John Horatio LLOYD

(17 juin 1851)

Brought from the Lords, 4 July 1851.

REPORT

AND

MINUTES OF EVIDENCE

TAKEN BEFORE THE

SELECT COMMITTEE OF THE HOUSE OF LORDS

APPOINTED TO CONSIDER OF

THE BILL,

INTITULED,

"AN ACT further to amend the Law touching LETTERS PATENT for INVENTIONS;"

AND ALSO OF

THE BILL,

INTITULED,

"AN ACT for the further Amendment of the Law touching LETTERS PATENT for INVENTIONS;"

AND TO REPORT THEREON TO THE HOUSE.

Session 1851.

Ordered, by The House of Commons, *to be Printed,*
4 *July* 1851.

Die Martis, 17° *Junii* 1851.

THE EARL GRANVILLE, in the Chair.

JOHN HORATIO LLOYD, Esquire, is called in, and examined as follows:

2689. YOU are a barrister?
I am, practising at chambers.

2690. Have you had any practice in your profession in reference to patents?
An extensive practice in reference to patents.

2691. Will you be good enough to state to the Committee what your experience of the working of the present system of the patent laws has been?
I have formed an opinion certainly, founded upon my observation and experience, and, so far as I am conscious, without reference to any *à priori* reasoning upon the subject. The conclusion to which I have come, unwillingly I must say, is, that I consider the patent laws objectionable in principle, practically useless, and even injurious.

2692. Will you state what you consider to be the principle upon which protection to inventions is given?
I consider the principle to be two-fold: first, an encouragement to invention, and, secondly, an inducement to the inventor to communicate freely to the public the invention itself; I look upon a patent, therefore, as a bargain on the part of the public with the inventor, that, in consideration of his so communicating his invention, he shall, for a limited time, have the exclusive benefit of it.

2693. Do not you conceive that that principle of the present law is a principle which ought to be adopted in the law of patents?
I conceive it to be the principle of the present law; it is upon that principle that the decisions of the courts are founded.

2694. Are not the objects you have stated very desirable objects?
No doubt.

2695. Do you think they are attained by the present system?
I do not; at least I think the present system is not necessary to the attainment of them, and I think also that it works injuriously to the public in other ways, which more than countervail any advantage to be derived from it.

2696. Do you consider that though injurious, to the public, patents are valuable to inventors?
I do not.

2697. Will you state why?
I think inventors, as a class, would be much better without them: in the first place you stimulate and incite a class of men who hardly need it, who are themselves naturally of a sanguine turn; you incite them in pursuit of a shadow, which is continually apparently within their grasp, but continually eludes it; I find, in fact, that for one inventor, or supposed inventor, who succeeds, there are 50, or perhaps 100 who fail; and although the history of invention may be a record of progress and of triumph, I suspect the biography of inventors would be a very tragic story indeed. My experience, and I have had a pretty large acquaintance

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with inventors, as a class, leads me to the conclusion that this incitement operates injuriously upon them; it is like seeking a prize in a lottery; the man is continually putting down his stake in the hope of getting a prize, and of course in 99 cases out of 100 he gets a blank.

2698. If all those persons who make inventions which are not useful are injured by the false stimulus which has induced them to do so, how stands the case with regard to the inventors of true and valuable inventions?

It is, of course, an unpopular opinion to express, and one which one gives with great diffidence and hesitation; but even in that case I think they would be better without the bounty, granted, or intended to be granted, in the shape of a monopoly.

2699. The diffidence you express has reference only to a courteous consideration of the parties concerned, and not to any doubt in your own mind?

Not to any doubt in my own mind, but simply to this, that any man who expresses an opinion which is contrary to the general current of opinion, ought to express himself with diffidence.

2700. How do you imagine an inventor would obtain a reward for his ingenuity, and a compensation for the loss of time he has incurred, if he did not obtain the monopoly which is supposed to reward him in a pecuniary sense?

I think there are many considerations which must enter into the question. In the first place, the class of meritorious inventors is a much narrower one than people suppose. Of the few whom I have ever known who were really meritorious inventors, I do not think I have known one who has derived material benefit merely from the monopoly given to him by the patent. They have derived benefit, but they have got it in other ways, quite independently of letters patent. In this country, and in the state of society in which we are now (I am not speaking of an early state of society, where it may be necessary to stimulate and encourage, but of an advanced state, like the present), there is no kind of talent, practically useful, which does not command its market value. I know practically, that persons who have the inventive faculty, do turn it to good account; that they do, without letters patent, receive sufficient encouragement from those whose interest it is to reward and encourage them. Of the larger establishments in the manufacturing districts of Lancashire, there is scarcely one in which mechanics, known to be of inventive talent, are not regularly kept; those men are continually observing and continually suggesting; they are valuable to their employers, and they are remunerated accordingly. If you take a man out of that category, and propose to encourage him by giving him a monopoly for every improvement which he may strike out, in the first place, you prevent his mind from following the bent and direction which it has received; you stop him suddenly; you fix and stereotype him in one idea, and thus you not only deprive the public of the advantage which it would have from his following out that train of thought, and working upon till he brought it to perfection, but you injure the man himself; you divert him from that which is his legitimate occupation, and the legitimate exercise of his peculiar faculty, and you set him dreaming about making a fortune. I speak of course always with diffidence; but so far as my observation goes, there is no man who has a practical talent that will not find his reward for it. It is not monopolies which make Watt's and Stephenson's and Brunel's, and to come down lower, it is not by letters patent that you can best reward the humble mechanic who makes and communicates valuable improvements.

2701. One object which you said was thought to be obtained by the granting of patents was, that it induces persons to make their inventions known to the public?

If you look at it with respect to the public only, it seems to me that you do not want that inducement. There will always be persons who will invent, and an inventor will always communicate his inventions. It is a necessity of his nature that he should do so; and even if he did not, inasmuch as invention is not a creation but a growth and gradual development, there will always be found some other mind about the same time which will have hit upon the same idea, and the public will not long be deprived of the benefit. The truth is, the idea will be communicated whether you have letters patent or not, either by that person or some one else; whereas the evil on the other side is, I think, obvious. You rather check the disposition to communicate than encourage it, because the moment

moment you give a man an inducement to protect his invention by letters patent, and an exclusive privilege, that instant his object is not freely to communicate it to the public; he begins rather to consider how he can best disguise and keep away from the public that which is the real merit and principle of his invention; so that you rather do harm than good in that respect, as it seems to me.

2702. One of the terms of his obtaining a monopoly is, that he shall divulge his secret to the public at some future period?

No doubt, and if there be any *mala fides*, if he does not give to the public the benefit of his discovery, he loses the privilege in case it be litigated. We know, however, what ingenuity can do in mystifying and wrapping up in ambiguous language that which might be clear and distinct; specifications are often most faulty in that respect. Where a man does not intend to act honestly, it is very easy to describe in such a way that it is difficult to understand what is really meant to be communicated; the public in that case do not get the benefit; that, however, is not perhaps a mischief so great or so obvious as many others.

2703. What are the principal objections to the system as regards the public?

It seems to me that the one I mentioned before, that you check and retard the progress of invention as respects the inventor himself, is an important one. Secondly, you impede and obstruct other inventors. With the present swarm of patents, for every day there is a fresh litter of them, a man who is really desirous of making improvements finds himself obstructed at every step; he is in constant danger of falling into some pit-fall, or stumbling upon some other man's invention. He cannot make progress in the line that his own mind would direct him in, but he must look about and see, "Am I touching upon this man's patent? Am I trespassing here? Am I quite safe in going on in this other direction?" In this way the public does not get the best invention which it might; it gets that which a man can give without subjecting himself to the tax of a license or to a law-suit, for touching another man's supposed invention, some crude, imperfect, undigested idea perhaps, but yet enough to prevent his treading upon the same ground.

2704. If there were no record kept of inventions as they are made, is not it very probable that many important inventions would be totally lost?

I think it is more desirable that some inducement should be held out to every body to record his inventions, however imperfect they may be, yet they will contain hints and suggestions which, operating upon other minds, may be extremely valuable.

2705. Do not many inventions lie dormant for a time till circumstances arise which bring them into general use?

No doubt of it.

2706. Would not there be a danger that such inventions as those would be lost, supposing there were no means of obtaining the record and the description which the specifications give of those inventions?

A register of inventions of some kind would undoubtedly be desirable.

2707. Is that consideration as important now as it was some years ago; 200 or 300 years ago a chemist or a mechanical inventor had very few means of communicating an invention to the public, at all events he had none of the ordinary means of communication which now exist; but with the present means of the publication of everything which is interesting in art and science now, would not nearly every invention of any use find its way to the public?

I think so. I think the natural tendency of a man who fancies he has hit upon something new, is to communicate it in some shape or other, either through the medium of others, or by publication on his own part: the public is sure, sooner or later, to be made acquainted with it.

2708. Are not all the discoveries in science, which are discoveries of principles rather than of their practical application, now daily commmunicated to the public, under the stimulus of the public reputation, to be obtained by making such discoveries?

It seems so to me; I do not think there is any great discovery of modern times which has been kept back for any long period.

2709. Those discoveries only, which having an immediate practical application, and

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and therefore are susceptible of being made productive of profit, are the inventions to which persons wish to apply patent privileges?

Precisely so.

2710. That being the case, do you think, in the present active state of the public mind, there is any danger that any such invention, if not made known under the premium of patent privileges, would be finally and entirely lost?

I think not.

2711. Do not you think that if any particular and great invention were lost in a particular case, in the existing state of the public mind, there being a practical demand for some such discovery, you may safely assume that such a discovery would be made a second time?

I feel confident that it would be so.

2712. The danger of the loss of inventions through non-publication merely, amounts to the danger of some delay in the re-discovery of them; that is the full extent of the evil, upon any supposition, is not it?

It would seem so, from that reasoning. It seems to me, that there is a little misunderstanding in the public mind generally, as to what an invention is; an invention I take to be a different thing from a discovery in the sense in which the noble Lord speaks of it; an invention is, for the most part, the application of some known law, or some principle, to a new subject, so as to produce a novel result; take Appold's centrifugal pump, for example; there is nothing whatever novel in the principle; the centrifugal force is a thing practically known to every boy who has hurled a stone from a sling; it is the application of that law to the lifting of water in which the novelty consists. Now this is a good illustration of what I consider to be the irremediable defects of the patent system; suppose Appold had thought fit to patent that invention (which he has not done), what could he have patented? not the principle, not only because such a patent would not be good in law, but because it is clear you could not make a principle the subject of a monopoly; not the result produced, for that is not a manufacture: he could only patent Appold's pump; that is to say, a particular machine by which, in a particular mode, water is lifted up; that is a meritorious invention no doubt, because the idea of applying the centrifugal force to driving water into a confined reservoir, and so up a vertical pipe till it reaches a certain level, is a very pretty and novel idea; but if he came to patent it, he would be attacked on all sides, and the more useful and valuable the invention, the more it would be attacked, and the more infringed; and how could he protect himself? He must, as I have said, patent this particular machine; but there is scarcely a part of that machine, if there be any part, which is not perfectly well known, and familiar; even the idea itself is not novel; the fan-blower to a furnace is the same thing, the only difference being that there it is air which is collected at the centre, and forced out at the circumference of the wheel, instead of water. The common rotatory bellows is the same thing, therefore he could not protect that. The steam-engine, or wheel turned by hand, which gives the rotatory motion, and so generates the centrifugal force, clearly could not be patented. The forcing of water by pressure, or a power of any sort, up a tube to a higher elevation, is not a matter that could be patented; it is perfectly well known. So that if you take the invention to pieces and analyse it, there is scarcely a thing in it which is novel. I doubt whether even the combination itself could be made the subject of a patent; yet here is clearly a meritorious invention. Now, supposing the inventor had been a poor man, and had desired to protect his invention, see what he would have been subject to: first he must have gone to the capitalist for means to construct the machine, and bring it before the public; he must have incurred a considerable outlay in order to obtain the patent; that is the first outlay, and by no means a trifling one. But when speaking of amending the patent laws by reducing the cost, people forget that there is a vast deal beyond that which the inventor has to contend with before he can secure to himself the exclusive privilege. Here is a machine which anybody, by a little change of combination, may construct, so as to make it appear a different thing; it may still be a forcing pump, it may even be an application of the same force to the same purpose, and yet it is not the same machine; possibly he has to litigate with that person. After half-a-dozen law suits with people who infringe his patent, he is himself attacked on the ground that the patent is not novel, and he has to meet that attack; he may succeed in one or two cases; he

may

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may fail in another. The greatest satire I have ever known passed upon the patent laws, I found the other day in a pamphlet published by one of the most eminent practitioners in that branch. He says, that as a general rule, where men are plaintiffs, and sue for an infringement, they succeed; where they are defendants, being sued under a writ of *scire facias*, they fail; well, the patentee goes through all that ordeal, and last of all, at the end, perhaps, of the term for which his patent is granted, he finds himself, if he were a poor man, reduced to beggary; if he were a wealthy man, much poorer than when he began. I have seen that so often to be the result, and so painfully, that I cannot divest myself of the conclusion to which I have come. It has sometimes occurred to my mind whether a tribunal might not be suggested which should give, in a less objectionable shape, bounties to those who are meritorious inventors; I have thought about it a good deal, for these things have been for 20 years passing through my mind, but I did not find it practicable according to the best consideration I could give the subject.

2713. You stated that you thought your opinion was one not shared in by the public at large?
I think it is not.

2714. Supposing that to be the case, do you think that the present law could be advantageously amended, at all events to give a fairer trial to the system of patents?
I have gone through every part of the law with reference to that question; I can see nothing which will remove the main objections; I can see that you may palliate and mitigate them, but I see nothing which can cure the defects that I consider to be inherent in the system itself. If you assume the principle that you are to protect them, of course you ought to make the obtaining of letters patent cheaper. You ought to remove the impediments to the practical advantages which you intend to give, and to a certain extent you might do that. If I were called on to make suggestions, I should not be unwilling to do so; but having a strong opinion that nothing can remove the objections of principle, and that, ultimately, you will hardly have done much good, perhaps rather have aggravated some of the evils by attempting to amend them. I should not feel disposed to volunteer any suggestions of that kind.

2715. If the principle of granting patents be wrong, the greater facility you give to inventors to obtain patents, the more you increase the evil; but if you are mistaken in your opinion with respect to the true principle upon which the system rests, it would be right to introduce into the present law those amendments which are pointed out by persons interested as likely to make it work better?
Yes, but I think that in this, as in almost every other case of a like kind, disappointed men lay the blame upon the wrong shoulders. I do not think the fault is in the law, I think it is in the system.

2716. If the Committee have understood your evidence correctly, your objection to the patent system is insuperable. You look upon it as a system of bounty, by which attention and ingenuity are artificially directed to subjects of invention, and you think that that artificial direction of the human intellect to those subjects, is, in the present advanced state of mental activity unnecessary, and is found practically, in many cases, pernicious to the parties concerned, as well as to the public?
That is my opinion.

2717. And, therefore, any law which shall remove or lessen the practical objections which you feel to the present administration of the patent system, would, in your estimation, in no way whatever touch the real objection which you see to the patent laws?
Certainly not.

2718. Are you still practising as a barrister?
Yes, at chambers.

2719. In giving this opinion against the law of patents, can you have any personal interest in the abrogation of that system?
Not the least; I am in the habit of drawing specifications, and in the habit of advising upon them; what I have stated as my opinion is in fact a conclusion forced upon me. I have occasionally expressed this opinion, and have found certain

tain persons whose judgment I respect, agree with me in it. It was known that this was my opinion, and it is therefore, I presume, that I am here.

2720. Do you find great difficulty in drawing specifications?
Exceeding difficulty. It is impossible to over-estimate the difficulty.

2721. Does that difficulty arise from the instructions of your client, or does it arise from the nature of the subject generally?
It arises from the nature of the subject, mainly. I could point out what the exceeding difficulties are. You have to avoid, on the one hand, such generality as will bring you to a principle only. On the other hand, you must avoid that particularity which would lead to easy infringement. You are to keep off every thing else which has been done and has been made the subject of a patent in the same direction. Therefore, what with qualifying, and what with particularizing, and what with seeking to make the matter as comprehensive as you can for the benefit of the inventor, and what with the inherent imperfections of language itself, and the difficulty of accurately expressing technical matters, the task of drawing a specification is one of extreme delicacy, and even nervous responsibility. And at last there are very few which go out free from danger. Nobody can be said to be sure of a patent till it has been tested by the ordeal of a trial, or two or three trials.

2722. Notwithstanding your opinion with regard to patents in general, have you any doubt that the publication of all existing specifications of patents, with full indices, accessible to the public, would be a very great advantage?
I think it would.

2723. Do those specifications, drawn under those great disadvantages and difficulties, often so describe the invention as to be perfectly unintelligible to any person, except to the inventor himself?
If so, they are extremely faulty. No lawyer would consciously err in that way. He would never make himself the instrument of endeavouring to keep from the public that which the public ought to know. There are, no doubt, specifications which are very ambiguous, and very unsatisfactory in that respect.

2724. And that ambiguity arises in consequence of the parties being afraid of making an infringement too easy?
And partly also from their fearing to tread upon the ground of some other person, so that there is as large and general a shape given to it as possible; and there is another motive which operates very generally. A man conceives, though he has not worked out the idea in his mind, that something further may be done of the same kind: he therefore adds some words large enough to take in what may afterwards be discovered in that particular field, and therefore a positive injustice is done to those who come afterwards, and work up that ground. That is one of the evils of the present system.

2725. Have you looked at the Bills now before the Committee?
I have not.

2726. With the opinion you have expressed upon the general question of its not being advisable to give a monopoly to an inventor, you would of course agree with the clause in this Bill which prevents the mere importer of a foreign invention having any monopoly for the introduction of it?
There is no doubt that that is one of the crying evils in the present system, as it practically works. Inventions communicated, as they are called, are become a nuisance; in fact, it is a trade to deal in communicated inventions, and really many meritorious inventors are shut out from the field by those pseudo inventors, who steal the ideas of others, and seek to appropriate the advantages to themselves.

2727. Are you aware that the law of other countries requires novelty throughout the world, as well as in the particular country in which the patent is granted?
Yes, I believe so. I think, in the present state of communication, there is scarcely any discovery made in any country, which is really valuable and useful, that does not find its way very soon into every other busy country, and certainly none which does not come to England; so that I do not know that a man has a right to set up that he has any merit from merely getting the start in introducing what

what any other man might just as well have appropriated. That notion belongs to an earlier state of society, I think. *J. H. Lloyd, Esq.* 17th June 1851.

2728. Is there any other observation which you wish to make to the Committee?

It occurred to me at one time that there might be a Council or a Board, such as the Royal Society or the Society of Arts, and that inventors might be encouraged to submit their pretensions to such a Board, who might report upon them, and recommend them for State bounty. The practical difficulties which occur upon that, seem to be these: either the investigation is *ex parte*, or it is not; if not *ex parte*, and you invite objectors by public notice, the only persons who would come to object under such circumstances would be rivals. You would thus practically arrive at the same evil which it is sought to avoid, viz., litigation upon a disputed patent, and that before a tribunal even less competent to dispose of the question than the existing tribunals—not less competent in respect of knowledge, but because it would have less means of arriving at a conclusion upon facts, and no means of ascertaining all the facts. The inquiry itself would be conducted without principles, if one may say so; and again, not having the character of a judicial proceeding, it would be subject, unconsciously and unintentionally, to influences which do not and cannot affect judicial tribunals, so that you would seldom obtain a satisfactory result. And then, as it seems to me, there is no criterion by which you can determine the merit of the inventor; some men will suddenly and without any labour conceive and mature an idea which may be very valuable, and may claim to be rewarded for that invention, and perhaps properly, because the utility may be considered to be the true measure and principle of the reward; there are others, again, who expend a life, and devote their energies, their time and their money, to the pursuit of an object which, perhaps, when attained, may not be so valuable. The question then arises, whether all this should be taken into account in estimating the claim of the inventor to a bounty.

2729. Would not the existence of a certain body of men, possessing scientific and practical attainments, be very useful, not in deciding upon what was the real merit of the invention, but as the means of informing both the applicant and the Attorney-general, with whom they might be associated, as to the novelty of the invention?

Certainly, I think it would be most valuable. A great many men now stumble in the dark, fancying that they have an invention, which they afterwards find out is not a novelty at all.

2730. Unless persons were particularly appointed to that post, would not there be a difficulty in finding mechanics, or chemists, who are not in some way mixed up with previous patents?

There is no one but a patent agent in extensive practice who really knows what are the subjects of existing patents; one of the mischiefs of the present system is, that men go to those patent agents, who are undoubtedly a very intelligent class of men, but whose business is to make a patent up; therefore, they are continually setting their ingenuity to work, not to make it clear what the man considers himself to have invented, but to find out what it is which can be made the subject of a patent, in the case of this particular man, without interfering with somebody else. The man goes with a fine bird, which he conceives to be of his own hatching, and one feather after another is stripped off, till at last he hardly knows his own again.

The Witness is directed to withdraw.

CHARLES MAY, Esquire, of the Firm of Ransomes & May, Ipswich, is called in, and examined, as follows: *Charles May, Esq.*

2731. YOU were examined before the Select Committee of this House on the Extension of Designs Act?

I was.