Die Veneris, 30° Maii 1851.

THE EARL GRANVILLE, in the Chair.

Evidence on the Patent Law Amendment Bill, and Patent Law Amendment (No. 2) Bill.

R. Prosser, Esq.

30th May 1851.

RICHARD PROSSER, Esquire, is called in, and examined as follows:

2301. WILL you be so good as to state what your occupation is?
I am a civil engineer in Birmingham.

2302. In that capacity, have you had your attention called to the law of patents?
Very much.

2303. Have you been an inventor yourself?
I have.

2304. Have you taken out patents?
About 20, I think.

2305. Do you act also as a patent agent?
I do not.

2306. Will you state generally to the Committee what is your experience of the way in which the patent law at present works?
The expense of taking out a patent appears to me to be very much too large.

2307. Is that the only objection to the present system?
A greater objection than that is that you do not know what has been patented; there is no list, and no record of what has been patented already.

2308. Do you see any objection to all specifications being printed, and indices to them arranged and published?
Every specification ought to be printed. In my opinion, when you apply for a patent, you ought to go with your specification, which is the case in every country except England.

2309. And you think that the specification should be made public at the time of the application?
I think that it should be printed and made public as soon as possible.

2310. Are the Committee to understand that you are one of those who think there should be no previous examination before a patent is granted?
None whatever; it has never been productive of any good except in creating fees; a patent should be granted at once, and there should be a more simple mode of repealing it if it were found to be for an old invention.

2311. How would you effect that?
By some mode more simple than a *scire facias*. I think a man should have a patent for what he pleases; but that the next day it should be repealed, if the invention is shown to be old.

2312. Do not you think it a hardship upon other inventors, or upon the public, that they should have to defend, in a court of law, that which they have been constantly using for a series of years?
Yes, it does seem a hardship; but such a patent could not stand. If the public had previously used the invention, the patent could not be upheld.

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2313. Would not it be the case if a patent could be obtained very cheaply, and without any previous examination, that a great many would be immediately taken out possibly for useless and worthless inventions?

No patents can be obtained without expense and trouble; they are very costly; it is not the mere expense of the fees, but expensive experiments are obliged to be resorted to before a patent can be applied for.

2314. The danger to which I now allude is, that which would arise from a person having great facility given to him by registering his invention for obtaining a patent for that which would turn out to be neither novel nor useful?

I do not see how the novelty or utility can be ascertained till it is tried at law; that appears to be the proper mode of deciding such points.

2315. Would not it be a hardship upon the public generally to be constantly dragged into courts of law in consequence of the simple act of a person choosing to register that as a novel invention which is really not so?

I do not think it is a hardship upon the public. The patentee would have to pay the expense of it; that appears to me to be the only way of settling the right; I know of no other. I do not think that any previous examination which might be instituted could settle it.

2316. Do not you think that such a power would be used as the means of extortion; with the feeling that exists in this country against going into courts of law, might not any person who had a patent registered be enabled, by the threat of litigation, to drive parties whom he accused of having infringed that patent into a compromise with him?

I do not think any one would resort to a patent for the sake of going to law about it; a great number of the patents which are now taken out are taken out in sheer ignorance; patents are taken out perhaps for 20 things which are, in fact, entirely the same, and probably by the same patent agent.

2317. You think that there would arise no inconvenience to the public from a great multiplicity of patent rights upon every possible subject?

I do not think there would; one patent supersedes another.

2318. Do not you think one result would be that manufacturers would be afraid of making any improvement whatever for fear of infringing some patent or other?

I do not think so; one patent is superseded by another; I have taken out patents myself to supersede my own patents; if an inventor does not do that, some one else will. I suppose there have been a thousand patents taken out for improvements in steam-engines; but that has done no harm to the steam-engine of Watt. So far as my own experience goes, I do not think there is more than one per cent. of the existing patents which are worth anything.

2319. If that be the case with respect to the patents which are now taken out, do not you think that giving greater facility for taking out patents would be opening the door further to the multiplication of useless patents, which are taken out, as you say, from sheer ignorance?

I think if proper indices to the specifications were published, they would not be so taken out; at present, the patent agent takes the fees, and he will patent whatever you please; there is where I think the evil lies. If you go to the patent agent, he does not tell you that your invention has already been made the subject of a patent before, because he knows if he does, you will go to some other patent agent, and he will lose his fees; when they can get 10 guineas for every patent they pass, merely employing a boy of 12 or 14 years of age to go to the different offices, it is a very lucrative matter.

2320. Would not the evil be increased by the system you propose?

I do not think it would be increased, if the specifications, past and future, were printed.

2321. You rely upon a more full publication of the specifications as a protection against the evil to arise from taking out useless patents?

Entirely so.

2322. Is not it often a very doubtful question whether a previous specification really

really covers an invention for which an inventor may seek a patent at a subsequent period?

Yes; and I think that is a question for a court of law; that is why I object to examiners; I think it is only a court of law which can settle that question; the only country in which they have examiners is America, and there the system works as badly as a system can possibly work.

2323. Do you know anything of the working of the patent law in America?

Yes; I have an American specification here, which I received by the last mail.

2324. Have you any personal knowledge on the subject?

I have never been in America myself, but I have a brother residing there, and I have heard a great deal of it through him.

2325. What are the principal objections to the system in America?

Your invention is referred to a certain examiner, who refers to published books for the purpose of seeing whether that invention is old or not; he has no practical knowledge whatever; he finds something which he thinks looks like it, and he gives you a list of those things, but upon reference to them, you find they are not of the slightest use to you, and do not apply to your invention at all. The delay is much greater in America than it is in England; you are kept six or twelve months in obtaining a patent there; you have a right of appeal from the commissioner to the chief justice of the district court of the United States, for the district of Columbia.

2326. Do many questions of infringement arise in America?

A great many; but I never heard anyone object to the expense of law proceedings in America. The Americans publish a list of all patents which are taken out, but they only publish the claims of the specifications. The French publish the specifications, and so do the Austrians, and I have those works here, but the English publish nothing whatever. In other countries parties can know whether or not a patent has been taken out for a certain invention, but there is no means of knowing that here.

2327. In whatever part of the United States an infringement may have taken place, the case must be tried at Washington, must it not?

Actions may be tried anywhere, but appeals must be tried at the district court at Washington.

2328. Therefore it is necessary, for the trial of a case, to resort to Washington?

Yes, on appeal, if you are dissatisfied with the commissioner.

2329. Is not that attended with a good deal of trouble and inconvenience?

It is, but the law charges in America are very light.

2330. Without undervaluing the benefit to be derived from printing the specifications, is not it the fact that parties who are disposed to spend money in advertisements, would find that it would be a cheap mode of advertising for them to obtain a patent for any article, not intending to protect themselves from an infringement of it, but merely to make that article known?

I think that is very much the case now.

2331. Do you think that a desirable state of things?

I do not.

2332. Would not it be increased under a system which rendered it more easy to obtain patents?

I think not; if the specifications were printed, the public would have the means of going to the documents themselves, and judging for themselves. I received yesterday a letter which bears upon that subject. The house of Morrison are infringing a patent. An attorney waits upon them. They want to see the specification, to ascertain, as they say, whether they are infringing it or not. If those things were published, they would not want to ask an attorney for a copy of that which they might find to be of no use to them. The public are in the greatest ignorance upon the subject of patents.

2333. With the extraordinary facilities you propose to give for obtaining patents, might not inventors find themselves embarrassed by the great number of patent rights which would be then in existence?

I do not think they would; I think, on the contrary, that it would give rise

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to a class of men which now does not exist, and that is the class of legitimate inventors, persons who would invent for the sake of being paid for anything which they were employed to invent.

2334. Are the services of a patent agent now absolutely necessary?
They are.

2335. Are they expensive?
Very expensive.

2336. According to the plan you propose, the services of a patent agent might be altogether dispensed with?
Yes, I think that very desirable for the sake of promoting morality; and the patentee should have the power to send his money and papers through the post-office, as in America and France.

2337. Are there many instances in which poor inventors, who may make inventions of some value, are able to draw up the specifications which are required, in order to obtain a patent?
I think every inventor would be able to draw up the first specification, but he would not be able to put it into technical language; no man can make an invention who cannot draw up an account of it. If a man makes an invention now, he goes to the patent agent; if he gives him a description by word of mouth, that is not enough, he should put it down on paper.

2338. You think a full specification should be given in at the time of petitioning for the patent?
I think so. I do not think it desirable that crude specifications should be given in upon an application for a patent; I think they should be put into a proper shape, and that some officer should judge of them as to form.

2339. You have stated that there is now no class of inventors existing as inventors?
No.

2340. Who generally make the inventions which are patented?
The majority are men who think they have an inventive turn, and when they have ruined themselves, they find out they have not; there are very few men who take out a patent twice.

2341. Is there not a considerable expense and loss of time and money incurred in the preparation for taking out a patent?
No doubt there is.

2342. Are not their efforts owing to the stimulus they now feel from expecting to get a large reward from their labours, if they obtain a patent?
It may be so; but I think it is more in the mind of the individual; I do not think some parties can help inventing.

2343. Would not that stimulus be more strongly felt if patents were made so cheap that any one could obtain them?
I think it would. We have many men who are qualified to become real inventors. I know 50 people who would make valuable inventions if they thought they should receive any advantage from them.

2344. Do you think the present system is better or worse than a system under which there should be no patent protection at all?
I think the system under which no patents should be granted would be very desirable, except that in that case we should lose all record of inventions after they have been made; a record of failures is as important as a record of successes.

2345. Do you imagine that there are many cases in which an inventor would keep his invention entirely to himself?
Not if he could sell it.

2346. Would not the absence of patent law present a great impediment to his being able to sell it?
Yes, and there are other disadvantages; we should know nothing of the literature of inventions, and we know quite little enough on that subject already.

2347. You think the law of patents, however administered, is more valuable as

as a statistical record, and as a means of obtaining statistical information, than from any influence it has upon the production of invention?

I think so. If there were a record which a person could go to, he would be able to see that the thing for which he desired a patent had been done before. Professor Woodcroft has prepared a very valuable set of indices. Now, in numberless instances, the time of a man is spent upon things which have been done 20 or 30 times before.

2348. In the event of a total abolition of the patent laws, what would become of that class of men whom you have recently alluded to as desirable to be encouraged, namely, the class of legitimate inventors, as you called them?

I think they would receive a remuneration by means of agreements.

2349. You think they would secure the advantage of their inventions to themselves, by keeping them secret?

Yes.

2350. Then, in your opinion, one of the advantages of the patent laws is that they lead to the publication of valuable secrets?

Yes, that is the only advantage which I can see in them, that they afford a permanent record of what has been done; I do not think they tend much to the encouragement of invention.

2351. Do you consider that the fact of there being no provision in the present law for having the specifications properly printed and arranged has been a source of disadvantage to inventors, and to the public at large?

It has been a great curse, and a source of ruin to hundreds.

2352. What do you think has been the result of the present system in the case of valuable inventions; have those parties who have made them derived profit from them, or the contrary?

I think they have not been remunerated by them.

2353. Is not it the case that a useful invention is generally subjected to litigation?

Always when it becomes profitable, never till then.

2354. Do you think that it has proceeded from any defect in the law, that inventors have been ruined in the way you describe?

I do not think it is from any defect in the law; there is the same law for the patentee as for the person who loses his pocket-handkerchief; the great expenses arise from the heavy fees to counsel, and the number of witnesses you must have, and the expense of travelling long distances, together with the loss of time.

2355. Do you think that that is an evil which admits of any remedy?

Yes; the remedy would be, taking all questions respecting patent matters to the county courts; I cannot conceive why the merits of a Birmingham invention should be tried in London; I know that one practical inconvenience of the present system is, that parties have to find money to put their men into fine clothes, that they may appear respectable in the witness-box.

2356. You think that wherever the infringement of a patent takes place the action should be tried?

Yes; there was the case of the Coalbrookdale Company, which was recently tried at Birmingham under the Registration Act; I think the result of that trial gave satisfaction to everybody, except the infringer, of course.

2357. (To Mr. *Webster*.) Will you state whether patent cases can be tried at the assizes?

Yes, patent cases may be tried anywhere; an assize seldom takes place at Liverpool at which there are not some patent cases; there was one at the last Stafford assizes; it is found more convenient to have them tried in London, generally, because the first-class witnesses are generally London men.

2358. (To Mr. *Prosser*.) With regard to inventions which have been used and published abroad, do you think it is necessary or desirable to give a patent to a person who imports them into this country?

I think a patent should be granted without regard to where the invention has been

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been used if it has not been used in England: that, I think, was the very origin of the patent laws, to introduce trades and manufactures into this country.

2359. Is that done in any other country in the world?
Yes.

2360. In which country?
In America, in France, in Belgium, in Holland, and in Russia; I do not know a country where it is not so; I have a French patent and a Belgian patent myself, though not in my own name.

2361. Have you assigned those patents to other persons?
Yes.

2362. Were those inventions, for which patents have been taken out in those countries, inventions which had been used and published by you in England?
No.

2363. My former question, which you appear to have misunderstood, was whether you think that a patent ought to be granted to a person for the importation into this country of an invention which has already been used and published in a foreign country?
Yes, I think so; that was the origin of the law of this country, I think.

2364. Is that the law in other countries now?
No, it is not; that has not been the law in other countries; if the invention has been published, it is fatal to the patent.

2365. You think that ours, which is an exceptional law in that respect, is a good law?
Yes; it was that which brought to us all our trades.

2366. Do you think that an invention would never reach this country unless there were a patent to protect it?
I do not say that; but it has been the state of our law on that subject which has brought us all our trades; the origin of the law, I take to be, the desire to bring foreign trades to this country.

2367. Whatever may have been the origin of the law, do you consider that in this country, looking to the progress which manufactures have made, a manufacturer would not, unless somebody else had taken out a patent, and so got the power of taxing him for it, use a foreign invention which would enable him to produce more manufactures at a cheaper rate?
I think not, because other manufacturers would begin to compete with him when he had been at all the expense and all the trouble of proving that it would succeed; he would then have his workmen enticed away from him; the first manufacturer would do it at a serious expense, which the second manufacturer would avoid.

2368. You think he would not use the foreign improvement, because, having educated his workmen to the use of that improvement, he would immediately incur the risk of having those workmen enticed away from him by his competitor?
Yes, when he had succeeded.

2369. When a manufacturer has paid for a license to use an invention by the patentee, does not he run the risk, under that license, of educating workmen who may be enticed away from him by a second manufacturer who, at a later period, may pay for a similar license?
No; because it is generally a condition that he shall be the sole licensee; there was a case reported in the "Times" yesterday to that effect.

2370. Do you mean to state that a patentee generally allows only one individual to take out a license for the use of his patent invention?
In the majority of cases, that is so; the person taking the license would not take it without that condition.

2371. By that means the patent becomes a still stricter monopoly than it would otherwise be?
Yes.

2372. In

2372. In a case where a manufacturer in England has to compete with the manufacturers abroad, is not it the case that he would have a sufficient inducement to use a foreign invention, even though he might be competed with by the manufacturers of this country?
If it were much cheaper it would be so; there is not much inducement for a manufacturer to take up any invention which may be made the subject of competition after he has been at the expense of proving whether it is worth it.

2373. Would not the proof of its value have been given in the foreign country?
No; it might succeed in a foreign country, and not here.

2374. Are not those parties in this country who use complicated and ingenious machinery very jealous of admitting foreigners to inspect that machinery?
They are always jealous of Englishmen, but never of foreigners.

2375. What particular branches of machinery are you most conversant with?
Machinery for the Birmingham manufactures.

2376. You are not so conversant with the cotton machinery?
Practically, I know nothing whatever of it.

2377. Do not you think, that in the present active state of competition in this country, there is a sufficient inducement to a person to obtain every new and ingenious idea which he can receive from abroad and apply it in this country, without his having a temporary monopoly given to him in it?
I do not think so, for the reason which I have given, that it is always done at a great expense by the person who does it first, and others can get it at perhaps one-fifth of the expense.

2378. How is that consistent with the statement you made to the Committee, that you do not think there is any use in the patent laws in the way of encouraging invention?
I do not think they do encourage invention; I think they encourage a set of charlatans, who make money by selling things that they know are worth nothing, and imposing upon manufacturers.

2379. How is it that the manufacturers adopt their inventions?
They take out patents for mere advertisements. Many manufacturers who have patents do not use them at all except as advertisements.

2380. Are there any other observations which you wish to make, with reference to the two Bills which have been referred to the Committee?
I have not seen Lord Granville's Bill.

2381. Have you read Lord Brougham's Bill?
I have.

2382. You object to that part of it which requires a previous examination; are there any other objections which you feel to it?
No, I think not. I object to the examination, because I have paid great attention to the subject, and have never seen it productive of any good.

2383. What do you think would be the effect of periodical payments?
I think the effect would be, that after about the third year you would have none.

2384. That would be an advantage, you think?
It would be an advantage.

2385. Do you think the periodical payments at the times stated in the Bill, or annual payments would be best?
I think periodical payments, as stated in the Bill, would be best; I think the patentee would have to spend less money before he found out his error. I do not think the expense of a patent is an object at all, provided it comes out of profit. I only speak of it as a hardship when it comes out of that which is uncertain, and may never produce a penny.

2386. Will you be so good as to look at the 13th clause of the Bill (No. 2.), and state your opinion of it?

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That would keep many an honest inventor out of the hands of the person from whom he is obliged to borrow money under the present law.

2387. Do you think that a patent ought to extend to the three kingdoms?
I think so.

2388. Should a patent extend to the colonies?
I do not see how it can extend to the colonies; they have legislatures of their own, and ni our North American colonies the patentee must be an inhabitant.

2389. Can you state what are the consequences of the delay which takes place under the present system in obtaining a patent?
The consequences of the delay are, that the first and original inventor is often superseded; another person gets his patent before the original inventor gets it.

390. That i s, of course, a defect belonging to the caveat system?
Yes, it attaches entirely to that, in my opinion.

2391. You consider that a very injurious system, do not you?
I consider it very unjust. The only notice by the caveat system is to those who pay the fees. There is a very large number of patents granted in this country, about 14,000, and there is no inquiry into them; the inquiry is only into those which pay the fees; the inquiry is in fact a farce.

2392. Do not you think if there were certain scientific persons appointed to assist the Attorney-general, they would soon make it their business to ascertain what had been done in the way of invention on any particular subject?
I do not think they would be of the slightest use, but only a hindrance. If inventions are, as they are of necessity, in advance of the times, I do not see how any one can judge of them till they are brought into operation; an invention can only be judged of by its results.

2393. You would have no previous inquiry in order to prevent patents for utterly useless inventions being granted?
No, I would grant a patent at once, and the next day I would repeal it, if it were found to be useless, and the public wished it.

2394. You would simply register his patent at an office to be appointed for the purpose?
That is all.

2395. It being proposed to date every patent from the day of the application for it, would not a judgment passed by the Attorney-general, assisted by scientific persons, upon the invention, be very much like the process which you would wish to see carried on in the county courts?
No; the Attorney-general never gives anything in the shape of a legal decision; he hears no evidence that I am aware of; he hears the parties separately, and that, I think, is very objectionable; if the Attorney or the Solicitor-general were to hear the parties in the presence of each other, I think the evils might be very much mitigated, but even then, the outlay and expense would be great evils.

2396. How would you propose to repeal the patent the next day, which you stated in some cases might be desirable?
By a process similar to a *scire facias*, but not so expensive.

2397. In the county court?
You could not do it in the county court; there must be a certain officer for that purpose; the Lord Chancellor, I apprehend, must do that.

2398. Then you do propose to resort to an inquiry for the purpose of determining the merits of the invention?
I do not think it is possible to decide the question except through a court of law; it is a question of the interference of one right with another, which a court of law must always decide.

2399. Who would pay the expenses of that appeal?
They must be paid as they are now; sometimes the plaintiff gets costs, and sometimes the defendant. The great expense of patent cases, according to my experience, arises from the number of witnesses required, and the exorbitant fees you pay with the briefs.

2400. According

2400. According to the plan which you suggest, would not patentees already in possession of useful patents, have to be daily on the look-out, to see that none of the numerous patents which might be granted, were infringements on their existing patents?

If it were so in any case, you would have the means of repealing that patent.

2401. Under those circumstances, in order to defend his own rights, would not he be obliged always to be on the look-out, to see that no patent was granted for an invention similar to his own, among the numerous patents which were daily coming out?

He would not, perhaps, feel it to be desirable to look after them till they interfered with him in the market.

2402. The practice then would be the same as it is at present?

Exactly so. There are thousands of patents existing which do nobody any harm, because they are not worked, and cannot be worked.

2403. They may be infringements of previous patents?

Yes; but if they are not worked they do the existing patentee no harm, and he does not look after them.

2404. The American Commissioners reject a great many applications for patents, do not they?

A great many, one-half, (and the examination of the rejected patents costs more than the examination of those which are granted.)

2405. Unjustly?

Some unjustly; because they are afterwards granted upon appeal.

2406. The great majority are rejected, are they not?

Yes.

2407. Is not it a hard thing upon me, supposing I am a manufacturer who have been employing a process for 20 years, to find myself dragged into a court of justice to defend my right of doing so, against a patentee who has merely taken the trouble of registering a patent for an invention which is worth nothing?

I do not see that it is, if the patentee has done it innocently.

2408. Supposing he does it fraudulently?

Then the only remedy is to make him pay the costs.

2409. Even supposing he did it innocently, would not it still be a hardship upon the individual who had previously used that process for a long period, to be obliged to resort to litigation to defend it?

Yes, but it would be equally hard upon an innocent man, who had spent his time and his money upon what he believed to be his own invention, to refuse him a patent.

2410. In that case it his own act?

If a man took out a patent for an invention of which he believed himself to be the first inventor, and it was afterwards proved that he was not, the patent might be repealed. In that case, all the inconvenience which would arise would be, that he must prove that he has used the process for 20 years previous to the grant of the patent.

2411. Is not there considerable expense and inconvenience involved in a resort to a court of justice even in the cheapest form?

Going to law at all is an inconvenience, but I do not see how it is to be prevented.

2412. Without wishing to do away with courts of law, is it desirable to increase the causes and the opportunities for litigation, in your opinion?

I do not think it is.

2413. Would not the publication of all specifications of previous patents take away the plea of ignorance from a party infringing the patent of another?

Entirely.

2414. The publication being considered as giving full notice of the existence of the previous patent?

I think so.

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2415. So that, in the case of such an infringement as has been supposed, costs would always be awarded?
I presume so.

2416. Is there any other observation which you wish to make, which has not been elicited in the course of your examination?
There is only one observation which I wish to make: there are now 500 patents taken out every year in England; there are only five renewed every year. The inference I draw from that is that the 495 must be useless, or the patentees have received so large a sum of money as their remuneration, that they are ashamed to go to the Privy Council for a renewal, and I have never known the modesty of patentees reach to such an extent yet.

2417. Does not the renewal of a patent depend upon the power of the party to satisfy the Privy Council that he has not been remunerated?
That he has not been sufficiently remunerated; I have known a patentee go to the Privy Council, who stated that he had got upwards of 70,000 *l.* by his patent.

2418. In that case the patent was not renewed?
It was not.

2419. The one per cent. of which you speak would not include the number of patents which have been successful, would they, because, in those instances, there would be no application to the Privy Council?
I think if a patent were successful, 19 out of every 20 patentees would apply for a renewal.

2420. Would they obtain it?
No; because I have known renewals refused, on the ground that parties had received such an amount of remuneration as the Privy Council considered sufficient. I think there is about one application in five refused by the Privy Council. I have never been able to draw any other inference from the fact I have mentioned, than that there is only one per cent. of the patents which are granted which are really useful, and therefore a previous inquiry would be a great waste of time and money.

2421. Supposing it to be the case that only one per cent. of the patents which are granted at present are useful, would not that per-centage be still smaller if patents were multiplied, by being obtained in the more easy and less expensive way which you desire?
I do not think it would, if the specifications were printed.

2422. You think if the specifications were printed, and a system were adopted by which patents could be more easily obtained, the number of useful inventions would be increased?
I think they would be increased; the value of the inventions would be increased; we should then have *bonâ fide* inventions. I am certain I know 50 persons who would take out patents for inventions if they were cheaper.

The Witness is directed to withdraw.

Sir DAVID BREWSTER, K.H., LL.D., is called in, and examined, as follows:

Sir D. Brewster, K.H., LL.D.

2423. WILL you state what your occupation is?
I am Principal of the United College of St. Salvador's and St. Leonard's, St. Andrew's.

2424. It is not necessary to ask you what interest you have taken in scientific pursuits?
I have always felt a great interest in such pursuits, and especially in the question of the patent laws, which I have had occasion to study, and upon which I have