Legal Notes.

SUGGESTED COPYRIGHT IMPROVEMENT.—That copyrights in the United States are in rather a chaotic condition most publishers are more than willing to admit.

Mr. Samuel Elder, of Boston, recently addressed the Maine State Bar Association on what he styles our "Archaic Copyright Laws," and shows in what ways it is possible to better them.

Mr. Elder points out that there is need of revision and simplification of the law of literary and artistic property. As it is the securing of an existing right, and not the creating of a new one, for which the law makes provision, it should liberally protect and not fetter, hamper, or by any possibility defeat the right. "The basis on which our copyright provisions rest is erroneous. It being true that the author's right of property results from his labor, genius, and ingenuity, and that protection was intended to be secured to him because of his dedication of his work to the public, there is no reason why the security itself should be imperiled by a variety of technicalities, or why the value of the work should be frittered away in litigation or questions which have nothing to do with the real work of ownership." Finally, Mr. Elder contends that "the law requires adaptation to modern conditions. It is no longer possible to summarize it in a few sections covering everything copyrightable. It should be revised so that protection to the honest literary worker, artist, or designer shall be simple and certain."

Mr. Elder suggests that a single term of protection would do away with the requirement of a second registration of title and deposit of copies, as well as with the resulting opportunities for complication between the author and his assignee.

A longer term is likewise recommended. Mr. Edward Everett Hale has already outlived the copyright of some of his earlier works. James Russell Lowell's first copyright expired during his lifetime.

The simplification of registration and deposit in the case of newspapers is advocated. Protection "ought to be temporarily extended beyond the mere language in which the news is stated."

Since great expense is incurred by press associations and individual papers in procuring news, "the news itself, the facts stated, should be protected, and not merely the literary vehicle in which it is conveyed, only for a brief period of time."

Mr. Elder believes that some distinction should be drawn between books and plays. Useless formalities should be avoided. The formalities which have come down to us with the first English copyright act of Queen Anne (1709), are the provisions which are "so many traps for the feet of the unwary." Striking examples are given of cases involving the loss of copyright protection because the statutory requirements have not been complied with.

As we have already pointed out in this column of legal notes, the copyright of the "Autocrat of the Breakfast Table" was lost because it could not be proved that copies of the Atlantic Monthly, in which it first appeared, were duly deposited. Detention in an express office for the collection of express charges on Gottsberger's expensive "Ebers Gallery" (its price was $60) led to a loss of copyright. The misprinting of the year date by a single year in the notice of copyright has been held to invalidate the right. The case digested in these columns of the printing of Mrs. Stowe's "The Minister's Wooing," with the notice of copyright in the author's name, before the last chapters of the book appeared in a number of the Atlantic Monthly, bearing notice of the copyright in the name of the publishers, was held, as our readers doubtless remember, to constitute a fatal defect.

The "Professor at the Breakfast Table," having been brought to completion in a number of the Atlantic Monthly which contained notice of copyright in the name of the publishers, was held to be insufficient when subsequent publication was made of the work with a notice of the copyright in the name of the author.

"It is absurd and wicked," says Mr. Elder, "that a slip of a clerk or binder, or a mistake of the author, publisher, or printer, should utterly destroy all copyright protection."

THE LOSS OF RIGHT TO COPYRIGHT PROTECTION.—The American Press Association secures original and selected matter for publication, which it prepares in the form of electrotype plates, which are leased for publication to subscribers. The matter thus distributed is sometimes copyrighted and sometimes not. The former matter is published with the requisite copyright notice; the latter is credited to the source from which it is obtained.

The Daily Story Publishing Company is engaged in supplying newspapers and periodicals with short copyrighted stories under a form of contract which gives to such newspapers the exclusive right to publish the story furnished, within a limited territory, and upon the express condition that each story when printed shall bear full copyright notice. The St. Louis Globe-Democrat, a patron of the Daily Story Publishing Company, published a copyrighted story, but omitted, through inadvertence, the required copyright notice. Shortly after, the story thus published was appropriated by the American Press Association, and distributed to its patrons by means of its electrotype plates, proper credit being given to the Globe-Democrat. Both firms acted in good faith.

Upon learning that newspapers were publishing the story without copyright notice, the Daily Story Publishing Company presented to the various papers in which the story appeared, bills for damages, threatening suits if they were not paid. The American Press Association promptly informed the Daily Story Publishing Company of the manner in which the story was obtained, assumed responsibility for its use by its patrons, and announced that further publication would be immediately discontinued. The American Press Association filed a bill in the Circuit Court of the United States to restrain the Daily Story Publishing Company from collecting in any manner from its patrons, and damages or compensation, or from instituting any suit therefor, insisting that the Daily Story Publishing Company had lost its right of copyright by publication in the St. Louis Club Democrat. The Circuit Court dismissed the bill and an appeal was taken to the Circuit Court of Appeals (120 Fed. Rep., 766). That the decree was affirmed, goes without saying, for to have enjoined the Daily Story Publishing Company would have been equivalent to depriving it of its right to sue the plaintiffs' subscribers; in other words, depriving it of a right, without due process of law. The Circuit Court of Appeals held that the Daily Story Publishing Company did not lose its copyright rights because the licensee inadvertently neglected to print the required copyright notice.

CONSTRUCTION OF CLAIMS IN PATENTS.—In the case of Stillwell-Bierce and Smith-Vaile Company against Eufaula Cotton Oil Company (117 Fed. Rep., 410) the validity and infringement of letters patent granted to John H. Vaile and D. A. Tompkins for a combined cooker and cake former for oil meal were involved.

Judge Day, who wrote the opinion of the case when it came up before the Court of Appeals, held that when the language of a claim for a combination includes an element described only in general terms, the court may look to the specification to ascertain its meaning, and the claim may be limited by the specification, especially where it contains the expression "substantially as described," and the element in the particular form described in the specification is essential to the production of the result which is its most important function. The patentee is not required to describe in full all the beneficial functions of his invention; but if a thing accomplished is a necessary consequence of the improvement made and described, the inventor is entitled to the benefit thereof in construing the patent.

So far as the use of an old element to perform new functions is concerned, Judge Day reiterated the well-known rule that a patent for a combination in which one of the parts performs a new and important function in the operation of the machine, is not anticipated as to such feature by a prior patent for a combination in which a similar part was used in a different place, where it did not perform such function.

The Penn Electrical and Manufacturing Company secured an injunction against the Regent Manufacturing Company and Curry for infringement of a patent taken out by Wright and Curry in 1899 and assigned to the Penn Company. Curry left the Penn Company in 1900. About the same time the Regent Company began to manufacture mirrors. In February, 1901, the Regent Company contracted with Curry thoroughly to organize the mirror factory of the Regent Company, and to suggest such improvements as might appear desirable, and to assist in any capacity necessary to further the interests of said company, at a stated salary. A suit was commenced in April following. The court held that Curry was estopped to deny the validity of the patent; that the Regent Company was in such privity with Curry that it, too, was estopped; that the patent was infringed; and that the Regent Company alone should account, since Curry had no financial interest in the business or in the profits therefrom.

From this decision the defendants appealed (121 Fed. Rep., 80). Judge Baker, who delivered the opinion of the court, held broadly that a patentee, who had assigned his patent, and is in the employ of another, who is making an infringing article, has no ground to object to a decree enjoining him as well as his employer from making and selling such article, where he is not held for the damages caused by the infringement.

THE WATERMAN PEN CASES.—A patent was granted in 1898 to Lewis E. Waterman for an improvement in fountain pens which consists essentially in making a conical taper joint between the cap and the barrel nozzle of the pen. The cap, being thinner and more elastic at the mouth, to form a non-capillary joint, while showing an improved method of construction, did not, in the opinion of the court delivered in the case of Waterman vs. Forsythe (121 Fed. Rep. 103), disclose patentable invention. The court held that the adaptation of joints which were old and well known and in use in other articles made of hard rubber, to use on a fountain pen required only the skill of a mechanic.

It was held in another action against the same defendant (121 Fed. Rep. 107) that patent 293,545, granted to Lewis E. Waterman, 1884, must be conceded patentable novelty and utility, taking into consideration its commercial success; but, in view of the prior art, it was limited to the feature of the claims which describes fissures in the bottom or sides of the ink duct, designed to facilitate the flow of ink to the pen when in use, which were an improvement on any prior construction. As so limited, the patent it was held is not infringed by a pen in which a reed is placed within the duct to perform the function of the fissures in securing capillary attraction.

THE EFFECT OF LACHES ON DAMAGES FOR INFRINGEMENT.—In the case of Jennings against the Rogers Silver Plate Company (118 Fed. Rep. 339), it appeared that the complainants had notified the defendants of their claim of infringement before their patent was issued, and promised to give notification of the issuance, but failed to do so. The defendant continued to make and sell the infringing article thereafter, until suit was brought. It was held that the complainants were entitled to recover only such damages as were clearly and strictly proven.

The demand for the article made after the patented device had largely fallen off by the time the patent was issued, in consequence of its having been on the market for a year and a half. It could not, therefore, be held that sales made by an infringer at a price so low as to leave scarcely any profit deprived the patentee of an equal number of sales at the higher prices demanded by him, so as to entitle him to recover the profit he would have made on such sales as damages for the infringement.

COPYRIGHTS OF COLORED PICTURES.—The Revised Statutes, Section 4956, authorize the copyright of any "book, chart, . . . cut, print, . . . or design, for a work of the fine arts, provided that in the case of a book, photograph, chromo or lithograph, the two copies of the same, required to be delivered or deposited, shall be printed from type set within the limits of the United States, or from plates made therefrom, or from negatives or drawing on stone made within the limits of the United States."

It was broadly held in the case of Hills & Co. vs. Austrich (120 Fed. Rep. 862) that the books printed in successive colors from metal plates from which part of the metal has been cut so as to leave portions in relief, were entitled to copyright as "prints" within the general enumeration of the section and were not within the proviso, because not "printed from drawings on stone."

While it is unnecessary in a claim of a patent to specify ordinary means for applying power or causing motion, it is necessary to specify the parts whose cooperative action is essential to the performance of the function specified in the claim, and each of such parts is an essential element of the combination, so that infringement cannot be charged of a machine so constructed as to eliminate one of such parts without using an equivalent part.

The mere cessation of infringement is not always sufficient to defeat a complainant's right to an injunction; but where it is shown that defendant abandoned the manufacture of the articles complained of some time before the commencement of suit, without any intention to resume, and there is no reason to doubt his good faith, a preliminary injunction will not be granted.

Where the advance toward perfection in an art consists of many intermediate steps, and several inventors form different combinations or improvements, which score decided advances in the art, and accomplish the desired result with varying degrees of success, each is entitled to his own combination, so long as it differs from those of his competitors and does not include theirs.

King Christian has issued a decree declaring the adherence of Denmark to the Berne International Copyright Convention of 1886, which became operative July 1. The Danish government will allow copyrights on literary and artistic work of the subjects of countries signatory to the Berne convention, and even on works not issued by the Danish publishers.