to show the presence of the statutory requirements.]

A New Remedy for Tapeworm.

Dr. Harris, of Simla, calls attention in the *Lancet* to the value of the fruit of the *Embelia ribes* for tapeworm. He states that the drug has for the last five years been used extensively, not only by the natives, but also by the Europeans, with great success.

The dose of the pulverized fruit is from 1 to 4 drachms, which should be given in the morning with milk.

The fruit has an aromatic taste, and is about the size of a pepper seed. According to Dr. Dymock, they have recently been exported in large quantities to Germany, where they are said to be used as the chief ingredient of several patent tapeworm "specifics." The drug is said to heighten the color of the urine.

POLISH bright iron work with rotten-stone and oil, if it is running machinery.