OBSERVATIONS ON THE DEFECTS OF THE PATENT LAWS OF THIS COUNTRY: WITH SUGGESTIONS FOR THE REFORM OF THEM

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SUGGESTIONS FOR THE REFORM OF THEM.

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SEPTEMBER, 1851.—32

OBSERVATIONS

ON

THE DEFECTS OF THE PATENT LAWS,

WITH

SUGGESTIONS FOR THE AMENDMENT OF THEM.

THE necessity for some alteration of the Patent Laws of this country has long been felt, and the time seems at length to have arrived when something must be done to satisfy the demands of the public, for such a reform of those laws as will adapt them to the present advanced state of the useful arts.

The difficulty of dealing with this subject has hitherto been the main impediment to this desirable reform; and, in order now to insure the preparation of a useful law respecting patent inventions, it is desirable that the subject should be fully discussed, so that the new law may be made as perfect as practicable.

With this view the writer ventures to submit to the public a few observations respecting the defects of the existing laws, and the provisions required for remedying the evils which they produce.

And, firstly, with respect to the Defects of the existing Law and Practice.

The objections to the present state of the patent law have regard—to the complicated and dilatory proceedings *which must be taken [*2] to procure patents;—to the enormous cost of such grants; and— to the inefficiency of the law for the protection of the rights either of patentees or the public.

The report of the Privy Seal Commission, published some months ago, and the subsequent public discussions respecting the complex procedure for obtaining a patent, render it unnecessary to make any detailed statement of the numerous steps which must be taken before an inventor can obtain a grant of the sole use of his invention.

The proceedings may, however, be shortly stated as being,—a petition for the patent, verified by a solemn declaration, and left at the Home Office; a reference of the petition by the Secretary of State to the Attorney or Solicitor General; a report by one of those officers to the

Crown in favour of the grant; a warrant under the sign manual to the Attorney or Solicitor General to prepare a bill for the patent; the preparation of the bill and two transcripts or copies of it in the Attorney General's Office, called the Patent Bill Office; the conversion of one of these copies of the bill into the Queen's Bill, upon its receiving the sign manual; the first bill being deposited in the Signet Office, a second copy is transformed into the Signet Bill by adding a few formal words to it, and sealing it with the seal of the Secretary of State; the Signet Bill being received in the Privy Seal Office, the remaining copy of the bill is in a similar manner converted into the Privy Seal Bill; the Privy Seal Bill is then delivered to the Lord Chancellor, and a patent made in the form contained in the bill.

The three bills which have been mentioned are in fact to this effect—that the Queen's Bill commands A., the signet officer, to command B., the Lord Keeper of the Privy Seal, that he command C., the Lord Chancellor, to make the intended grant. A. then issues the required
[*3] command to B., who, in his turn, issues a command to C., *and C. then directs his officers to prepare and seal a patent.

It is not very certain when this complex machinery first had its origin, but at present it is regulated, and indeed required by a statute of the twenty-seventh year of the reign of Henry the Eighth.

Sir Edward Coke, in his Second Institute,(a) speaks exultingly of the provisions of our law in this respect, and says, "such was the wisdom of prudent antiquity, that whatsoever should passe the Great Seale should come through so many hands, to the end that nothing should passe that Great Seale, that is so highly esteemed and accounted of in law, that was against law or inconvenient; or that anything should passe from the king anywayes, which he intended not, by undue or surreptitious meanes."

At the time when these observations of our great legal commentator were written, it seems to have been thought that the public security against the making of improper grants by the crown was most effectually provided for by requiring that this exercise of the prerogative should be subject to the supervision of a large number of officers.

In the present day, however, the division of responsibility amongst a large number of persons appears to produce no good result, and the best mode of providing for the security of the public is by casting responsibility upon persons of high character and attainments, who can be made accountable in their places in Parliament for their official acts.

It appears, from the language of the act of the twenty-seventh of Henry the Eighth, to be very probable that the complicated machinery which has been mentioned was in former times found to be burthensome to suitors for crown grants, for it shows that the object of the statute was to prevent the officers being deprived of their fees by the making of
[*4] such grants without passing the bills through *the Signet and Privy Seal offices according to ancient custom.

(a) Commentary on the 28th Edw. 1, stat. 3, c. vi. (*Articuli super Chartas,*) 2 Inst. p. 555.

The natural consequence of using such cumbrous machinery for making patent grants to inventors has been that the proceedings are treated as matters of course at almost every stage, the only exceptions being that the Attorney and Solicitor-General exercise a controlling power in opposed cases, and if, when the proceedings have arrived at the last stage, the sealing of a patent be opposed, the Lord Chancellor decides whether it is just that the patent should be sealed or not.

The first and most obvious mode of reforming this unnecessarily complicated procedure seems to be, to abolish every part of it which is not really useful; and the want of utility is an objection which applies to every part except the proceedings before the Attorney or Solicitor-General and the Lord Chancellor.

Although these useless forms are observed with respect to patents for inventions, there are many patents of other descriptions—and, to say the least, of quite as important a character—which pass the Great Seal without the authority of either a privy seal bill, a signet bill, or queen's bill; and it is sufficient to mention, as examples, commissions of the peace, commissions of assize and patents of precedence.

The Lord Chancellor has full power of his own authority to issue letters-patent under the great seal (commonly called a commission,) appointing such persons to be justices of the peace, as his Lordship may think fit; and in many other cases may, after taking her majesty's pleasure, he may issue patents without further warrant or authority.

But even if there were no precedents for dispensing with the useless forms which have been mentioned, the retention of them would be utterly indefensible for several reasons.

No security or benefit accrues to the public from these forms, for the officers preparing them issue them as of course, and the chances of error are greatly increased by the unnecessary multiplication of documents which are in effect copies of each other. [*5]

Her majesty's labours are unnecessarily increased by being compelled to sign her name twice for every patent granted for an invention, and the completion of a patent is occasionally so much delayed as to render it worthless when obtained.

The cost of obtaining a patent is also greatly increased, and indeed nearly doubled by these superfluous forms. In obtaining a patent extending to England and the Colonies in an unopposed case by a single person, the expense of these forms amounts to about £45: 19s.;(a) and

(a) The fees are as follows:

	Patent for England.			Extra for the Colonies.		
	£	s.	d.	£	s.	d.
Reference Home Office	2	2	6			
Warrant do.	7	13	6	1	7	6
Patent Bill Office	15	16	0	0	2	6
Queen's Bill	7	13	6	1	7	6
Signet Bill	4	7	0	0	13	6
Privy Seal Bill	4	2	0	0	13	6
	£41	14	6	£4	4	6