THE NECESSITY FOR CONSERVATISM IN THE ADMINISTRATION OF PATENT LAW.

[READ BEFORE THE PATENT CONGRESS AT CHICAGO, 1893.]

Every system of law is developed by the application of principles to facts. The principles are fundamental truths of the intellectual or moral order which are perceived by the human mind, and affirm themselves to the enlightened reason of every individual. The facts are beings or conditions or relations which exist in the visible or invisible world around us, and constitute or influence the personal, social or political life of all mankind. The proper application of these principles to these facts results in the creation of new beings, in the production or modification of conditions, and in the establishment or severance of relations, whereby the sphere of human activity is enlarged, the freedom and effectiveness of human effort are increased, and the prosperity and happiness both of the citizen and the community are secured.

The principles of law and the facts to which they are applied are alike definite and immutable. Neither their scope nor their verity depends upon the qualities of the applier or upon his act of application. The fundamental truths are true, both in their comprehensions and their limitations, whether or not he perceives them, or understands them, or adequately interprets and employs them. The facts are precisely what they are, both in their essence and their attributes, irrespective of his ignorance or knowledge, and are unchangeable either by the errors of his intellect or by the perversity of his will. Even where the facts are created by the law, when once created they are, as to all future applications of these principles, no less real and impregnable than those which are evolved by physical forces or rest upon the original fiat of Omnipotence.

The administration of the law, which consists in the proper application of principles to facts, thus demands in its administrator: first, a clear conception of the principle in its entire comprehension and in its exact limitations; second, an accurate apprehension of the facts as they really exist; third, a correct percep-

tion of the relations which subsist between the principle and the facts, and of the extent and method of the additions, modifications, or rescissions which it imposes on them; and fourth, an unalterable fidelity to the truth of the principle and the reality of the facts in imposing such additions, modifications, and rescissions. In the administration of the law there is, therefore, no room for the exercise of the imagination or for the indulgence of individual idiosyncrasies. The applier of the principle has nothing of his own to offer by which he can improve or fortify it; nor can he increase or diminish the smallest detail of the facts by any conjecture of his fancy or any falsehood of his tongue. The duties which devolve upon him lie within the province of his intellect alone. He is bound to know, not to guess; to accept, not to invent; to become the instrument through which the abstract truth acts upon the concrete truth in begetting other and equally immutable truth, not the originator and promulgator of notions conceived in his own ignorance, and through his pride and folly foisted off upon the public as the infallible utterance of the law.

Law is administered, for the most part, either by legislatures or by courts. The legislative body contemplates the beings, conditions, and relations which exist in the community at large, ascertains the principles whose application to these facts is calculated to promote the public welfare, and makes the application by the enactment of a statute which is enforced by the executive department of the State. The courts inform themselves concerning the beings, conditions, and relations which constitute the facts in controversy, discover the principle in obedience to which additions, modifications, or rescissions in the facts should be made, and apply that principle by ordering and compelling such action or forbearance as the principle demands. The purpose and the process in both cases is the same. The field of legislative energy is wider. Its mandate has superior authority. But in their respective spheres each deals with facts and principles over whose truth and reality it has no control, yet which, if it is fully cognizant of their actual character and relations, it can apply, the one to the other, to the benefit of the entire community or of that part of it to whom the facts especially pertain.

Conservatism in the administration of the law consists in the adhesion of the legislative or judicial mind to the entire truth of principles and to the complete reality of facts, and in its perception and enforcement of the exact relations which subsist between them. Conservatism is a term employed sometimes as an antithesis of progress, sometimes as an antithesis of radicalism. In the

latter sense only can it be predicated of the administration of the law. The law is in its very essence progressive. By the development of individuals and of society new facts are constantly evolved and principles hitherto unperceived are made apparent; and in the application of one to the other courts and legislatures must keep pace with the movement of mankind. Conservatism, in the sense of rest or *stasis*, is therefore impossible. Immutable as are the fundamental truths to which the legal mind adheres, the facts to which they are to be applied pour forth in ever increasing multitudes from the womb of time, and their subjection to these truths requires the formulation of new rules and doctrines which reach beyond, but do not contradict, the old.

Conservatism in law is the antithesis of radicalism. Radicalism is essentially destructive. It overthrows in order that it may rebuild, but having overthrown it leaves its field of operations strewn with ruins; and if new structures ever do appear they are erected by conservatism on the old foundations, with the old materials, and after the model of those which were destroyed. In the administration of law radicalism manifests itself in the abandonment or contradiction of principles, in the ignoring or perversion of facts, in the substitution of individual opinions for universal truths, and in the assertion of the transient prejudice or whim of judge or legislator in place of the inevitable conclusion which follows from the proper application of indisputable principles to established facts. Unconscious that one vital force pervades the universe and that nothing can exist which does not draw its life from that which lived before it, the radical seeks to cut loose from the past, and to create by his mere human edict a new cosmos whose laws and methods shall accord with his own vagrant theories and perverse desires. Conservatism, on the contrary, recognizes and accepts the "Isness of the Is." The conservative submits his intellect to the immutable truth of fundamental principles. He acknowledges that facts are precisely what they are, and in his own convictions affirms the indissoluble relations between principles and facts. Whether legislating for the future or solving the problems of the present, he realizes that in existing institutions are the seeds of all that are to come, and that whatever circumstances may arise they can be beneficially and permanently controlled only by extending to them the same principles which heretofore have governed our political and social life. Throughout the history of jurisprudence these two antagonistic influences have contended for the mastery over the administration of the law. Fortunately conservatism has thus far prevailed; and not-

withstanding some portentous revolutions, we can trace back the great outlines of our legal system to the beginning of the world, and demonstrate from the experience of every age the truth of its principles and the practical wisdom of the rules in which their application has resulted.

Until the present century radicalism in the administration of the law has perverted the acts of legislatures rather than of courts. Legislative assemblies too often echoed the temporary wishes of the sovereign or answered the clamor of the populace by statutes which embodied no fundamental principle and were adapted to no actual condition of facts. Meanwhile the courts, having no guide but the unerring maxims and definitions of the law as interpreted by their own reason and the concise judgments of their predecessors, referred their decisions back to these ancient standards and sought only to discover and establish between them and the facts their necessary and unchangeable relations. The doctrine "*stare decisis*" held them fast to the adjudicated points of previous cases and under its direction, in spite of hostile legislation, they advanced with no uncertain or interrupted step, developing the symmetrical and enduring fabric of the common law. Within the present century, however, the attitudes of courts and legislatures have been in this respect reversed. Radicalism has transferred its theatre of operations from legislative halls to the temple of justice, and now exhibits itself with greater frequency and more effectiveness in the decisions of the judges than in the positive enactments of the written law.

The causes of this double change are easily discerned. The members of our legislatures have ceased to be the servile instruments of royal will. More deliberate modes of legislation counteract the influence of popular excitement, afford an opportunity for public discussions through which a thorough acquaintance with the facts and principles is gained, and enable the legislators to embody in their edicts the collective wisdom of the State. Thus in the absence of personal interest and partisan fanaticism modern legislation is generally conservative, developing the law along lines predetermined by its past conditions, and meeting the demands of an advancing civilization with rules of action derived from the same sources which furnished those under whose impulse that civilization was itself evolved.

The opposite tendency of judicial administration can be explained with equal ease. Through the vast increase in commercial enterprises and the industrial arts the sphere of facts has been expanded out of all proportion to the sphere of human knowl

edge. A hundred years ago an energetic student might aspire to some degree of familiarity with all those beings, conditions, and relations which constitute the practical side of political and social existence. A lawyer or a judge who did not comprehend the matters in controversy might justly be charged with a neglect of duty, and an erroneous decision could proceed only from some departure from the acknowledged principles or from a voluntary ignorance of the disputed facts. But this parity between the knower and the knowable has long since disappeared. No man can now pretend to universal knowledge, and few to an acquaintance with all the details of any special science. Probably there is no human intellect which could to-day form an exact and complete conception of every fact already discovered and verified by men, even although the fact were fully set before it by the descriptions and explanations of those who comprehend it. Yet these innumerable facts, in every possible combination, are presented to our courts as one element in the problems which they are compelled to solve, and our judges are incessantly confronted with questions requiring a thorough knowledge of subjects which they are qualfied neither by natural aptitude nor artificial training to understand, and of which they can gain but the most fragmentary and deceitful glimpses through the testimony of witnesses and the arguments of advocates. Thus, though their minds were pervaded by those fundamental truths which are the reason of the law, it would be impossible for them to perceive and postulate their true relation to the facts as they actually exist, and so establish rules and doctrines in harmony with principle and with the normal development of the law.

But, most unfortunately, these fundamental truths are also often dim and shadowy in the judicial mind. For at least two generations the study of principles has been largely superseded, both among lawyers and judges, by the hasty examination of authorities. Instead of resorting for guidance to the supreme reason of the law, (which is neither the private reason of any man nor the aggregated reasons of all men, but the universal reason of mankind "gotten by long study, observation, and experience"), they fly to some favorable decision in which too often the tribunal has shown itself wiser than the law, and written its own refutation in its contradictions of imperishable truth. The modern fashion of requiring the judges of our courts of last resort to disclose and publish their reasons for their judgments intensifies this evil in the highest degree. It does not follow that because the relations between principles and facts are clearly perceived by the mind

they can be recited by the tongue. The verdict of a jury, for example, may be correct, as it sometimes is, and still not one member of the panel may be able to describe the mental process through which the conclusion was attained. No doubt many an ancient jurist who discerned the principles, and properly applied them to the facts in a decision which has been endorsed by every subsequent tribunal, would have made but a sorry showing if he had undertaken to depict the operations of his own intellect in reaching the result. The frequent contrast between the rectitude of a judgment and the weakness of the reasons which are adduced in its support is thus no matter for surprise, even in cases where the opinion truly represents the method by which the court arrived at its conclusions. But when the court has jumped to its conclusion, perhaps under the guidance of a legal instinct more reliable than all its reasonings, and then attempts to justify its judgment, the opinion becomes a mere partisan argument, influenced by the same prejudices and subject to the same dangers of prevarication and suppression as if the writer were seeking at the bar the adjudication which he now endeavors to defend. Such in their real and necessary character are many of the decisions upon which so much judicial labor is expended, and over which so many eager students pore in the vain effort to discern the sunlight in the uncertain mirror of this agitated sea.

Moreover, as though this substitution of authorities for principles would not sufficiently disturb the natural growth and progress of the law, the authorities themselves have been flagrantly abused. If, in referring to authorities, cases identical with the one at bar or truly analogous to it were alone regarded, if due distinction were made between the points adjudicated and the arguments which support and the illustrations which explain them, and if only the judgments of the courts were taken as a guide, the investigation might be profitable. But when, as often now occurs, the entire printed opinion is treated as an infallible oracle of the law, when its ill-considered *dicta* or its misstated examples are accepted as settled rules and definitions or as a basis for further logical deductions, nothing but contradictions and confusion could result. Instances of this abuse of the authorities are met on every side. No one can study a subject, by reading in chronological order the decided cases which involve it, without perceiving how the law has suffered from this evil. Some of the most dangerous errors, affecting not merely the theory of the law but immense practical interests, have had their origin in a heedless sentence, written by a hurried judge, which had no possible connection with the points

he was deciding, and of whose legal consequences, if not of its actual meaning, he was himself unconscious. The more destructive in their effects, the more subversive of fundamental principles, such utterances are, the more do they attract and fascinate certain classes of judicial (?) minds, and the eagerness with which they are adopted and asserted is equalled only by the ruthlessness with which they are applied. In view of these abuses it might well be questioned whether judicial legislation was not in a healthier condition, and our tribunals of last resort of more real advantage to the commonwealth, when their judgments on the points in controversy alone were disclosed and their reasons, if they had any, were buried among the secrets of their own breasts.

In the judicial administration of the law according to such methods, radicalism is of course inevitable. When principles recede beyond the sphere of judicial vision and facts never completely come within it, it is impossible that new and strange doctrines should not be asserted and that fancy, ignorance, and self-conceit should not combine to overthrow the rules which embody the reason and the life of the law. That the decisions of different courts on precisely similar states of fact should flatly contradict each other, that courts should overrule their own prior judgments, that judges should in subsequent opinions exhaust their ingenuity in endeavoring to explain away the assertions and reasonings of their previous dissertations, that the whole body of the law should fall into uncertainty and conjecture, and empiricism usurp the thrones of knowledge and true scientific investigation, are merely symptoms and consequences of the radicalism which is fast poisoning the very fountains of public justice and undermining those institutions on which the security and value of political and social life depend.

It might perhaps have been expected that patent law would escape this contamination. Its principles are few and eminently intelligible. All its facts lie within a limited domain capable of exploration by any person interested in them. Its administration is entrusted to courts and legislatures presumably composed of men of the highest practical wisdom and widest experience, and actuated by no motive except the desire to interpret and apply the law according to its true spirit and for the mutual benefit of individuals and the commonwealth. Under these circumstances, this department of our jurisprudence might well be considered safe from the insidious attacks of radicalism, and destined to preserve its integrity, consistency, and usefulness as long as the patent system should itself endure.

To a great extent this expectation has been realized. The legislative administration of the law has almost uniformly been faithful to principles, though sometimes more than liberal in their application in favor of inventors. The Statute of Monopolies declared with clearness and precision the fundamental truths of patent law, and from its date to the present no original enactment, either in England or the United States, has materially departed from them. The same encomium may be awarded to the authorized amendments, compilations, and revisions, when these are construed by the originals in obedience to the common law rules of statutory interpretation.

The judicial administration of the law is not entitled to an equal commendation. The attitude of courts toward inventors may be historically divided into three distinct periods,—the first ending with the eighteenth century; the second terminating in this country about twenty years ago; the third that of our own generation, whose close none can foresee. During the first period the English judges did not appreciate the importance of the industrial arts nor commend the policy of conferring on inventors a temporary monopoly in return for their disclosures to the public, and consequently in their decisions they did not always extend to patentees that measure of protection which the principles of patent law require. In the second period the judges of the courts of the United States, and generally those of England, recognized the full significance of these principles, and so far as their imperfect conceptions of the nature and results of the inventive act permitted, correctly applied them to the facts. During this period the opinions of these courts in patent cases are almost entirely free from the defects which have subjected judicial opinions in other departments of the law to such abundant and deserved criticism. While these opinions are not, and do not purport to be, complete statements of the doctrines which the judgment is intended to enforce, and do not attempt to lay foundations for inferences in future cases outside the legal points which they expressly determine, yet as essays upon various topics of patent law, as explanations of its principles and illustrations of their application and effects, as definitions of the subjects which they govern, as indications of the questions still unanswered and suggestions of their probable solutions, they form a body of legal literature which has no parallel in our jurisprudence and whose loss would be irreparable. In it the student, the lawyer, and the judge, whatever statutes may be passed or text-books written, must ever find the most fruitful field for their investigations not only of the principles

which embody the reason of the law, but of the nature and relations of the facts to which those principles apply.

It is to be profoundly regretted that in the present period the judicial administration of patent law in this country seems to be departing from these wise and just standards and trending backward toward the ideas and methods of the preceding age. The current of judicial feeling is apparently turning against the inventor, and a jealousy of his exclusive privileges has begun to manifest itself in narrow interpretations of his patent, in disparaging the achievements of his genius, in imposing upon him unprecedented burdens of knowledge and diligence, and in depriving him of benefits and immunities which had long been regarded as indisputable. Already two of the most important of the fundamental principles of our law have been attacked, and others of less moment, but still essential to the harmony and completeness of our system, have been put in jeopardy. These attacks have been as subtle as they were dangerous, and probably were unsuspected by the very judges through whose decisions they were perpetrated. A glance at the invasions of these principles will disclose the method of those attacks and the magnitude of the injury which they have already inflicted, not only upon individual patentees but upon the perspicuity and consistency of the law itself.

The fundamental truth upon which all patent systems rest is this: that public policy requires that an inventor who is willing to place his invention at once within the knowledge of the public, in consideration of a temporary monopoly therein, should be protected in the full enjoyment of that monopoly during the period for which it was conferred. Patent systems exist solely for the purpose of according and securing this protection. Every rule regarding the grant and amendment and interpretation and transfer of patents was made only to bestow upon the inventor the recompense which he has earned by his disclosure of the invention. Upon him is imposed a single duty,—to publish his invention in the description of his patent in such a manner that persons skilled in the art can, without further exercise of inventive genius, practise it in the best method known to the inventor. When the inventor has performed this duty it remains for the public to carry out effectively its own part of the contract. It is obliged to grant him a patent in terms which fully cover his invention. If his first patent does not accomplish this, it must grant him another, either as a new original or as an amendment of the former, and repeat its efforts until it does vest in him the monop-

oly to which he is entitled. In all controversies between him and itself or other individuals it is bound by the same principle to construe his patent, if its language will permit, in such a manner as to coincide with his actual invention, and if its language will not suffer this, to amend the language in accordance with the facts and then sustain the monopoly as thus defined. If it is for his interest to transfer his invention in whole or in part to others, the right to make such transfer, which enters into the essence of every property right, must be conceded, and modes must be provided in which it can be accomplished without other restrictions than the nature of the property has imposed. All acts for his protection are thus acts of the government on behalf of the public and in the performance of a public obligation, and for the mode of their performance the public, not the inventor, is responsible. The statement and allowance of the Claim in which the limits of his monopoly are defined is the act of the government, and if this is defective the fault is that of the government, and when discovered should be corrected without inflicting upon him any loss or hardship. The grant of a patent is an act of the government formulating a judgment, after due inquiry, in favor of the patentability of his invention and of his title to it as its inventor, and by this act and its results the government should stand, affirming the monopoly until its lawfulness is overwhelmingly disproved. The construction of a patent by the court is an act of the government interpreting its own grant, and the court should interpret the words in the "most liberal and beneficial sense," for the honor of the public is more to be regarded than its profit, and it was not the government's intent to make a void grant. The vindication of a patentee against infringers is an act of the government enforcing its decrees against impugners of its own authority and compelling their obedience to regulations which it has itself imposed, and should be performed with the same energy, and with as slight respect for the excuses and subterfuges of wrong-doers, as any other act of prosecuting and punishing offenders. All these propositions are contained within that fundamental principle of patent law. They follow from it as inevitable consequences. If it is to remain the corner-stone of our patent system and the expression of our public policy, then these, and each of these, must be in its full integrity maintained. For when they are attacked the whole fabric of our patent jurisprudence is assailed. When any of them fall, its foundations and its superstructure are alike endangered.

The instances in which our courts, during the last twenty

years, have either directly or by implication denied these propositions are very numerous. No one can read the cases involving the validity and scope of reissues, the construction of Claims, the line of demarcation between mechanical and inventive skill, the weight of the presumptions arising from the grant of a patent, and similar questions, without perceiving the discrepancy between the present positions of our courts and those of their predecessors by whom this principle of patent law was constantly acknowledged and enforced. That patents cannot be reissued to amend the Claims in the interest of the inventor; that acquiescence in a Claim forced on him by the government, as the sole alternative to the denial of a patent, deprives him of the right to an amendment even although the Patent Office has discovered and is willing to correct its error; that the invention protected by the patent is to be measured by the letter of the Claim notwithstanding it omits or covers features which the description clearly shows should be rejected or included in order to confer a monopoly commensurate with the actual invention; that there is no distinction between mechanical and inventive skill which can be accurately defined; that the opinion of a judge, whose knowledge of the industrial arts has been acquired by hearsay on the bench, is to outweigh that of skilled governmental experts in the Patent Office upon questions of the state of the art or the originality and identity of inventions; that all the rights and remedies of inventors are to be determined by the phraseology of statutes without referring them to principles or the doctrines of the common law;—these are some of the strange heresies which this later age of judicial administration has evolved, and in them is the prophecy of worse to come.

The second principle to which I have alluded is the following: that the first conceiver of an invention, if diligent in reduction, is entitled to a patent for it against a rival inventor as well as against all the world. This principle lies at the very heart of our own patent system, and probably no judge could be found so rash as to deny it in express words. But nevertheless a doctrine has crept into our courts, and found endorsement in the highest tribunal of our land, which strikes at the life of this principle and limits it to an extent which practically destroys its value. The ancient statutory rule that an inventor forfeits his right to obtain a patent, if with his consent and allowance the invention has been in public use or on sale for more than two years before his application, has, under a construction of the Act of 1870 which utterly ignores its antecedents and its consequences, been held to embrace cases not merely where the invention made by the appli-

cant had been used without his knowledge, but where the invention used was that of an unknown and later rival. Obviously if the public use of an unknown rival invention can defeat the right of the first conceiver to a patent it is no longer true that diligence in reduction, added to priority of conception, completes his title to the patent. The further obligation, and one often impossible of performance, is imposed upon him of reducing to practice and filing his application within two years from his conception, at the risk of losing his monopoly through the action of some later conceiver but more prompt reducer. The imposition of this obligation is justified by none of the principles of patent law, and the inventor is thus liable to be robbed of the fruits of his inventive genius without his own fault and while he is fulfilling every requirement which in reason, or on principle, or under any consistent interpretation of the letter of the law, could be exacted from him.

The source of these and of most other departures from the principles of patent law has been already indicated. They originate in the opinions of the judges, mainly in *obiter dicta* thrown off from a rapid pen with little apprehension of their true meaning and their probable effects. Advocates eager for authorities to support a doubtful argument in an almost hopeless case are only too glad to avail themselves of any endorsement of the bench, and careless whether their quotations represent the judgment of the court, or its mere reasons and examples, insert these *dicta* in their briefs and offer them as judicial statements of the law. Too often the sound of the sentences in which these errors are contained is agreeable to the ear. Their very heterodoxy also excites interest, and in the modern mind a disposition to sustain them, and when other influences are at work upon the court in favor of the advocate it is not surprising that these *dicta* should be accepted as expressing verities of law.

The seeds of such errors are still being sown with an unsparing hand. Not long since one of our courts in discussing the significance of the word "invention" said: "The word cannot be defined in such manner as to afford any substantial aid in determining whether a particular device involves an exercise of the inventive faculty or not." If this statement were correct the patent system would be incapable of administration and the patent law itself a solemn farce. As no valid patent can be granted except for an invention, if the nature and attributes of an invention cannot be ascertained and accurately defined it never can be known whether the claimant is entitled to a patent or whether an

existing monopoly should be sustained. To judge the character of the alleged invention from its consequences does not solve the difficulty, for if its character cannot be known its relations to other things are equally unknowable, and though events may follow it in order of time it never can be safely predicated as their cause. But the statement is not correct. The word invention is as capable of exact definition as any scientific term in the English language, and the processes of the inventive act can be described as clearly as any other operation of the human mind and hand. That judges find many states of fact to which the application of this definition is not easy is also true, but the trouble springs not from the definition but from their own ignorance of the industrial arts, and of the proper method of distinguishing the old from the new. Given a perfect knowledge of the state of an art and a precise conception of the intrinsic character of an alleged invention, and the question whether inventive skill was exercised in its production becomes one of the simplest problems ever presented to a court for its solution. What may result from this new blow at fundamental principles, when the error of this court comes to be applied in other cases through the misdirected ingenuity of counsel, imagination stimulated by experience can alone conceive.

In a case still more recent the same court has decided that the Claims of a patent cannot be separately assigned, and advanced as its reason for the decision that such an assignment would divide the monopoly otherwise than territorially, contrary to the settled doctrine of the law. This reasoning assumes that the monopoly created by a patent is commensurate with the patent, not with the invention; that if a patent covers several inventions, as under our system is permissible, the single indivisible monopoly applies to them as a group, not individually; and that the union thus verbally established between the inventions is disseverable. The doctrine here asserted is not only new and contrary to the very meaning of the word monopoly, but introduces into our law peculiar difficulties. Its logical developments cannot be conjectured. It may compel the owner of a patent covering several inventions to procure its reissue in divisions in order to assign them separately, or it may lead some other court, following another line of deductions, to declare that a reissue in divisions is a severance of the monopoly which the law does not allow. There was no occasion in the case referred to for any allusion to this subject of monopoly. That public policy forbids such a confusion of the records as would be likely to occur if Claims were

individually assignable was a sufficient reason for the judgment, and the insertion of this further proposition,—unnecessary, strange, subversive as it is,—presents a striking illustration of the pernicious practice which is here condemned.

Instances of these *dicta* and of their abuse might be indefinitely multiplied, but it is not the purpose of this paper to criticise the utterances of the courts, and they have been referred to merely as exhibiting the infusion of the radical virus into our patent law, and disclosing the methods in which its influence is disseminated. There can remain no doubt, after considering these examples, that the evil exists, that it is propagating itself through the medium of judicial decisions, and that it threatens to overthrow the very foundations of our patent jurisprudence.

To point out a disease without attempting to prescribe a remedy is as profitless in legal as in medical or moral science. In concluding this paper I therefore venture to suggest certain lines of conduct which, in my view, a sound conservatism would dictate as the most efficacious modes of restoring and perpetuating the integrity and consistency of our patent law.

1. A legislative revision of the written law, in which each subdivision of the subject shall be separately treated with such completeness as if it had no relations with any other subdivision, and every rule shall be expressed in words with all its limitations. This is practicable in patent law even if it is so in no other branch of jurisprudence, and would abolish that convenient but destructive method of escaping difficulties by discovering some new interpretation of the statutes which their ellipses and confused arrangement now render possible.

2. The abandonment by the courts of the present habit of departing from the points submitted to their judgment in order to discourse on general topics which, though related to the facts before them, raise no issue of law for their decision; and when explaining and fortifying their own judgments to urge only those reasons which they have had the time and opportunity to thoroughly investigate both in their fidelity to principle and in their bearing on all possible states of fact. A decision for which no reasons are adduced, if right as most of the decisions in patent cases unquestionably are, advances the science of the law to the extent of that decision. But a correct judgment for which untrue or illogical reasons are presented works mischief in two ways. To critical students, having already a competent knowledge of the law, the force of the judgment is impaired by the manifest weakness of the reasons which support it; while the careless and

ill-informed accept the judgment and the reasons both as sound and are by both misled.

3. The refusal of advocates to maintain before the courts any legal proposition of whose correctness they have not satisfied themselves by sufficient study, unbiassed by the exigencies of the case in which they are engaged. This remedy touches the evil at its root. Of all the erroneous propositions scattered up and down through the pages of our reports there are probably very few which were not first conceived and formulated in the brain of some partisan advocate whose purposes it suited to have the law thus perverted and misapplied. An overburdened judge, unfamiliar with the facts and sometimes with the principles of law involved in the case before him, is not always proof against the specious arguments by which false doctrines may be clothed in the habiliments of truth; and though the courts must undergo the odium of their errors and mistakes, yet with the members of the bar lies in most cases the greater blame. Fortunately with them also lies the remedy. They have the power, if they see fit to use it, to return the patent law to its ancient channels, to purify it of its errors, to bring it back in all its details into complete harmony with principles, and to hand it down to their successors the simple, consistent, and beneficial system which it was when they received it.

William C. Robinson.