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A

PRACTICAL TREATISE

ON

The Law

OF

PATENTS FOR INVENTIONS

AND OF

COPYRIGHT.

TO WHICH IS ADDED

A SUPPLEMENT,

CONTAINING THE LAW ON PATENTS TO THE PRESENT TIME.

WITH

SUGGESTIONS

OF MANY ALTERATIONS IN THAT LAW;

AND

An Abstract of the Laws

IN

AMERICA, SPAIN, AUSTRIA, NETHERLANDS, AND FRANCE.

By RICHARD GODSON, M.P.

BARRISTER AT LAW.

LONDON:

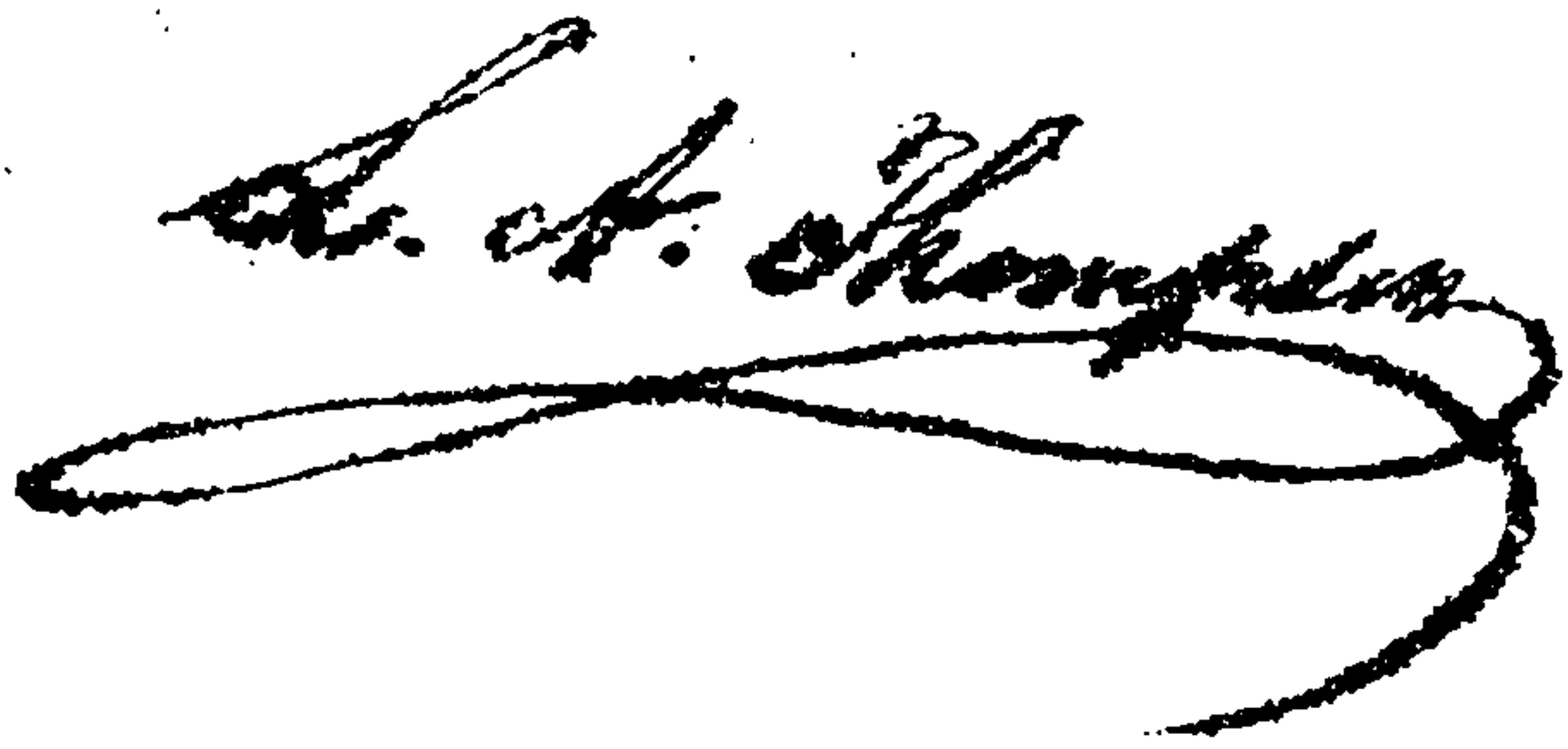
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PREFACE

TO

THE SUPPLEMENT.

It was the intention of the Author of "*A Practical Treatise on the Law of Patents for Inventions and of Copyright*," several years ago, to bring out a second edition of his work; but the expectation that alterations would speedily be made in the law obliged him to desist. Those expectations have not been realized. A Committee of the House of Commons sat, heard evidence, and reported the same, in June, 1829; and yet no legislative provisions have been made to amend the law.

Since the publication of the Treatise in 1822, many decisions have been pronounced in the Courts of Law and Equity, and he felt constrained either to publish a second edition or a

Supplement. He preferred the latter plan, because the purchasers of the first edition would possess the law, as administered at the present time, at a low price; and for those, who were not possessed of the original book, the Treatise and the Supplement (if bound together) would make a complete work.

The Author also preferred the form of a Supplement, because it enabled him to throw out suggestions for the improvement of the law of Patents, and to give his opinion generally upon the policy and details of the law, which he could not have done with propriety in the second edition of a book, professing to state only the rules of law as they exist, and not as they (in the opinion of the writer) ought to be made.

Whilst the Author of this Supplement was meditating a second edition of his work, a publication appeared, entitled "A Practical Treatise of the Law of Patents for Inventions," and another work, entitled "A Treatise on the Law of Literary Property." Every lawyer has a full, undoubted right to publish a book upon the same

subject which has occupied the attention of a brother lawyer, but it would perhaps be a liberal course to pursue, if the writers of the latter works would condescend to quote the names of those, who, having collected all the cases together, having analysed their contents, and having systematically arranged the rules of law extracted from the judgments given in them, have much abridged their bodily labour and mental exertions.

The Author of this Supplement well remembers with what studious care he analysed all the cases on Patents and Copyright, and anxiously formed general rules from particular cases, and gave very full directions to inventors to enable them to make correct specifications. His task occupied him three years, but with his analysis lying before them, and adopted by them, it could not be a great exertion for two persons to write Treatises on those subjects in three months.

An Abstract of the Laws of Foreign Countries giving protection to Inventions, has been made

from the Appendix to the Report of the Committee of the House of Commons: and the books of Cases decided and reported in America have been consulted and cited.

It is hoped, that before another session of Parliament has been permitted to pass away, the Legislature will have formed a good code of Laws for the better protection of Inventions.

HALL STAIRCASE, INNER TEMPLE,
11*th October*, 1832.

PREFACE

TO THE

PRACTICAL TREATISE.

To collect and explain the Laws protecting that species of property which arises more particularly from the exertions of *ingenious and learned Men*—to furnish the library of the ARTIST with a book wherein he might readily find the rules of law, subject to which he must give publicity to his inventions, if he intend to secure exclusively to himself the benefits accruing from them—and to inform the SCHOLAR of the extent and duration of his power over the productions of his mind—was the task imposed on himself by the Author of the following Treatise. How far he has succeeded in the execution of his undertaking, he now leaves to the judgment and candour of the Reader.

The rights conferred by a *Patent for an Invention*, and the *Copy of a Book*, differ in their *Origin*: The one species arising from grants made by the Crown regulated by an Act of Parliament, and

the other being at the present day conferred by enactments *in* several statutes. But they are similar in their *Nature;* and the protection afforded to the labours of the ingenious Artist, and the literary productions of Genius, are therefore subjects which must necessarily interest the same class of readers. It is that circumstance which has induced the Author of this Treatise to include them in the same work.

The laws which prevent persons making machines or printing books, from those in which by purchase they have acquired a property, are in their nature *restrictive;* and give to inventors and authors different kinds of Monopolies: hence it has been necessary to introduce a brief account of Monopolies in general, as they were formerly made by Royal Grants, or created by individuals.

To render the matter as clear as possible, the work therefore begins with Monopolies as they stood at Common Law, or can be made at this day; it then proceeds to the developement of the Law of Patents for Inventions. And, because many of the principles of Copyright can be illustrated by the reasoning on Patents, that branch of law is last explained.

Other Monopolies, such as have been granted to *Public Companies* to enjoy an exclusive trade to different parts of the world, belong to the law of

Commerce, and come not therefore within the design of the present Work; and perhaps the third chapter of the first book ought on that account to have been omitted.

In the TEXT of this Treatise it has been the anxious wish of the Author to state the Principles of the Law, with examples to explain them, in as concise yet comprehensive a manner as the subject would admit. Aiming at a middle course he has endeavoured to treat the matter with a perspicuous brevity, that the work might not be tedious to the professional reader; and yet he hopes that it will be found sufficiently full, as not to be obscure to the Artists and Scholars who may be led to peruse it. The NOTES are subjoined with the intention of affording full information to those persons who may wish to see the cases more at length; and to serve as a Commentary on the text for the use of scientific men who may not have an easy access to a Law library. In the APPENDIX are collected together the necessary forms and the principal Acts of Parliament that have been referred to in the Work. A copious INDEX has been added, by which it is hoped that every point of law in the whole Treatise may readily be found.

On the *Necessity* or *Utility* of a Book, similar to the one now presented to the Public, it is not

for the Author to expatiate; though it may be allowed to him to observe, that the Law of Patents for Inventions has never yet been fully and scientifically investigated; that it is so little known among Artists, that it is supposed that not one half of the Patents which have been obtained could bear the test of a legal inquiry; and that the cases of Copyright have never before been formed into a distinct and independent Treatise.

In this attempt to extract the principles upon which the numerous cases on the Law of Patents for Inventions, and of Copyright, have been decided, and to reduce them into a System—in this endeavour to reconcile apparent inconsistencies, and to arrange the whole in a logical manner—the Author has spent some time, and employed much labour. If the positions of Law should be found in general to be correctly and clearly stated, he hopes to meet with that indulgence which it is usual for the Profession to extend to every one who attempts to explain any part of our Laws, for any inaccuracies which possibly may be found in his Work.

HALL STAIRCASE, INNER TEMPLE,
21st December, 1822.

SUPPLEMENT

TO

PATENTS.

Analytical Table of the Contents, as well of the SUPPLEMENT *as of the* PRACTICAL TREATISE.

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ADDENDA ET CORRIGENDA.

PAGE 46. note (g).—It is mentioned that *the Editor of the Repository of Arts* professes to assist Inventors in making Specifications. On the wrapper of the *Technical Repository* there is an advertisement that *Mr. Thomas Gill, the Editor*, is accustomed to lend every assistance that patentees can require.

Page 64. note (*t*), and p. 188. note (*c*).—As to the expenses of making experiments before the trial of a cause, see *Severn* v. *Olive*, 3 Brod. and Bing. 72. in which case it was decided that they are not to be allowed.

Page 113. note (*x*).—A patent was taken out for an improved method of making sail cloth without any starch whatever. The improvement or discovery (if any) consisted in a new mode of texture, and not in the exclusion of starch; the advantage of excluding which had been discovered and made public before. Held that the patent was void as claiming, in addition to what the patentee had discovered, the discovery of something already made public. *Campion* v. *Benyon and Another*, 3 Brod. and Bing. 5.

Page 172. note (*a*).—And see *Makepeace* v. *Jackson*, 4 Taunt. 770.

Page 184. line 25.—For "law. It will however in the mean time grant, &c." read *law before it will grant, &c.*

Page 192. note (*h*).—And see 3 Inst. 184.

Page 208. line 9.—For "continue in," read *return to.*

Page 213. note (*z*).—And see the New Edinburgh Review.

Page 271. note (*a*).—And see 6 Taunt. 522. 2 Marsh. 236.

Page 285. note (*q*).—Morris *v.* Harris, 1 Maddox Ch. Pr. 153. 2d edition.

Page 286.—In note, after "7 Ves. 617." read "And see 5 Taunt. 212. 2 Marsh. 551."

A

PRACTICAL TREATISE

ON THE

LAW

OF

PATENTS FOR INVENTIONS;

AND OF

COPYRIGHT.

BOOK I.

ON MONOPOLIES.

CHAP. I.

INTRODUCTION.—OF MONOPOLIES IN GENERAL.

EACH individual, by the *natural rights* of mankind, is entitled to exercise an uncontrouled power over every kind of property of which he is once legally in possession; whether obtained by purchase, or produced by labour. The buyer of any *merchandize*, or a *machine*, or a *book*, would therefore be at liberty to dispose of his goods in any way that would be most conducive to his own advantage, or he might increase the number of the machines or books to any magnitude that profit or pleasure might dictate.

A monopoly.

This natural right to unlimited freedom in trade has, at different times, been invaded, both by the Sovereigns of States, and by the individuals who compose them.—By the former it is effected when they assume the prerogative of granting an exclusive privilege to particular persons of the sole trade in any article of commerce mentioned in their grants—By the latter, when with nefarious and unfair means, or in excessive quantities, they obtain possession of the necessaries of life, and vend them at exorbitant prices. These innovations and restrictions on trade, which would otherwise be *free*, are called *Monopolies.*(a)

Monopolies among the ancients.

The monopolists among the ancients, both in Greece and at Rome, as Thales, Pythocles, &c., and the Roman merchants speculating in olives, were of that description, which, at the present day, would be called *engrossers*, persons benefiting themselves to the injury or ruin of their countrymen, but doing it without the authority or connivance of their governments.

Modern monopolies.

In modern times kings and their subjects have respectively enriched themselves by monopolies, differing in their nature and extent, but attended with the same baneful consequences to the community.

Commercial combinations.

After the introduction of the Feudal system into Europe, and during the time it was strictly

(a) *Monopolium*, απο του μονου, και πωλεομαι, quod est, cum unus solus aliquod genus mercaturæ universum emit, ut solus vendat pretium ad suum libitum statuens. 11 Co. Rep. 86. 3 Inst. 181.

followed, commerce was spurned and rejected as an ignoble employment, far beneath the dignity of a freeman and warrior: but when the fury of the martial spirit had somewhat abated, and the countries became a little settled, the want of the comforts and even necessaries of life, incident to every country where the art of war has been preferred to the occupations of peace, soon urged some of the people, particularly the inhabitants of the different towns, to form themselves into societies for the purposes of carrying on their pursuits in trade with facility and in safety. To them immunities were granted by the Sovereigns in whose states the places were situated. And afterwards the corporate bodies of many cities associated together for the protection of their common interests.

Hanseatic league.

The first combination was the Hanseatic league, formed about the end of the twelfth century, to which many extensive privileges were granted. This confederation, promoting commerce and the interests of each other, soon astonished Europe by the accumulation of wealth which it rapidly gathered, and the immense power, its inseparable concomitant, which it quickly obtained. At length its augmenting influence created an alarm that it would become dangerous to the independence of the sovereign power in Europe. The members of it were commanded by the governments of the several countries forming parts of the league to reside within their native towns; that they might, by

their commercial pursuits, enrich the dominions of their respective princes. The association thus weakened was gradually reduced to insignificance.

Progress of commerce.

Commerce, having once revived, was not to be destroyed by the dissolution of this league—She continued to spread her beneficial influence over several countries. The monopolies, restrictions, immunities and privileges, which protected her in the earlier stages of her progress were transferred by each prince from the members of the league to the inhabitants of the places within their own states.

Progress of monopolies.

The towns, with the facilities and assistance which exclusive privileges afford, increased in population, and became rich and powerful. At first, the joint efforts of large bodies of citizens were alone capable of supplying to their princes the large sums of money which were necessary to relieve their wants, or to gratify their inclinations. Hence the advantages to be derived from monopolies were first bestowed on corporate bodies.

In this manner commerce arose, and spread her influence. When the opulence of individuals enabled them to advance money for the use of their sovereigns, they too were rewarded with charters and privileges.

Monopolies may thus be traced. They were formerly granted to many towns confederated together—afterwards they were given to separate towns—and ultimately were conferred on

individuals. It is the last species of them which is the immediate subject of the *first book* of this Treatise.

To the Hanseatic league England is in some measure indebted for her wealth. London, however, was the only town which was admitted to form a part of that celebrated confederacy. Monopolies in England.

The Metropolis, and most of our cities and corporate towns, are indebted to King John for their commercial pre-eminence arising from his endowments, and his gift of their greatest franchises. The privileges of the *cinque ports*, the nursery of the English navy, were first granted by King John upon condition of supplying him with ships in his wars.

From his death to the reign of Elizabeth there is very little variation in the commercial history of this country. Its power kept continually, though slowly, increasing beneath a heavy burthen of Monopolies.

The public purse being under the immediate control of the Parliament, the Kings of England often exercised the prerogative of conferring exclusive grants; either to supply the deficiency of their revenues, or to reward their necessitous adherents. It was the policy of Queen Elizabeth never to recur to Parliament for a supply of money, if she could possibly avoid it. To such an alarming height had monopolies accumulated during her reign, that towards the end of it they threatened the destruction of commerce, and the annihilation of the best interests of the country. The people could no longer bear the oppressive

and pernicious effects of them, and they loudly called for some redress. To prevent an abrogation of her power by an act of parliament, she cancelled the patents that were considered to be the most oppressive.

It should, however, be mentioned, that all the grants and exclusive privileges made in her reign were not detrimental to the interests of the nation. It was under the auspices of Queen Elizabeth that the Huguenots settled in Norwich, Sandwich, Colchester, and other places, where they carried on woollen and linen manufactories to the great benefit of the country. It was by her charter that the East India Company was established; which grant, though a very great monopoly, has contributed very largely to the splendour and influence of England in the scale of nations.

Stat. of James.

At length the Legislature interfered, and, with cautious policy, taking a middle course, between the right of all persons to a free trade, and the assumed power of the Crown, declared by stat. 21 Jac. c. 3., that the Sovereign might make grants of the exclusive privilege of sale to individuals who produced *new inventions*, and to those only; still allowing that common right to take effect if the grants, even for new inventions were not properly made.

Upon that statute is founded all the law on PATENTS FOR INVENTIONS. It was in vain that King Charles attempted to renew the grievance of monopolies. That statute afforded an insurmountable barrier against every attempt to intro-

duce them, and he did not possess sufficient power to have it repealed.

Monopolies by individuals.

Whilst the parliament was strenuously exerting itself to confine the prerogatives of the Crown within the limits of the common law, they had also to contend with the malpractices of the subjects, to the monopolist among the people—the *forestaller* (*a*), the *engrosser* (*b*), and *regrater* (*c*). Many statutes were passed to correct the abuses they introduced, which were afterwards repealed, and the matter left to the rules of the common law: to that head of *monopolies* a separate chapter will be devoted.

Monopolies by act of parliament.

The Statute of James just referred to is merely *declaraory* of the co mmon law. Hence it appears that the monopoly, which can be created by the Crown, arises merely from the grant, conferring on an individual the privilege of the sole making and selling *some article or thing*. It can be made, when thereby, no other

(*a*) Forestel, faristel, foristellum, foristellarius, is derived from two Saxon words, viz. *far* or *farc* (via or iter) and *stall*, interceptionem, 3 Inst. 195. It may also be derived from the circumstance of thus preventing the articles from coming to the stalls in the market, from *fore* before, and *stalle*, a standing place.

(*b*) Ingrosser is derived from *in* and *gross*, great. "Is in genere dicitur qui integram rei alicujus copiam emendo satagit comparare, ut distrahendo postea carius vendat, a Gall. *le gros*, pro integro vel plenitudine." Spelman.

(c) Regrating is derived from *re*, again, and the French *grater*, to grate or scrape; and signifieth the scraping or dressing of cloth or other goods, to sell them again; or from *regratement*, Huckstery. 3 Inst. 195.

person is restrained in what he had before, or prevented from following his lawful trade (*d*); which grant, at the present day, can only be for a *new Invention*. When, therefore, it is in contemplation to constitute a *new* monopoly, recourse must be had to parliament. This transcendent power of the Legislature has, in several instances, particularly in confining the trade to the East Indies and other parts of the world to different companies, been often and wisely exerted. Under peculiar circumstances, statutes have also been passed to increase the benefits and advantages derived by the inventor from the patent for his invention, either by extending its duration, or by enlarging the number of persons that may at one time be interested in it.

Account of copyright.

By the Legislature other exclusive privileges as COPYRIGHTS in books, engravings, &c. have been conferred. Copyright being the subject of the *Third Book* of this Treatise, it will be unnecessary to make any other observation at present, than merely to remark that it was formerly considered to be founded on common law, but that it can now only be viewed as part of our Statute Law.

The manner in which the laws on monopolies may be systematically arranged, may be collected from an examination of the preceding historical sketch, and the following analysis. The investigation, it is conceived, necessarily leads to the enquiry into monopolies, when made

(*d*) Hawk. I. 470.

By the King; and therein

1. ***How they stood at common law.***
2. ***Under the Statute of James; whence arise* Patents for Inventions.**

By Individuals: as to

1. ***Forestalling.***
2. ***Engrossing.***
3. ***Regrating.***

By the Legislature:

1. ***The Statutes respecting the trade with foreign countries.***
2. ***The statute of* 8 *Ann. whence arises* Copyright.**
3. ***The statutes as to the* Fine Arts.**

The whole matter of this work is, therefore, divided into three parts:—First, *Monopolies in general*, as they are governed by the rules of the common law, are cursorily described:—Secondly, the limited monopoly in *Inventions*, created by patents, is investigated:—and, Thirdly, the statutes giving *Copyrights* in books, and in the productions of the Fine Arts, are explained.

CHAP. II.

OF MONOPOLIES MADE BY GRANTS.

LETTERS Patent, or grants of the Crown, by which the exercise of the natural right of a person to use in any way he pleases every thing by him once legally possessed, is restrained, and monopolies in general created, may be classed for consideration under the following heads:—

1. ***Grants that were valid at common law.***
2. ***Those that were bad at common law.***
3. ***Those that by statute law are permitted to be made.***

I. GRANTS VALID AT COMMON LAW.

IT is clear, that at common law the King could make a patent, to continue for a *reasonable time*, to any person who, at his own charge, or by his own industry, wit, or invention, had introduced any *new and profitable trade* into the realm, or any engine that had never before been used, tending to the furtherance of a trade; by virtue of which the patentee might confine the whole use of it to himself, and enjoy all the benefit accruing from it (*a*).

(*a*) Noy. 182.; Hawk. P. C. 231.

For in the 9th year of Elizabeth a patent was granted to a Mr. Hastinges of the sole trade for several years, of making frisadoes, in consideration that he had brought the method of making them from Amsterdam (*b*). This patent was considered as valid, until it was shewn that some clothiers had before its date made baize of similar workmanship.

A patent was also granted to a Mr. Matthews, a cutler (*c*), because, as was suggested, he had brought the invention from beyond the seas. The grant was supported, until it appeared that other cutlers had, with *a slight difference* only, made similar knives; and then it was declared to be void.

There is another case which illustrates the law as it anciently stood. A patent had been granted for the sole and only use of a seive, or instrument for melting lead. In the Court of Exchequer Chamber (*d*), it was said that the question was, whether it was *newly invented* by the grantee? whereby he might have the privilege of exclusive power over it; or else used before, in which case they were of opinion that he should not have the sole use of it.

It is said to be the better opinion (*e*), that the King may also grant to particular persons the *sole use of some particular employments* (as of printing the Holy Scriptures, and law books, &c.)

(*b*) Noy Rep. 182. 10 Mod. 131. Godb. 125.
(*c*) Noy Rep. 183.
(*d*) Ibid.
(*e*) 3 Bac. Ab. 627.

in the exercise of which an unrestrained liberty might be of dangerous consequence. How far this rule is correct, to what extent it is modified, and how limited, will hereafter be shewn (*f*).

II. Grants that were bad at Common Law.

It evidently appears that at Common Law *Novelty* was a necessary incident to the thing, over which an exclusive power was to be given by the patent. On the other hand any institution or allowance by the King, by his grant, commission, or otherwise, to any person or persons, politic or corporate, of or for the sole buying, selling, making, working, or using of any thing, whereby any person or persons, bodies politic or corporate, were sought to be restrained of any freedom or liberty *that they had before*, or hindered in *their own* lawful trade, was a monopoly, and void at common law (g).

Such an Act of the Sovereign was always considered by the Judges to be against the ancient and fundamental laws of the realm; because it destroyed the freedom of trade, and discouraged labour and industry. John Peachie (*h*) so early as in the reign of Edward III. was severely punished for procuring a licence under the great seal, whereby it was directed that he alone, in London, should enjoy the privilege of selling sweet wines.

(*f*) Post, Book III. Copyright; and see Mod. 256. 3 Keb. 792. 3 Mod. 75. 2 Chan. Ca. 67. Skin. 234. 1 Burn Ex. Law 347. title College.

(*g*) 3 Inst. 181. 2 Inst. 47, 61. (*h*) 3 Inst. 181.

And the grant of the sole ingrossing of wills (*i*) and inventories in a spiritual court, or of the sole making of bills, pleas and writs, in a court of law, to a particular person, was held to be void; because it entrenched on the acknowledged privileges of every member of society.

A grant of the King, of the sole making, importing, and selling of *playing cards*, was also adjudged to be invalid (*k*). It was urged on the consideration of the court, that the playing with them was matter merely of pleasure and recreation, and often abused, and that, therefore, it was proper that the making of them should be restrained. The principal argument which produced the judgment, was the circumstance, that card-making was a *known trade*, and that there was no reason why any subject should be hindered from getting his livelihood by it (*l*).

(*i*) 2 Roll. Ab. 212. Jon. 231. 3 Mod. 75. Vern. 120, 130. 10 Mod. 107, 131, 133.

(*k*) 11 Co. 84. Noy 173. Moor 671. 2 Inst. 47.

(*l*) Darcy's Case, Noy Rep. 179. The observations of the counsel are very strong against monopolies. Now by this patent, be they good, be they bad, be they false, be they true, be they dear, or good cheap, you must buy all of him and his assigns, in what manner pleaseth him. When before, if any person by his industry had obtained excellent skill in his trade, he might have reaped the fruits thereof, and that hath been thought the surest thing, a man could obtain skill and knowledge, because thieves could not steal it. Now, Mr. Darcy hath devised a means to take away a man's skill from him which was never heard of before, which if others should do the like in other trades, it would discourage men to labour to be skilful in any art, and bring in barbarism and confusion.

And the King's charter to any particular corporation of the *sole importation* of any merchandize was also held to be of no effect, whether the merchandize was prohibited by statute or not (*m*).

A similar charter, impowering individuals or companies to trade to and from a particular place, and in particular articles, is void, so far as it gives such persons an exclusive right of trading, and debarring all others (*n*).

III. Grants as restrained by Statute Law.

The doubt which formerly existed as to the legality of the prerogative of confining the exclusive trade in certain articles to particular persons was removed by the stat. 21 Jac. I. by which it was declared (*o*) that all monopolies, and all commissions, grants, licences, charters, and letters patent, &c., granted to any person or persons, bodies politic or corporate whatsoever, of or for the sole buying, selling, making, working, or using of any thing within this realm, or Wales, or any other monopolies, &c., and all licences, &c., and all proclamations, &c., and all other matters whatsoever, any way tending to the instituting, strengthening, furthering, or countenancing of the same, or any of them, were altogether contrary to the laws of this realm, and

(*m*) 2 Roll. Ab. 214. 3 Inst. 182. 2 Inst. 61. Style 214.

(*n*) Sandys *v.* East India Company, Raym. 489. 2 Chan. Cas. 165. Skin. 165. pl. 2. 226, 234.; and see the Company of Merchant Adventurers *v.* Rebow, 3 Mod. 126.

(*o*) 21 Jac. I. c. 3. s. 1.

so were and should be utterly void and of none effect, and in no wise to be put in use or execution.

All monopolies being, by the prior part of that statute, thus indescriminately condemned, a clause (*p*), upon which alone the *second Book* of this Treatise is a commentary, was afterwards inserted declaratory of the common law. By it the Sovereign is still permitted to grant *patents for new inventions*, provided they are not made to endure for a longer time than fourteen years.

For a knowledge of the remaining clauses of the stat. 21 Jac. I. which except certain monopolies out of its first general enactments against them, reference must be made to the Act itself: for they are not immediately connected with the present enquiry (*q*).

(*p*) 21 Jac. I. c. 3. s. 6. (*q*) Post, Appendix.

CHAP. III.

Of Monopolies in domestic Trade.

THERE are monopolies created by individuals (*a*). They take place in *domestic trade*, and consist in obtaining possession of provisions or the necessaries of life, with the *intention* of enhancing the current prices of them in the Market (*b*).

The principles of law, which govern these monopolies, will be more clearly elucidated by the consideration of

I. A Statement of the ways of effecting them.

1. *A popular description of them.*
2. *The statutes relating to them.*
3. *The common law respecting them.*

(*a*) The difference between monopoly in general, and engrossing, consists in this, that the one is made by patent from the King, the other arises from the acts of the subjects between party and party. Skin. 169.

(*b*) Here the Scholar, who may look into this Treatise, for the laws that preserve to him the fruits of his inventions, or give him the profits of his literary labours, must be informed that this Chapter will not interest him; and that he may pass on to the next book without experiencing any inconvenience. Forestalling, &c. being monopolies, and therefore part of the matter of this Work, I was obliged to introduce them: but the subject will be treated as briefly as is consistent with a perspicuous account of the law.

II. THE NATURE OF EACH OFFENCE IN PARTICULAR.

1. *Forestalling.*

1. *The contracts of a Forestaller.*
2. *His conduct.*

2. *Engrossing*
3. *Regrating.*

III. OF WHAT THINGS THEY MAY BE COMMITTED.

IV. THE PROCEEDINGS TO PUNISH OFFENDERS.

I. A STATEMENT OF THE WAYS OF EFFECTING THEM.

The inhabitants of the country generally bring the produce of their lands to the nearest town to be sold. The citizen relies upon the weekly supply, for the sustenance of his family. It is convenient. The reward of the artificer's labour is exchanged for the fruits of the husbandman's toil. They mutually part with their articles for such prices as they can afford. It becomes the duty of the Magistrate, to see that every facility is given to this barter of commodities; and to take care that the poorer classes of society are not imposed upon.

1. A popular description of them.

The avarice of monied men has often stimulated them to step in between these fair dealers. Some of them have *bought up* the merchandize or victuals, before it could reach the towns; others have *dissuaded the people from bringing* their goods or provisions to market; whilst some have

exerted their influence to *persuade them to enhance* the price of them when there. These acts are in one general term called FORESTALLING (c).

To go about purchasing, collecting, and hoarding up such large quantities of the necessaries of life, so as to produce an artificial famine, or such a scarcity as must evidently increase the price of them to a great and unusual degree, is termed ENGROSSING.

Among the Greeks and the Romans, by our Saxon ancestors, and in all countries, have laws been made to regulate the internal trade, and to preserve a free traffic in the articles necessary to sustain life. Hence spring the reasons for granting markets and fairs, to be held at known places at certain fixed times. It is one of the principal regulations of them, that all contracts made therein shall bind not only the parties to them, but all others who may claim any right to the thing sold: upon the supposition, that every transaction is publicly known to the whole market. But if the monied man is to be allowed quietly to insinuate himself, and interpose between the factor and the tradesman—between the grower and consumer in the market-place, he can, by the increased retail price, and apparently under the sanction of the law, force the poorer classes of society to yield up their hard-earned pittance to his lust for gain. Such a

(c) On the law contained in this Chapter see *Illingworth* on Forestalling, &c; *Girdler* on Forestalling; *Russell* on Crimes and Misdemeanours.

buying and selling of any provisions, corn, or other dead victual, has been denominated REGRATING.

2. The statutes on forestalling, &c.

These transactions, which have been thus generally described, will hereafter be shewn to be offences at common law, in furtherance of which many statutes were enacted that have either been repealed, or are in practice become obsolete. The account to be given of the statutes will therefore be merely a statement of the purposes for which they were made, and the effect which is now given to them.

The first act of Parliament making mention of forestallers is the 51 Henry III. stat. 6. c. 1. intituled "A Statute of the Pillory and Tumbrel, and of the Assize of Bread and Ale." The leet is directed to inquire if there be any "forestallers that buy any thing afore the due and accustomed hour, against the good state and weal of the town and market, or that pass out of the town to meet such things as come to the market, and buy them out of the town, to the intent that they may sell the same in the town more dear unto regrators," and to doom them to the punishment of the pillory.

This statute still remains unrepealed (*d*) as to forestallers, though it is in part repealed as to the assize of bread, by 8 Ann. c. 18.

(*d*) It is incorrectly stated in 4 Bla. Com. 160. that *all* the prior statutes on this subject were repealed by 12 Geo. III. c. 71. It seems that those statutes only are repealed which are enumerated in that repealing act. See Rex *v.* Waddington, 1 East. 150.

The next Act is intituled An Ordinance for bakers, brewers, victuallers, and for ells, bushels, and *forestallers*, &c. supposed (*e*) to have been enacted in the 34 Edward I. It is unrepealed, and is very severe in its penalties, which are to be inflicted on all manner of *forestallers*, and likewise upon those who give them *counsel*.

After the plague in 1349 an ordinance was promulgated (23 Edward III. c. 6.) commanding butchers, fishmongers, *regrators*, &c. to sell at reasonable prices, under pain of forfeiting double the value.

In 25 Edward III. an act (stat. 4. c. 3.) was passed against *forestallers* of wine and other victuals. It is confirmed by 2 Richard II. c. 2. and is still in force.

The *statute de stapulis* (27 Edw. III. c. 11.) enacts that the *forestaller* of merchandizes, coming to the cities, towns, or ports within this realm, shall suffer the pains of felony. The capital part of the punishment was taken away by 38 Edward III. st. 1. c. 6.: but the statute, as to the forfeiture of goods and chattels, still remains unrepealed.

Then follow the statutes 31 Edward III. st. I. c. 10., 6 Richard II. c. 10. (repealed by 7 Rich. II. c. 11. but revived and enforced by 14 Henry VI. c. 6.) 11 Richard II. c. 7., 13 Richard II. c. 8., (confirmed by 4 Henry VIII. c. 25.) and

(*e*) It is denominated "*incerti temporis*." See 3 Inst. 196. 4 Inst. 261.

1 Henry IV. c. 17., which were made to confine the sellers of victuals to reasonable gains.

The next statute on this subject is 25 Henry VIII. c. 2., for assessing the price of victuals. Then follows the famous act against ingrossing cattle, and cultivating large tracts of land, 25 Henry VIII. c. 13. (confirmed by 32 Hen. VIII. c. 28. s. 4.) by which it is enacted, that no person shall possess at one time more than two thousand sheep, nor hold above two farms. It is still unrepealed.

The statute 34 and 35 Henry VIII. c. 26. s. 105. regulates the method of buying cattle out of the market in Wales; and 2 and 3 Edw. VI. c. 15., confirmed by 22 and 23 Car. II. c. 19., was made to punish conspiracies among victuallers.

In the 3 and 4 of Edward VI. two acts of Parliament were passed; the first, c. 19, (continued by 3 Car. I. c. 4., and 16 Car. I. c. 4., and altered by 15 Car. II. c. 8.) enacts that no cattle shall be bought but in open market, and that the same shall not be sold again alive, which is supposed to be repealed by 12 Geo. III. c. 71., which repealed 15 Car. II., that had altered it. The other, c. 21. s. 1., was passed to prevent the *engrossing* of butter and cheese, and was repealed by 12 Geo. III.

5 & 6 Edw. VI. c. 14.

The principal statute against *forestalling*, *engrossing*, and *regrating*, is the 5 and 6 Edward VI. c. 14., confirmed by 13 Eliz. c. 25., and repealed by 12 Geo. III. c. 71. The statute was always considered as *declaratory of the*

common law; and therefore its provisions, and the decisions in law which have taken place upon it, will be hereafter noticed.

The statute 5 and 6 Edward VI. c. 15. against regrating and engrossing all kinds of tanned leather was repealed in part by 1 Mary, sess. 3. c. 8. and 5 Eliz. c. 8., and entirely so by 1 Jac. I. c. 22.

The statute 7 Edward VI. c. 7., against *regrating* woods, coals, and fuel, is still in force, as is also 1 Philip and Mary, c. 7., enacting that strangers shall not *retail* in towns, except in open fairs. But the 2 and 3 Philip and Mary, c. 3., confirmed by 13 Eliz. c. 25., respecting keeping milch kine, is repealed by 12 Geo. III. c. 71.

By 5 Eliz. c. 12., made perpetual by 13 Eliz. c. 25., but repealed by 12 Geo. III. c. 71., enacted to prevent exorbitant prices of victuals, drovers and badgers were ordered to take out a licence.

The statutes 1 Jac. I. c. 22. s. 7., against *forestalling* hides, and *regrating* and *engrossing* bark, and 3 Jac. I. c. 9. s. 3. for selling less than a certain number of coney or lamb skins at one time, are both still in force.

The stat. 21 Jac. I. c. 22, made to explain the statutes of 3 and 4 Edw. VI., and 5 and 6 Edw. VI., as far as they related to butter and cheese, were continued by 3 Car. I. c. 4., and 16 Car. I. c. 4., but repealed by 12 Geo. III. c. 71.

There is an act of the Commonwealth, Oct.

23, A. D. 1650, respecting *engrossing* corn. Scobel, 142.

The statute 15 Car. II. c. 7. s. 4., relating to storing up corn, was repealed by 31 Geo. II. c. 30. s. 2. The statutes 15 Car. II. c. 8. (confirmed by 22 and 23 Car. II. c. 19.) and 5 Ann. c. 34., respecting butchers selling live cattle, are repealed by 12 Geo. III. c. 71.

The stat. 31 Geo. II. c. 40. s. 11. enacts that no salesman or broker employed to buy or sell cattle by commission, shall buy or sell on his own account.

12 G. III. c. 71.

Thus much it has been thought necessary to introduce on the subject of the statute law of *forestalling*, *engrossing*, and *regrating*. It must be remarked that when the statute 12 Geo. III. repealed the statute 5 and 6 Edward VI. and all the others dependent upon it, the law would necessarily be again in the same state as it stood before that statute passed. It would be a waste of time to make observations upon the acts of Parliament which were made prior to the reign of Edward VI. Although many of them remain unrepealed, and have recovered their original force, (*f*) yet they are not efficacious in stopping the progress of the crime, and are become so obsolete in practice that they may safely be considered as obliterated from the statute book.

3. The common law on forestalling, &c.

The statute of 5 and 6 Edward VI. has often been recognized as being merely *declaratory* of

(*f*) 4 Inst. 325.

the common law; (g) by which law, now revived, the transactions above described in general terms have ever been considered as offences. It will therefore be proper to proceed at once to the second division of this subject;—to treat *practically* of forestalling, engrossing, and regrating, under separate and distinct heads, as offences at common law. The declaratory statute of Edward VI., and the cases decided upon it, will be used, when they contain principles, or explain and illustrate the subject under investigation.

II. The Nature of each Offence in particular.

1. Forestalling.

Forestalling cannot be better described than in the words of the stat. 5 and 6 Edward VI. c. 14., by which it is enacted that Whosoever shall buy or cause to be bought any merchandize, victual, or any thing whatsoever, *coming* by land or by water, *towards any market* or fair to be sold in the same, or coming towards any city, port, haven, creek or road from any parts beyond the sea, to be sold; or make any bargain, *contract or promise* for the having or buying the same, or any part thereof, so coming as is aforesaid, before the said merchandize, victuals, or other things shall be in the market, fair, city, port, haven, creek, or road, ready to be sold; or shall make *any motion* by word, let-

(g) Cross *v.* Westwood, 2 Brownl. 108.

ter, messuage, or otherwise, to any person for the enhancing of the price, or dearer selling of any thing above mentioned; or else *dissuade*, move, or stir any person coming to the market or fair, to *abstain or forbear to bring* or convey any of the things above rehearsed to any market, fair, city, port, haven, creek, or road to be sold as aforesaid, shall be deemed a *Forestaller*. (*h*)

Bearing in mind that it is the *intention* to increase the current price of provisions, in order to reap a pecuniary advantage at the expense, and to the serious injury of the public, which forms the principal trait in the character of a *forestaller*, it will be necessary to investigate,—

1. The nature of the *contracts*, by entering into which a man becomes a forestaller; and
2. The *conduct*, independent of contract, which renders him a forestaller.

The contract which makes a forestaller.

The merchandize purchased must, at the time of the contract, be *on its way to a market*. Wherefore an indictment which stated that some lead was bought near Bristol which was to have been sold at Bristol market, was bad, because it did not set forth that the owner was *then coming towards the market* with it. (*i*)

(*h*) It may be observed that this description of forestalling does not seem to include "persuading a person not to sell in the market unless he can obtain a certain price."

(*i*) 1 Rol. Rep. 421, Mich. 14 Jac. in B. R. The King *v.* Hook.

A fishmonger, or any person in trade, may be indicted if he buy to enhance the price (*k*) as the fish are being brought to market.

But a contract (*l*) in a market for corn not in the market was holden not to be within the statute 5 and 6 Edward VI., and could not be considered as forestalling or engrossing. It would have been otherwise if the corn had been *in* the market, although the contract had been made in a house *out* of the market, and the corn delivered to the vendee out of the market.

And so jealous is the common law of all practices of this description, that it will not suffer *corn to be sold in the sheaf.* For this reason, says Lord Coke, because by such means the market is in effect forestalled. (*m*)

Although corn cannot be vended in the sheaf, yet a *growing crop* of wheat may be sold. If the law were otherwise, an incoming tenant could not take to the crops then on the ground. (*n*) Hops are often sold whilst growing. The illegality of the contract consists in buying, with the apparent intention, and for the purpose either of selling them again before they are gathered, or of preventing the planters from bringing them to

(*k*) 1 Roll. Rep. 11, Pasch. 12 Jac. I. in K. B. King *v.* Davies. The offence is there called ingrossing. The three terms were anciently considered as nearly synonymous.

(*l*) Arg. Godb. Rep. 131. Hil. 29 Eliz. C. P. Anonymous. The information was for engrossing seed corn.

(*m*) 3 Inst. 197. Haddain's case. But see Grant *v.* Hedding, Hardr. 380. and Moyle *v.* Ewer, 2 Bulst. 183.

(*n*) Bristow and Others *v.* Waddington and Others, 2

market in the usual manner, and at the accustomed seasons, in order to increase their value.

It was adjudged to be an offence at common law in Mr. Waddington for getting into his hands large quantities of growing hops by *forehand* bargains, by contracting with various persons for the purchase of them, with the intention of preventing the same from being brought to market, that he might thereby greatly enhance the price, and resell them at an unreasonable profit.

Upon the whole, it may be observed, that *all contracts* by which it plainly appears that it was the *intention* of the party to enhance the market prices, and not to leave them freely to find their level, are contrary to law; and that there is an illegality in a person's buying things, even in a market, *before the accustomed hour.* (*o*)

The conduct of a forestaller.

It would be an irksome task to enumerate all the different descriptions of *conduct, independent of contract,* which would stamp a man a forestaller. A few cases will be sufficient to shew the principle upon which the law rests. It is founded on the evident *intention* of the party whether he wish unwarrantably to increase the market-prices of provisions, or fairly to gain a livelihood by purchasing and selling again, without using any undue means to alter the current value of the commodities.

New Rep. 355. And see Slade's case, 4 Co. R. 92. which was an action of assumpsit for the value of a crop of growing wheat and rye.

(*o*) 3 Inst. 195, 196. 1 Hawk. P. C. c. 80; and see Cousins *v.* Smith, 13 Ves. 542., and *ante*, 19.

False rumours.

Of this nature is spreading *false rumours* and reports, in order to affect the markets.

There is a very old case on this part of the subject, given by Lord Coke, which explains the nature of the offence. (*p*) It was presented that a Lombard had endeavoured to promote and enhance the price of merchandize. He demanded judgment of the presentment for two causes:—1. That it did not sound in forestaling; 2. That of his endeavour or attempt at words, no price was enhanced. It was held that the attempt by words to enhance the price of merchandize was punishable by law, and sounded in forestalment: and that the punishment was by fine and ransom. In that case Knivet reported that certain persons came to Coteswold in Herefordshire, and said, in deceit of the people, that there were such wars beyond the seas that no wool could pass or be carried beyond sea, whereby the price of wools was abated. Upon presentment thereof made, they appeared; and upon their confession they were put to fine and ransom.

And in a modern case, in which *forestalling* was recognized as an offence at common law, Mr. Waddington (*q*) was accused of declaring

(*p*) 3 Inst. 196. 43 Ass. p. 38.

(*q*) King *v.* Waddington, 1 East. Rep. 143. *Lord Kenyon.* "But without attending to disputed points, let us state fairly what this case really is, and then see if it be possible to doubt whether the defendant has been guilty of any offence. Here is a person going into the market who deals in a certain commodity. If he went there for the purpose of

and publishing that the then present stock of hops was nearly exhausted, and that from that time there soon would be a scarcity of hops, and that before the hops then growing could be brought to market, the then present stock of hops would be exhausted, with the *intent and design*, to induce the dealers in hops *not to send them to*

making his purchases in the fair course of dealing, with a view of afterwards dispersing the commodity which he collected, in proportion to the wants and convenience of the public, whatever profit accrues to him from the transaction, no blame is imputable to him. On the contrary, if the whole of his conduct shews plainly that he did not make his purchases in the market with this view, but that his traffic there was carried on with a view to enhance the price of the commodity, to deprive the people of their ordinary subsistence, or else to compel them to purchase it at an exorbitant price: Who can deny that this is an offence of the greatest magnitude? It was the peculiar policy of this system of laws to provide for the wants of the poor labouring class of the country. If humanity alone cannot operate to this end, interest and policy must compel our attention to it. Now this defendant went into the market for the very purpose of tempting the dealers in hops to raise the price of the atricle, offering them higher terms than they themselves proposed and were contented to take, and urging them to withhold their hops from the market in order to compel the public to pay a higher price. What defence can be made for such conduct; and how is it possible to impute an innocent intention to him? We must judge of a man's motives from his overt acts; and by that rule it cannot be said that the defendant's conduct was fair and honest to the public. It is our duty to take care that persons, in pursuing their own particular interests, do not transgress these laws, which were made for the benefit of the whole community. *I am perfectly satisfied that the common law remains in force with respect to offences of this nature.*"

market. And such conduct was declared to be unwarrantable and illegal.

This species of forestalling is included in the description given in the statute of Edward VI. (*r*) and was noticed in both the cases of Rex *v.* Waddington. (*s*)

Dissuading from selling.

It also consists in *dissuading persons from selling their articles unless they can obtain a certain fixed exorbitant price:* a point also recognized in Waddington's case.

Thus, it plainly appears, that every endeavour to enhance the common price of any merchandize, and all *kinds of practices* which have an evident tendency thereto; in short, all *undue attempts*, by which it plainly appears that the party's sole intention is to enhance the price of victuals to the public, is a forestalling. (*t*)

2. Engrossing.

The second attempt of the monopolist to make the poverty of the lower orders in society a means of obtaining exorbitant gains, is by *engrossing*, sometimes written *ingrossing*.

This offence is also well described in the stat. of Edward VI. (*u*)—Whosoever shall engross, or get into his hands by buying, contracting, or promise taking, other than by demise, grant, or lease of land or tithe, any corn growing in the fields, or any other corn or grain, butter, cheese, fish, or other dead victual whatsoever, to the

(*r*) Ante, 24.
(*s*) 1 East. 144, and 1 East. Rep. 169.
(*t*) 1 East. Rep. 153. 3 Bac. Abr. 261.
(*u*) 5 & 6 Edward VI. c. 14.

intent to sell the same again, shall be deemed an unlawful *engrosser*.

That engrossing was an offence indictable at common law there is the express authority of my Lord Coke. (x) Indeed, this crime was in the decisions at common law comprehended under the general term of forestalling. (*y*) Every enhancement of the price was considered an offence; for it was *quasi* a forestalment. (*z*)

The bare act of buying up a whole commodity with an *intent* to sell it at an unreasonable price, although no sale has taken place, is a common law offence. (*a*) And an indictment for buying *ex intentione ad revendendum*, is sufficient; for, after verdict, it shall not be intended of a sale by retail. (*b*)

It is not necessary that the quantity of commodities bought should bear such a proportion to the consumption of the whole kingdom as that it must necessarily affect the general price. If it create an artificial scarcity in some particular town or district, the purchaser is guilty of engrossing: which appears from the case of some persons who conspired to monopolize all the salt at Droitwich in order to raise the price of it. (*c*)

But every large purchase is not an engrossing, or there would soon be an end to the foreign

(*x*) 3 Inst. 195. (*y*) 3 Inst. 196. (*z*) 3 Inst. 197.

(*a*) Cro. Car. 231. Hav. P. C. c. 80. s. 3. King *v.* Reynard, and see 6 Mod. 32.

(*b*) Cro. Car. 314. Jon. 320. S. C. Fenn's case, 4 Com. Dig. 68.

(*c*) 1 East. 156, 157, by Lord Kenyon.

commerce of this country. (*d*) It is correctly laid down in the old books, (*e*) that any merchant, whether he be a subject or a foreigner, bringing victuals or any other merchandize into the realm, may sell the same *in gross*. (*f*) But the next position,—"that a person within the realm, buying any merchandize in gross and selling the same in gross, commits an offence of this nature, because the price is enhanced as it passes through several hands," is certainly not tenable, unless the *intention*—the reason for buying the large quantity, was evidently an endeavour to advance the market price. It was formerly held that although fishmongers came within the statute against engrossers if they bought and sold at their pleasure at *unreasonable* prices, (*g*) yet they might justly buy all the fish if they sold them at a *reasonable* rate. (*h*)

If the act of buying be done in the usual way of trade, without any thing appearing which would shew that the purchase was made merely to enhance the value, it would be unimpeachable.

The same case, (*i*) The King *v.* Waddington, in which it was decided that the common law is still in force against forestalling, must again be

(*d*) 14 East. 406. 15 East. 511.

(*e*) 3 Inst. 195. Hale's P. C. 152.

(*f*) 3 Inst. 196.

(*g*) 1 Roll. Rep. 11. The King *v.* Davies.

(*h*) 2 Bulst. 249, per Coke, C. J. in Sackerman and another *v.* Sir Henry Warner.

(*i*) 1 East. Rep. 157.

referred to in confirmation of the doctrine in general of engrossing; for it was there decided that obtaining large quantities of hops by buying them with the intent to resell the same for an exorbitant profit, was engrossing.

3. Regrating.

The third means employed by the monopolist to obtain an undue influence over the markets, and to gain an unfair profit, is by *regrating*. The offence is also well described in the statute of Edward VI. (*k*)—Whosoever shall by any means regrate, obtain, or get into his hands or possession in a fair or market, any corn, wine, fish, butter, cheese, candles, tallow, sheep, lambs, calves, swine, pigs, geese, capons, hens, chickens, pigeons, conies, or *other dead victual* whatsoever that shall be brought to any fair or market to be sold, and shall *sell the same again* in any fair or market holden or kept in the same place, or in any other fair or market within four miles thereof, shall be deemed a *regrator*.

A regrator is sometimes called a chopper, or jobber; and sometimes a bagger, a higler, or huckster.

It is very difficult to say whether a court of justice would now decide that regrating is a crime at common law: I shall therefore merely state the principal case under this head of the subject.

Mr. Rusby (*l*) was indicted for getting into his possession, and selling again on the same day,

(*k*) 5 and 6 Edw. VI. c. 14.

(*l*) Girdler on Forestalling. &c. 255, 256; and see 2 Chit. Cr. Law. 535.

ninety quarters of oats on the corn exchange. At the trial Lord Kenyon is said thus to have expressed himself upon the law of regrating:—

"The legislature of all countries, and the administration of justice in those countries, are never better employed than when they condescend to look at those who are the greatest distance from them in point of rank: humanity calls for it; religion calls for it; and if there are minds which are not affected by humanity and religion, yet their own interests call particularly for it.

"The law had been stated to you; and if the acts of Parliament that have been upon the statute books for about one hundred and fifty years are repealed; and were, in my opinion in an evil hour, without consideration enough, repealed; yet, thank God, the power which repealed it was not informed of, or did not intend to repeal those provisions made by the common law. That which is called the common law existed undoubtedly after society began to exist; after society began to be formed: in very ancient times, which we cannot trace to their top, when men looked round them to see what was be done. And we are not to suppose that wisdom had not considerably advanced when William the Conqueror came over, or about the time when the first statute in Henry III. got upon the statute book: but, by more modern researches, there are among the Saxon laws many traces found from which it is supposed the common law had its first origin among our Saxon ancestors.

But, without minutely tracing it back to the beginning, there is no doubt now, that by the common law of the land provisions are made against the three offences, forestalling, engrossing, and regrating; and it is now given in charge, since the exigencies of the state require it, by the judges to the grand juries; they have been repeatedly informed that though the statute law upon this subject has been repealed, yet that by the common law those offences are provided against."

The Court was afterwards ineffectually moved for a new trial. (*m*) At length they granted a rule

(*m*) This case of Rex *v.* Rusby, as argued in Bank, is not reported: but the substance of the arguments are thus given from a MSS. by Mr. Chitty, in the second volume of his Criminal Law, 536, n. "That the Act of Regrating as described in 6 Edw. VI. (now repealed) and mentioned as a crime by that act, is not an offence which now exists, as such, at common law, and that though the word *regrator* occurs in the statute of Edward VI. and other statutes, yet there is no statute to be found which describes a regrator, *per se*, as buying and selling again in the same market, as a criminal, nor can any indictment so framed be found, or that selling again in the same market on the same day was ever recognized as a crime,—that by the statute 31 Hen. III. s. 16. c. 3.; it is nothing more or less than an huckster, and that the reselling in the same market is no where recognized as an ingredient of regrating or is recognized as an offence, but as an huckster mentioned indiscriminately, not as a principal, *eo nomine*, that is a statute against forestallers by selling it again to regrators: they are not describing the offence of regrating as consisting of any thing in the reselling of the article but is understood merely as an huckster, that statute being repealed which mentioned the *crime*, and which gave it existence,—that statute existing no

to shew cause why the judgment should not be arrested, inasmuch as regrating was not a crime at common law. It was twice argued ; and the Court being equally divided upon the question, no judgment was ever passed upon Mr. Rusby.

III Of what things it may be committed.

With respect to the merchandize or commodities, the purchase of which, in the manner described, constitutes some one of these offences, if a question has not arisen in Waddington's case(*n*) whether *hops* were included among them, it would have been sufficient simply to observe, that all articles necessary to sustain life, and every thing used as an ingredient in the making or preserving those articles, are comprehended under the terms *provisions* and victuals, and are

longer which was a declaration of what was the common law on the subject. In consequence of the repeal of that statute, it not only does away with the offence but repealed the explanation : the statute is therefore to be considered as if it had had no existence; and if so, we are to look to the antiquity of the cases to know whether regrating is so described by the act of Parliament as an offence in Edward III. c. 6. in which the word *regrator* (which was long after the time of legal memory) is not described as an offence—it is used as to other subjects than victuals. That the statute of 14 Rich. II. c. 4. forbids the buying of wool, &c. it is most clear ; that it does not forbid, or restrain, &c. which is the denomination given to it by this particular statute. The 8 Hen. VI. c. 5. says, &c. Here regrator is nothing more than a common huckster, and not a regrator. It does not mean the resale in the same market, nor can any trace be found in the statutes."

(*n*) 1 East. 156.

the objects with which the offences of forestalling, engrossing, and regrating, may be committed. In consequence of that discussion it has become necessary to enumerate the different commodities that have been brought before the courts.

Wheat to make starch.

It was considered that buying wheat to make starch, and then to sell it again, was not within the statute, because it was not bought for the purpose of sale, but to be first *altered by a trade* or science, and then sold again; although Lord Coke was of a different opinion. (*o*) In another instance a contrary judgment was given: (*p*) but a third decision coincided with the first case. (*q*)

Corn to make into meal.

The buying of corn, with an intent to make meal of it, was held not to be within the statute, (*r*) though there is a decision to the contrary effect. (*s*)

Barley to convert into malt.

It is doubtful whether the purchase of excessive great quantities of barley, although with the intention of converting it into malt, be within the statute. There are two authorities *pro* (*t*) *et contra*. (*u*)

(*o*) Owen, 134. Trin. 9 Jac. I.

(*p*) 2 Brownl. 108. Mich. 9 Jac. I. 1611. Ferdinando Crosse, informer, *v.* Westwood.

(*q*) Bridg. 5, 6. Trin. 18 Jac. I. Davison *v.* Cullier in the city of Norwich.

(*r*) Moor, 595, pl. 810. Pasch. 35 Eliz. Anon. Cro. Car. 231.

(*s*) Owen, 135.

(*t*) 3 Inst. 196. Cro. Car. 231.

(*u*) Owen, 135. See a difference, if done in another man's house. Roll. Rep. 12.

Malt (x) and *fish* (*y*) were enumerated as articles within the statute of Edward VI. when sold at an unreasonable price.

Salt (*z*) too is now, though not formerly, considered as a victual, as being necessary for the food and health of man, and constantly used to keep wholesome other provisions.

The same change of sentiment has taken place with regard to *hops*, which are now numbered among the necessaries of life. (*a*)

But *apples*, *cherries*, and *fruits*, were not denominated victuals, because they are of a very perishable nature (*b*).

IV. THE PROCEEDINGS TO PUNISH OFFENDERS.

By the old statutes 51 Henry III. &c., the Court Leet ordered to present forestallers, &c.(*c*). The practice is now obsolete. The present mode of proceeding to punish offenders is by preferring bills of indictment at the sessions or the assizes, or by moving for an information

(*x*) 3 Inst. 196. Hale P. C. 152. Owen. Rep. 135. Roll. Rep. 12.

(*y*) Jones' Rep. 320. Cro. Car. 314. S. C. 2 Bulst. 249. 1 Roll. Rep. 11.

(*z*) 3 Inst. 195. Cro. Car. 231. 1 East. Rep. 157. Contra, per Rolle, C. J. Style Rep. 190. Rex *v.* Maynard.

(*a*) Cro. Car. 231, and 1 East. 143.

(*b*) 3 Inst. 195. 13 Co. Rep. 189. Baron and Boys' case. Cro. Car. 231. Cro. Jac. 214. Owen Rep. 135.

(*c*) Illingworth on Forestallers, 93.

in the King's Bench. It is usual to proceed by indictment (*d*).

Great certainty is requisite in the indictment; for where a person was indicted for being a common *forestaller*, without stating of what thing with certainty, he had judgment of acquittal (*e*).

Evidence.

It is a question whether, in all cases, it ought not now to be averred and proved that the defendant *intended to injure the public* (*f*); and that the acts complained of were done with an evil design, to raise the price of the article. The weight of reason and authority is certainly in favour of such an averment being absolutely necessary, and consequently that the fact must be proved. For wherever a bad intent is essential to the completion of a crime, it must be averred in the indictment, and proved at the trial.

The cases that have been decided upon this subject, which are not of any use in illustrating the positions of the common law, have been collected together in a note (*g*), to make this summary of the law complete.

(*d*) For Precedents, see 2 Chit. Crim. Law, from 527 to 538, and also 1 East 167. Hand. Prac. 166. Cro. C.C. 205. 6 Went. 7 Burn J. Forestalling. Williams J. Forestalling. 2 Starkie 653-656.

(*e*) 29 Assize, p. 48.

(*f*) 2 Chit. Crim. Law, 527. n. and see 6 East, 473. 2 East, P. C. 1021. Andr. 162.

(*g*) Smith q.t. *v* Bointon, Bridg. Rep. 48, 9, technical objections to an information for ingrossing.—The Queen *v.* Ingersell, Cro. Eliz. 309, information on 3 and 4 Edw. VI.,

It will be proper to enumerate those decisions that affect an indictment at common law. It appears by an old case (*h*), that a feme covert could not be an engrosser; and, if indicted, her husband must be joined.

When the *quantity* engrossed was expressed by the word cumulus (*i*), or by the words magnos et excessivos numeros volucrum ferarum mortuarum, (*j*) and by magnam quantitatem stra-

for buying cattle out of the market.—Anon. Latch. Rep. 192. That an action on 3 and 4 Edw. VI. for buying cattle alive cannot be brought in the Sheriff's Court.—Johnson's case, Cro. Jac. 609. Indict. on 13 Richard II. c. 8, and 4 Henry VIII. c. 25, against an innkeeper for selling oats at an unreasonable price.—Anon. Godb. Rep. 131, information on 5 and 6 Edward VI. c. 14, for ingrossing seed corn. —Martin Van Hubeck's case, 2 Leon. Rep. 39, information on that statute bad for not following its words.—On the 5 and 6 Edward VI. c. 14, several other cases now unimportant might be referred to, as that the penalty might be recovered in any court of record, *Arg.* In Robert Scarlet's case, 12 Co. Rep.; that the forfeiture might be mitigated, King *v.* Wray, 1 Roll. Rep. 194; that licences were a justification, Dawkes *v* Hill, Mod. 879. Anon. Hoy. 27. King *v.* Carter, 2 Roll. Rep. 33, and that it need not be alleged in the information that the defendant had it not by demise, grant, &c. Bedoe *v.* Alpe, Sir William Jones, 156, and see Hard. 231. As to the judgment, see Anon. 2 Roll. Rep. 400. Information against a poor woman for buying fish, Anon. 1 Show. Rep. 292. Holt. Rep. 328. s. c.

(*h*) 2 Keb. 468, 9-479, 503. Hil. 20 & 21 Car. 2. in B.R. K. *v.* Fenner.

(*i*) 2 Buls. 317. Hil. 12 Jac. I. in B. R. 1 Roll. Rep. 134. S.C. K. *v.* Whider.

(*j*) Ld. Haymond, 475. Rex *v.* Foster, Cro. Car. 380. 6 Mod. 32. Anonymous.

minis et fœni, the proceedings were respectively quashed for uncertainty, although the words magnam quantitatem frumenti were in one case allowed to be sufficient (*k*).

The same doctrine was recognized in a later case (*l*), in which the indictment was preferred for engrossing a great *quantity* of fish, geese, and ducks.

To an indictment in 5 and 6 Edward VI., for engrossing, exception was taken that the venue was laid in London, although the sale was in Surry. It was ruled in a special verdict that it was well enough (*m*). Venue.

After conviction and before judgment, if any length of time intervene, the defaulter will be committed, unless the prosecutor consent to his being admitted to bail (*n*).

Different kinds of punishments were, by particular statutes, denounced against forestallers, engrossers, and regrators. These crimes being now punishable by indictment at common law, all offenders are liable to be fined and imprisoned (*o*). Judgment.

Where an information was against several, and one only was found guilty, and the others were acquitted: the judgment, after much discussion, was given against him (*p*).

(*k*) 6 Mod. 32.

(*l*) K. *v.* Gilbert, 1 East, 583. and see 1 Stra. 497. and 2 Hawk. c. 25. s. 74. See Hawk. B. 1. c. 18. s. 25.

(*m*) K. *v.* Copeland, Comb. 3. K. *v.* Gaul, 1 Salk. 372.

(*n*) 1 East, 159.

(*o*) 1 Hawk. P. C. c. 80. s. 5.

(*p*) Lane 59. Trin. 7 Jac. 1.

BOOK II.

ON PATENTS FOR INVENTIONS.

CHAP. I.

INTRODUCTION.—OF A PATENT GENERALLY.

THE manner in which our Sovereigns, mistaking the extent of their prerogative, created monopolies, and the pernicious consequences which flowed from those grants, have been explained in the first Book of this Treatise. It was there stated, how the limitation of the power of making grants of exclusive privileges was defined by the common law, and how the exercise of it was moderated by the prudent determinations of the judges.

One species of monopolies, it has been shewn, are those, which, although founded on grants, are allowed by statute law. From that source the LAW OF PATENTS FOR INVENTIONS spring. It is a branch of the law, in its nature and consequences as pleasing to consider, as that of the first book was irksome. For although they are monopolies, yet they are very limited ones; and are as beneficial in their effects, both to the inventors and to the community, as the old kind were detrimental to the best interests of the state.

Patents at Common Law.

The common law, however, is not altogether silent on the question of Patents for Inventions. All monopolies were declared generally to be void. The grants of the crown were, at common law, construed with the greatest strictness. Yet, even by that law the King had the power of conferring on the *inventor* of any useful manufacture or art the exclusive power of using or vending it for a *reasonable* time (*a*).

Patents by Stat. of 21 James.

But the law of patents for inventions, as it now stands, rests for support on the statute of 21 James (*b*).

After a declaration that all monopolies are void, it is, by the *sixth* and principal section of that act, enacted, "That any declaration before mentioned shall not extend to any letters patents and grants of privilege for the *term of fourteen years* or under, thereafter to be made, of the sole working or making of any manner of *new manufactures* (*c*) within this realm, to the *true and first inventor* (*d*) and inventors of such manufactures, which *others* at the time of making such letters patents and grants *shall not use*, so as also they be *not contrary to the law*, nor mischievous to the state, by raising prices of commodities at home, or *hurt of trade*, or *generally inconvenient*. The said fourteen years to be accounted from the date of the first letters patents, or grant of such privilege thereafter to

(*a*) 3 Inst. 181. 2 Hawk. P. C. 293, B. I. c. 79. s. 20. Noy 182. ante. 10.

(*b*) 21 Jac. I. c. 3. ante. 14.

(*c*) Post, Chap. 3.

(*d*) Post, Chap. 2.

be made, but that the same shall be of such force as they should be, if that act had never been made, and of none other."

This statute has always been considered as merely *declaratory* of the common law prerogative of granting patents: but the acknowledged power of the Crown was so seldom exerted in favour of the inventor of a useful manufacture, that the legislature was compelled at once to put an end to the licentious and grievous monopolies, and to hold out encouragement to the ingenious artist. Encouragement of artists.

The necessity of some legal provision, to secure a reward to those who would exert their abilities, employ their time, and spend their money in the production of something new and useful to the community, was apparent to every one. But the question as to what kind of protection is the most proper to be afforded to the inventor, has since given rise to much discussion. It seems but just that he, who informs the public of a new method of increasing their wealth, should gather for himself the first fruits of his ingenuity and labour. Hence the great and almost certain remuneration given by the statute of James,—that an inventor shall have a limited monopoly in his own manufacture,—is the most appropriate recompence that can be awarded to him; for, in proportion as the invention is valuable to society, will the amount of his own profits increase.

Upon this statute numerous observations, as to its *policy* and the construction it ought to receive, have been made by learned men, many of them Policy of stat. 21 Jac.

differing in opinion. Whilst some have thought it a very wise and useful measure, others have described it as oppressive to inferior tradesmen. Of its policy nothing can be said in a legal treatise. The opinions, as to the kind of *construction* which it ought to receive, will be noticed when those parts of the subject to which they apply are mentioned; and the whole of them will be collected together, when the rules for the construction of the statute of monopolies, as it relates to patents for inventions, are expounded (*e*).

Condition for the specification.

This important statute, marking out the boundary to which the royal grants should in future extend, left the terms on which they might be obtained, to be settled at the pleasure of the Sovereign. In the reign of Queen Anne a condition was introduced into the patent: that if the inventor did not by an instrument under his hand and seal *particularly describe* (*f*) and ascertain the nature of his invention, and in what manner the same was to be performed, and also cause the same to be inrolled in Chancery within a certain time (generally one month) therein mentioned, then the letters patent, and all liberties and advantages whatsoever thereby granted, should utterly cease and become void.

By thus obtaining an exact statement (*g*) of the nature and use of the invention, the public

(*e*) Post, Chap. 6. (*f*) Post, Chap. 4.

(*g*) The description must be very correct. Even a slight inadvertent omission will, it appears, (post, ch. 4.) invalidate

are benefited, and have an equivalent for this limited monopoly. The instrument containing this required description is called THE SPECIFICATION.

No right to demand patent.

Though the power of the King to create monopolies was closely defined by the statute of James, and grants of them in future were to be made only to the authors of new inventions; yet there is not any clause or enactment, by which the subject can *demand* them as a *right*. This great encouragement to industry, this fruitful source of wealth, is still the free gift of the King. It emanates from him as *the Patron of Arts and Sciences* at the humble request of his subject; and it is as a gracious favour that he extends this protection to the inventor.

The grants of King by letters patent.

All grants from the crown are matters of public record (*h*), *as being the deeds of the first magistrate;* and are next in dignity to the acts of the state. They are either in the form of the grant. A man, whose thoughts have long dwelt on the same subject, overlooks many things forming part of the manufacture which lead him to the invention. It is therefore often very prudent to call for the skill, experience, and unprejudiced judgment of others, to enable him to make a good specification. The Editor of the REPERTORY OF ARTS, *new series*, a work in which the specifications of new patents are monthly published, and which also contains much useful information respecting new inventions and improvements in the Arts and Sciences, professes, by an advertisement attached to it, to assist inventors in making a correct specification, and to be otherwise of use in obtaining the patent.

(*h*) Dr. and Stud. B. 1. d. 8.

charters, or letters (*i*). These letters are either open, and thence called *Literæ Patentes*, being addressed to all his Majesty's subjects; or else close, *Literæ clausæ*, addressed to particular persons. It is by the letters patent, that grants of the sole privilege and exclusive property in inventions are made.

Offices for patents.

To prevent grants of this description from being surreptitiously obtained, numerous offices are established, communicating in regular subordination. In them the proceedings are narrowly inspected by the King's law officers, before they are sanctioned by the royal authority; and that the great seal may not be affixed without the utmost caution being used, and due consideration given to the subject of the grant, the letters patent must first pass by the dilatory and expensive method of *bill* (*k*).

The parts of a patent.

The clause in the patent by which the specification is required has been given (*l*). It is thought that a short description of the several parts of the patent will make the different bearings of patent law more readily seen, and the numerous rules respecting it more easily comprehended.

In the patent (*m*), after a recital of the petition and its prayer, it is stated that his Majesty, of his special grace, certain knowledge, and mere

(*i*) 2 Bla. Com. 346.

(*k*) Post, Chap. 5.

(*l*) Ante. 46.

(*m*) For a patent at length with all its clauses see Appendix.

motion (*n*), has given and granted the matter requested by the petitioner. That he, his executors, administrators, or such others as they shall agree with, shall lawfully make, use, and vend the invention, during the time therein expressed, (generally fourteen years,) within that part of the dominions in which the inventor has petitioned to use it. It then goes on to command that all persons, bodies politic and corporate shall not dare to imitate the same, or make any addition to or subtraction from it, without the *licence* (*o*) of the petitioner, his executors, administrators, or assigns, in writing under his or their hands and seals; disobedience subjecting them to the punishment for a contempt, or to be proceeded against in an action at law (*p*). It also directs that mayors, sheriffs, &c., and all other the King's officers and ministers, shall not molest the patentee in the exercise of his invention.

Matters which make it void.

There are several regulations connected with the grant that are mentioned in the patent, the non-observance of which will render it void (*q*). If it should appear to the King, or any of the privy council, that the grant is contrary to the provisions (particularly the sixth section) of the statute of monopolies, or that it leads to the use of any invention protected by a prior patent, or that the patentee or his representative has transferred or divided it into shares, or declared any

(*n*) In the old grants speciali gratia, certa scientia, et mero motu.

(*o*) See post, chap. 7.

(*p*) See post, chap. 8.

(*q*) See post, chap. 9.

trust of it, to or for any number of persons exceeding the number of *five*, or those five have presumed to act as a corporate body, or in any wise contrary to an act of Parliament therein recited, respecting assurances of ships and merchandize, then the patent is to be declared to be void.

In the construction of this proviso executors or administrators, however numerous they may be, are collectively to stand in the place, and to be considered as and for the single person whom they represent (*r*).

Then comes the proviso for the particular description or specification of the invention to be made in a given time.

And lastly, it is granted that the letters patent shall be *construed* (*s*) and adjudged in the most *favourable* and beneficial sense for the best advantage of the grantee, notwithstanding any defective and uncertain description of the nature and quality of the invention, and of its materials.

Which instrument the PATENT is the *formal*, as the SPECIFICATION is the *substantial*, part of this limited monopoly.

Division of matter respecting patents.

Whence it appears that the most logical order in which the matter of this book on patents can be arranged, will be to begin with investigating the law respecting the *true and first inventor*, the *subject* of his invention, and the nature of the *description* which he must give to the public to secure his limited monopoly. Having exa-

(*r*) See post, chap. 7.

(*s*) See post, chap. 6.

mined the contents of the grant, it will then be the best time to set forth the *mode of obtaining it.* Being once in possession of the patent, the questions as to its *construction* and the *property* in it will arise. And then will follow the *remedies* which may be resorted to by an inventor, if he suffer any injury from an infringement of his right. And lastly, the method by which the public *may deprive him* of the grant, if it be not a good one in law, will be examined.

CHAP. II.

Of the Inventor.

THE most important business of an enquiry into the laws respecting patents for inventions, is to obtain an accurate knowledge of the following questions:—Who is he that has found out something new, or who is the *inventor* of the subject? What is an invention, or a proper *subject* for a patent? How is the thing to be described, or the *specification* to be made? These topics claim particular attention, and therefore a Chapter will be devoted to the examination of each of them.

In prosecuting the investigation of the first question—who is the person that the law will adjudge to be *the true and just inventor* of a manufacture, within the meaning of the statute—the decisions will lead to the consideration of,—

I. A *discoverer* of a new thing (*a*).
II. A *publisher* of an invention.
III. An *introducer* of a foreign invention.

I. A Discoverer of a new thing.

That a *discoverer*, or he who *first finds out*

(*a*) Since the word "*inventor*" has in patent-law several distinct meanings, it is thought that this Treatise will be rendered more intelligible if that word is made a *generic term*, and if to each of its meanings a separate name be given.

a thing, of which a limited monopoly may lawfully be granted, should have the advantages accruing from it secured to him by patent, if he apply for it, is one of the fundamental maxims of this branch of the law.

But, to prevent abuse, the protection which the laws afford to this species of monopoly is strictly watched. No person, who has not without assistance *formed the original idea* of the subject in his own mind, will be enabled to keep any patent which he may have obtained.

If the principle of the invention be taken from a *scientific work* (*b*), the patentee is not an *inventor.*

Nor will he be entitled to hold the grant, if he has in any manner been *informed of the secret* by another person in England. Mr. Tennant (*c*) had a part of the process, indispensable in rendering the subject of his patent of any utility, suggested to him by another person. It was therefore determined that he was not the inventor.

In vain it will be urged that the patentee has embodied the principle, that the method of reducing it to practice is his own discovery, and that great genius has been exerted to form the subject.

In the great caseof the King *v.* Arkwright (*d*),

(*b*) Post, King *v.* Arkwright, printed 'as. 182. Dav. Pat. Cas. 129. And see Hill *v.* Thompson, 2 B. Moore 456.

(*c*) Dav. Pat. Cas. 429.

(*d*) Mr. Arkwright's machine consisted of ten distinct parts. It may be useful to know the opinion of Mr. Justice Buller on each of them, with references to the printed case.

the point was agitated,—whether the machine for which the patent had been granted, was invented by Mr. Arkwright—it was satisfactorily proved, that every part which was not *old*, or had not been *used* for the same purpose to which it was then applied was either not *material* or not *useful*. It was therefore determined that he was yet the inventor of a new manufacture.

II. A Publisher of an Invention.

If two persons severally discover the same thing, the one who obtains a patent for it, before the other has made the matter public, will be adjudged to be "*the true and first inventor*," and be entitled to hold the grant. This rule is necessary to insure an early production of the efforts of genius.

An objection was raised to the patent of Dolland (*e*), that he was not the inventor of the

No. 1. The beater, taken from Emerson's book, p. 182. No. 2. The iron frame, not new, if used, p. 182. No. 3. The feeder, invented by John Lees, p. 183. No. 4. The crank, not new, p. 183. No. 5. The filleted cylinder, not new, p. 185. No. 6. The rollers, not new, p. 185. No. 7. The can, if new, not material and useful, p. 186. No. 8. A machine for twisting, and No. 9. A spindle and flyer, never used, p. 186. No. 10. A regulating wheel, not used, p. 187. And see *King* v. *Murray*, Rep. of Arts, Vol. III. N. S. p. 235. The patent was for improvements in the construction of air-pumps. Messrs. Boulton and Watt proved that they had used every one of the parts which it was pretended were new, and the verdict was given for the Crown to repeal the patent.

(*e*) In Boulton v. Bull, 2 Hen. Bla. 487. The patent

new method of making object-glasses, for that Dr. Hall had made the same discovery a long time before. It was held, however, that, inasmuch as the public were not acquainted with it, Mr. Dolland must be looked upon as the inventor. He was not only a *discoverer* of it, as well as Dr. Hall, but he was the *first publisher*.

This doctrine was confirmed in the late case of Forsyth *v.* Reviere (*f*), in which it was held that, if several persons *simultaneously discover* the same thing, the party who first communicates it to the public, protected by a patent, *the publisher*, becomes the legal inventor, and is entitled to the benefits to be derived from the invention.

It is therefore necessary that a *discoverer*, who does not wish that a grant should be obtained, either by himself, or by any other person finding out the same thing, should immediately make his discovery known. But if he has a desire to enjoy the advantages which may arise from the sole use of the invention by himself, he will act with prudence, if he procure

granted to Mr. Dolland, was for an invention of a new method of making the object-glasses of refracting telescopes, by compounding mediums of different refractive qualities; whereby the errors arising from the different refrangibility of light, as well as those which are produced by the spherical surfaces of the glasses, were perfectly corrected. *Buller, J.* The point contested in Dolland's case was, whether he, or Dr. Hall, was the first and true inventor within the meaning of the statute; Hall having first made the discovery in his own closet, but never made it public, and on that ground Dolland's patent was confirmed.

(*f*) Chitty, Jun., Prer. of Crown, 182. n.

a patent *immediately* before the matter can be divulged by another person.

III. An Introducer of a foreign Invention.

The sixth clause, and indeed the whole of the statute of monopolies, being made for the benefit of the subject, has been construed in his favour.

If the objects of patents are new in England, they certainly come within the equity of a statute, by which it was intended to encourage new devices that might probably prove useful and beneficial to the kingdom. Whether the invention was learnt by travel, or produced by study, the intention of the legislature is equally fulfilled; and therefore, soon after the passing of the Act (g), a patent, granted for something which had been practised beyond the sea, was held to be good and valid.

This construction has ever continued to be put upon that clause. It was confirmed by a late case (*h*), in which it was declared to be good law.

Upon the whole, then, the character of an inventor may be obtained by a person in three ways, by bringing with him and publishing to his countrymen the productions of the genius of foreigners; by publishing what others as well as himself may have found out at home; or by publishing what he alone has discovered.

(g) Edgeberry *v.* Stephens, 2 Salk. 477.
(*h*) Wood *v.* Zimmer, Holt. N. P. C. 58.

CHAP. III.

OF A NEW MANUFACTURE; OR, THE SUBJECT OF A PATENT.

THE statute of monopolies having been made for the encouragement of commerce; the word "manufacture" has received a very extended signification (*a*). It has not indeed, as yet, been accurately defined; for the objects, which may possibly come within the spirit and meaning of that Act, are almost infinite.

That the principles upon which a great variety of things have been declared to come within the design and to claim the protection of that statute may be clearly understood, it will be proper to divide the manufactures into their several kinds.

An arrangement, at once simple and correct, could not easily be suggested; it is therefore hoped that the following classification of them will assist in the present enquiry, and that it will also be found useful in elucidating the rules for making out the *specification* of patents. There is not any thing which conduces so much towards rendering a description of a manufacture, concise

(*a*) A summary of what things come within the words "new manufacture" will be found given by Eyre, C. J. in 2 H. Bla. 492.; by Dallas, C. J., in 2 B. Moore, 448.; by Eldon, C., in 3 Meriv. 629.; by Abbott, C. J., in 2 Barn. & Ald. 349.

yet clear, as a knowledge of the several objects of patents, in their kinds distinct from each other(*b*).

A new manufacture may be,

I. A *substance*, or thing made.
II. A *machine*, or instrument.
III. An *improvement*, or addition.
IV. A *combination* or arrangement of things already known.
V. A principle, *method*, or process, carried into practice by tangible means.
VI. A *chemical* discovery.
VII. *A foreign invention.*

I. A SUBSTANCE, OR THING MADE.

A substance appears peculiarly to have been contemplated by the legislature, as the most proper object for a patent. "A manufacture," says Lord Kenyon, "is something made by the hands of man." (*c*)

The requisite qualities of a manufacture.

But it is not for every substance, nor for every thing which is discovered, that a patent can be obtained and supported. It must be *new*, or it will come within the purview of the former part of the statute of James against monopolies. It must, by the words of the act, not have been *used*. It must be *vendible*; or, not being re-

(*b*) It will be noticed that this arrangement is not *strictly logical* as to the several kinds of manufactures; but that it has been formed with a view to illustrate the reported cases, and for the sake of simplicity in the observations on them.

(*c*) 8 T. R. 99.

quired in trade, it cannot be a proper object for protection. It must be *perfect in itself*, and the means must be adapted to the end, or the public will not receive any benefit from it; at least, the barter between them and the monopolist will be greatly in favour of the latter. In its effects it must be *useful* and beneficial, or it will be unworthy of notice.

These are the *primary qualities*, and are not peculiar to any one species of manufacture, but must be found in every discovery for which a patent is sought. These properties may be considered as the TEST by which the fitness of an invention to support a patent may be ascertained. (*d*)

Before the several kinds of manufactures are particularly described, it will therefore be proper to investigate the exact nature and extent of those qualities which are common to all of them.

Every manufacture within the meaning of the statute must, at least, be

1. *New.*
2. *Not used* before,—neither
    1. By others,—nor
    2. By the inventor.
3. *Vendible.*
4. *Useful.*

Some incidental properties, as that the means must be adapted to the end intended to be produced, will be best understood, if examined when treating of the *specification.*

1. Must be new.

Not only must the subject be *new*, in the common acceptation of that word, as to the world in general, but it must not be copied from a *scientific work*. The beater in Mr. Arkwright's machine was taken from *Emerson*'s book. (*e*)

Though it may be learned abroad, (*f*) yet it must not be suggested by a friend at home. (*g*)

And where the patentee claimed the exclusive liberty of making lace, composed of silk and cotton thread mixed, and not of any *particular mode* of mixing them; upon its being clearly proved and admitted that silk and cotton thread had before that time been mixed on the same frame for lace in some mode or other, the patent was declared to be void. (*h*) There was not any thing particularized which was a novelty.

A patentee *summed up the principle* (*i*) in

(*e*) Ante, 53. Rex *v.* Arkwright, Printed Case, 182. Dav. Pat. Cas. 129., and see Repertory of Arts, N. S. 27th Vol. 252. The question of novelty arose in Manton *v.* Manton, Dav. Pat. Cas. 333; see 2 B. Moore, 456. and Brunton *v.* Hawkes, 4 B. & A. 541.

(*f*) Edgeberry *v.* Stephens, 2 Salk. 477.

(*g*) Ante, 53. Tennant's patent. Dav. Pat. Cas. 429.

(*h*) King *v.* Else, Bull. N. P. 76. Dav. Pat. Cas. 144.

(*i*) Rex *v.* Cutler, 1 Stark. N. P. C. 354. and see 3 Mer. 629. The defendant stated his invention to consist of a new mode of feeding the fire in a grate. The fuel necessary for supplying the fire was introduced at the lower part of the grate, in a perpendicular or oblique direction. The manner of performing it was set forth in the description and drawings annexed. It was proved that grates had been made prior to the date of the patent upon the same principle, although they did not possess all the advantages of this patent one. The effect was produced in the old ones by con-

which his invention consisted, but did not set forth any instrument, or any new particular mode of applying that principle. The patent was in consequence adjudged to be void for *want of novelty*, although the application of the principle, as described in the specification, was new.

If the subject has been published, though unremarked, among other things, it is not new; for no man can appropriate the invention of another person. And if the effect has been produced by a similar method, it is known in law. (*k*) If a contrary rule were to prevail, it would be impossible to say what publication of a fact should take away its novelty, and prevent its becoming the subject of a patent.

When the objects of two grants are substantially the same, they may both be valid, if the modes of attaining the desired effect are essentially different. (*l*)

2. Must not have been used.

It is expressly provided by the statute of James that the subject fit for a patent must be one

tracting the grate, whilst in the new ones the grates remained of the same size. In both, the coals were *wound up from below* the grate.

(*k*) Hare *v.* Harford and Taylor, C. P. 14 July, 1803. Repertory of Arts, N. S., 3d Vol. 232. By the invention, in brewing beer the essential oil of hops was preserved, and the water boiled. The water had been boiled by a *similar method*, which must *necessarily* have preserved the oil, although not intended to do so. And see Manton *v.* Parker, Dav. Pat. Cas. 330.

(*l*) Huddart *v.* Grimshaw, Dav. Pat. Cas. 299.

"which others at the time of making such letters patent and grants shall not use." (*m*)

It must not have been used, either by *other persons*, or by the patentee himself.

Used by others.

It has been stated, that if several persons about the same time discover the same thing, that he is accounted the inventor who makes the first communication of it to the public. (*n*) Thus it was considered by the Court that Dr. Hall had not *used* his discovery of the object-glasses, because he had not made it known; and that the mere knowledge of the fact, without its being published, was not *a using* within the meaning of the statute, so as to render Dolland's patent void, as one granted to a person who was not the real original inventor of the subject of it.

It has been seen (*o*) that the circumstance of several parts of Arkwright's machine having been *used* before the grant was obtained, weighed very strongly with the judge who tried the validity of his patent.

But if the secret of an invention be known only to a few persons, and one of them put it in practice and make an actual use of it, then a patent afterwards obtained by any one of them is void. This happened to Mr. Tennant, (*p*) whose grant was declared to be invalid, because

(*m*) 21 Jac. I. c. 3. s. 6.

(*n*) Ante, p. 54. And see 2 Hen. Bla. 487.

(*o*) Ante, p. 53, in note, printed case, 50, 182, 861. Dav. Pat. Cas. 129, 139, and see 2 B. Moore, 452.

(*p*) Dav. Pat. Cas. 429.

a bleacher, who had not divulged the secret to any other person but his two servants, had however *used* the same kind of bleaching liquor for several years anterior to the date of the patent.

An example is given by Mr. Davis (*q*) that seems to be a little at variance with this general rule. A person who sought a patent for making spectacles, incautiously told an acquaintance of the principle of the invention; by which means a person of the same trade immediately made a similar pair. The discoverer saw them in the shop window and employed a friend to purchase them for him. The patent passed the Great Seal a few days afterwards, and thus it is said "that his patent was rendered secure." It does not appear that this patent ever came before the Court. There are many reasons which may, it is conceived, be assigned why the grant would not be good in law. By the imprudence of the discoverer himself two persons at least became acquainted with his invention before the patent was sealed, and one actually made the article, and exposed it to sale. The moment the third person bought it, he, as one of the community, took possession of it. It was then made public, if it had not become so by the exposure to sale. It is difficult to imagine upon what principle this publicity could be done away with; certainly not by the gift of it back to the discoverer. There was knowledge of the secret,—an

(*q*) Dav. Pat. Cas. 445.

actual making,—and a public sale, by a person who was not the patentee.(r)

Used before patent obtained.

Not only is it required that the subject shall not have been *publicly used*, but the patent will be void if the inventor had made any use of it himself prior to the time of obtaining his grant. Thus, the patent for British imperial verdigris,(s) because the inventor had, for four months prior to the sealing of the grant, sold the article under a different name, was, in consequence thereof, declared to be void.

Experiments.

Whether *experiments* made with a view to try the efficacy of an invention, or the full extent of a discovery, are a *using* within the meaning of the statute of James has not yet been decided.(t)

(r) See Wood v. Zimmer, 1 Holt. N. P. C. 60.

(s) Wood v. Zimmer, 1 Holt. Rep. N. P. 58. S. C. in Repertory of Arts, N. S. 27th Vol. 171. under the names of Wood v. Zimmerman. This patent was for a new mode of making verdigris, to be called British Imperial Verdigris. It was one objection to it that the article was not new at the time of the patent; inasmuch as the patentee had previously sold it. Gibbs, C. J.—This question is somewhat new. Some things are obvious as soon as they are made public. Of others the scientific world may possess itself by analysis. Some inventions almost baffle discovery: but, to entitle a man to a patent the invention must be new to the world. The public sale of that which is afterwards made the subject of a patent, though sold by the inventor only, makes the patent void. It is in evidence that a great quantity was sold in the course of four months before the patent was obtained, and that the patentees were in the habit of selling his manufacture. His Lordship left it to the jury to say whether the invention was in public use before the patent was granted. The jury found in the affirmative.

(t) See Hill v. Thompson, 2 B. Moore, 457. A bill was

It would be very difficult to say how much a substance or machine might be *used* by way of experiment before the patent is obtained, without running a great risk of invalidating the grant.

3. Must be vendible.

The subject of a patent must be *vendible matter*. It seems reasonable that it should be something capable of being bartered in commerce,—or some substance in contradistinction to any thing that is to be learnt by practice. If it cannot be *sold*,—upon what principle can it reasonably claim protection from a statute made for the encouragement of trade and commerce?

There is not a case expressly decided on this point: but it is a fundamental proposition, which will be of great assistance in ascertaining what *methods* or processes may be denominated *new manufactures*: and therefore the dicta of the judges respecting it have been collected.

Heath J. said (*u*), "The term manufacturer precludes all nice refinements: it gives us to understand the *reason* of the proviso, that it was introduced for the benefit of trade; and that the subject ought to be that which is *vendible*, otherwise it cannot be a manufacture." "It must be for the *vendible* matter, and not for the principle."

Kenyon, C. J. "I have no doubt in saying that this is a patent for a manufacture, which I understand to be *something made by the hands* introduced into Parliament last sessions to protect persons making experiments. It was thrown out on the second reading.

(*u*) 2 Hen. Bla. 482.

of man." An opinion that strongly impresses the idea of its being something *vendible* (*x*).

And in the King *v.* Wheeler (*y*) Abbott, C. J. observed, that the word "manufacture" had been *generally* understood to denote either a thing made, which was useful for its own sake, *and vendible as such*, as a medicine, a stove, a telescope, and many other things, or to mean an engine, or instrument, or some part of an engine or instrument, to be employed either in the making of some previously known article, or in some other useful purpose, as a stocking frame, or a steam engine for raising water from mines.

4. Must be material and useful.

The number of patents that have been cancelled for not being *beneficial* to the public is very small; although it is always distinctly left to the jury to say, whether the invention is a material and useful manufacture (*z*).

(*x*) 8 T. R. 99.

(*y*) 2 Barn. and Ald. 349, 350.

(*z*) Hill *v.* Thompson, 2 B. Moore 450-454. 3 Meriv. 629. and see King *v.* Arkwright, where it is said that the stripes on the fillets, if new, were not material enough to support a patent. Printed Case, 185. Dav. Pat. Cas. 135. and see id. 186. id. 138. *Buller*, J. Then the seventh article is what they call the *can*. *Holt*, (a witness) says, the only difference between the two, the spi ·ing machine, and the present roving machine, is, that the latter has a can; and indeed, that, at one time, was admitted by the counsel for the defendant. If it be so, it brings the case to a short point indeed; for, if nothing else is *new*, the question is, whether it is *material* or *useful*? The witnesses upon the part of the prosecution say, it is of no use at all. In the first place, they had that before which answered the same purpose, though not

An inventor may honestly imagine that there is utility in his discovery when there is not. Few men would risk the expense of obtaining a patent for an article, which they knew to be useless, when it is evident that their reward, depending on the sale, could not possibly be great, unless the manufacture was beneficial to the community. But it is not difficult to conceive that a person might endeavour to monopolize a known article of trade, by a patent for some immaterial alteration or addition to it, on the speculation that the public would give him credit for the patent article being superior to the old one. To prevent such deceit, this general rule is laid down, *that the new manufacture or subject must be material and useful.* It must, *of itself,* be a thing of some consequence in commerce. Although, as Lord Ellenborough observed (*a*), in

made exactly in the same form; it was open at top, it twisted round, and laid the thread precisely in the same form, and had the same effect this had; so if it was new, it is of no use. But they say it is not new; for, though it was not precisely the same shape, in substance it was the same thing, that is not contradicted.

That part also *stands without any contradiction upon the* part of the defendant; for the defendant's witnesses satisfy themselves with telling you they think it intelligible, and it might do without the roller, though it might not be so effectual as with the roller. It is admited by several it could do without, that appeared from the experiment made. They shewed you by one of the engines, how it did with the roller, and how without; and that it was done without, just the same as with it.

(*a*) Huddart *v.* Grimshaw, Dav. Pat. Cas. 297, 298 See post. 73, n.

every department of science there are some things which are common and cannot be appropriated, and if one elementary thing be substituted for another, and make an important improvement (as if that be done by a tube which was before done by a ring,) a patent for the improvement would be good, for it is a substantive invention: yet in general the substitution of one *material* for another in making a manufacture is insufficient to support a patent (*b*).

(*b*) Walker *v.* Congreve, Eq. July, 1816. Repertory of Arts, 29th vol. p. 311. Sir *J. Leach* Vice-Chancellor, said, Though new, the invention, which was a *barrel* for carrying gunpowder, was not of such a nature as to come within the statute of monopolies; and did not exhibit such proof of skill and invention as entitled it to the protection of that law, which encouraged the exertions of genius by enabling its possessors to reap more exclusively its reward.

Every thing was not an invention worthy of a patent; nor could every original former of a machine be called an inventor.

Every novelty was not an invention entitled to the protection of the statute. A new principle must be discovered; skill and ingenuity must be exerted to entitle an inventor to a patent, the making of an old machine of new materials could not be a discovery, and the plaintiff could claim no protection for an invention, the only merit of which consisted in being made of brass instead of wood. When tea was first introduced into this country, earthenware teapots were used;—but could a person, who made the first one of silver, be entitled to a patent, restraining all his fellow-subjects from using silver teapots, except those bought of him.

Next it was said that the form was new: but was the invention of making *a barrel like a cylinder* worthy of being protected by the statute of the monopolies? Well, but said the patentee, my barrel is strengthened with *hoops*. And was it a new thing displaying great ingenuity to strengthen

If a contrary rule were to prevail, a patent might be obtained for a thing, which, in itself, is a mere curiosity. And one great mischief at least would arise; for a person, who, applying this thing, trifling in itself, to an invention of his own, might thus produce something beneficial to the community, would be prevented from availing himself of the use of it for several years.

In the case of Manton *v.* Parker (*c*), the question of *utility* was considered. By means of a perforation in the hammer of a gun, it was specified, that the air formerly confined, would escape, but that, at the same time, the powder would be secured. On experiment it appeared that the powder passed as well as the air. The *utility* of the invention, and the purpose of the patent thus *failing*, the plaintiff was nonsuited.

The same point was again agitated in the case of Brunton *v.* Hawkes (*d*), and received the same determination.

a barrel with hoops? Was the *circular aperture* a great invention? No, but the method of shutting was new. And what was the novelty of placing upon a circular aperture a common pot lid? What was new was *unimportant*.

(*c*) Dav. Pat. Cas. 332, and see Manton *v.* Manton, Dav. Pat. Cas. 348.

(*d*) 4 Barn. and Ald. 455. and see same Case in Repert. of Arts, N. S. vol. 37. p. 105. *Bayley*, J. Could there be a patent for making in one entire piece what before had been made in two pieces? I think not: but if it could, I think that still this would not be new. In the mushroom and the adze anchors, the shank is introduced into the anchor by a hole in the centre of the solid piece; and in reality, the adze anchor is an anchor with one fluke, and the double fluke anchor is an anchor with two flukes. After having

II. A Machine or Instrument.

From the consideration of substances, it is easy to direct attention to the means by which some new or old thing may be made. Though a man cannot have a patent for making an article of trade by machinery in general terms, yet any particular *machine, engine,* or *instrument,* used in the production of a substance, is a new manufacture (*e*).

Peculiar quality.

It must possess the *properties* which have been shewn to be necessary not only to a substance, but to every other manufacture. One of its qualities must be pre-eminent—it must be very *useful.* If the article that is produced by the machine be old, it must be furnished to

had a one-fluked anchor, could you have a patent for a double fluked anchor? I doubt it very much. After the analogies alluded to in argument, of the hammer and pick-axe, I do not think that the mere introducing the shank of the anchor, which I may call the handle, in so similar a mode, is an invention for which a patent can be sustained.

(*e*) Boulton *v.* Bull, 2 Hen. Bla. 492. and see *Brown v. Moore,* Eq. Nov. 1815. *Repertory of Arts,* 28 vol. p.60. *Eyre,* C. J. It was admitted that the word manufacture was of extensive signification; that it applied not only to things made, but to the practice of making, to principles carried into practice in a new manner, to new results of principles carried into practice. Under things made, we may class, in the first place, new compositions of things, such as manufactures in the most ordinary sense of the word. Secondly, all mechanical inventions, whether made to produce old or new effects; for a new piece of mechanism is certainly a thing made.

the public at a much cheaper rate. The community must receive some benefit from the invention; and when it is not a new article which is introduced, the old one must, in some respect, be rendered a better commodity for trade.

III. An Improvement, or Addition.

An addition to or improvement of a manufacture, whether it be of a substance or machine, is considered as a new manufacture in law, and is allowed to be the subject of a patent. So early as in the reign of Elizabeth, in Bircot's case (*f*), it was decided, that if the substance was *in esse* before; an addition, though it made the former article more profitable, was not a new manufacture.

This doctrine was overruled by Lord Mansfield (*g*); who said, that the objection that there can be no patent for an addition, would go to repeal every patent that ever was granted: that it was a *question open on the record*, and the defendant might move in arrest of judgment. No such motion was ever made, and the decision has ever since been recognized as law.

But the patent must be *confined to the addition* or improvement, that the public may purchase it without being encumbered with other things (*h*). If the grant extend to the whole, it will be

(*f*) 3 Inst. 184.
(*g*) In Morris *v.* Branson, Bull. N. P. 76.
(*h*) 2 Hen. Bla. 463.

invalid; for the property in the addition or improvement can give no right to the thing that has been improved. Thus in *Jessop's* case (*i*), the patent was held to be void, because it was taken out for the whole watch, when the invention consisted merely of a single movement. *Huddart's* invention differed from that of *Belfour's*, because the thing which was effected with a ring or circle by the latter person was produced by a tube in the mode of making ropes by the former; and therefore he should have taken his patent for that improvement (*j*).

(*i*) Cited by Buller, J. in Boulton *v.* Bull, 2 Hen. Bla. 489.

(*j*) Huddart *v.* Grimshaw, Dav. Pat. Cas. 265, and same case in Repertory of Arts, N. S. 4 Vol. 156, and see Hill *v.* Thompson, 2 B. Moore 451, and ante, 68. The patent in this case was for "A new mode or art of making *great cables* "and other cordage, so as to attain a greater degree of "strength therein *by a more equal distribution* of strain "upon the yarns." It appeared that a Mr. Belfour had invented some machinery which he thought would produce the same effect as Captain Huddart's now did: but it failed.

It was contended that the object of the plaintiff and Belfour was exactly the same, the obtaining an equal stress upon each yarn. That Belfour's machine did not succeed, and the plaintiff's was only an *improvement* of it. That the subject of a bad patent becomes public property; and no person *improving it* can have a patent for the *whole*. Even if the first patent were good, leave to use it must be obtained, and then it may be made the *substratum* of another machine: but the second patent should be for the improvement. *Ellenborough*, C. J. In inventions of this sort, and every other, through the medium of mechanism, there are some materials which are common, and cannot be supposed to be appropriated in the terms of any patent. There are common elementary materials to work with in machinery: but it is the

There appears in the case of *Harmer* v. *Playne* an exception to this rule,—that the patent should be for the addition, and that it should be kept *distinctly* apart by itself, in order that it may easily be distinguished from the *substratum* to which it has been applied. A patent had been granted to Harmer for a machine, of which he afterwards discovered some improvements. The second grant, in which was described the machine as improved, was of the privilege to make use of and vend "*his said invention,*" which evidently appears at first sight to mean a patent for the *whole* machine. Yet, inasmuch as the second patent *recited* the first, it was held that the grant was *merely* for

adoption of those materials to the execution of any particular purpose, that constitutes the invention. And if the application of them be new, if the combination in its nature be essentially new, if it be productive of a new end and beneficial to the public, it is that species of invention, which, protected by the King's patent, ought to continue to the person the sole right of vending it. But if, prior to the time of his obtaining a patent, any part of that which is of the substance of the invention has been communicated to the public in the shape of a specification of any other patent, or is a part of the service of the country, so as to be a known thing, in that case he cannot claim the benefit of his patent.

Now with respect to the tube it does seem to me, with submission to you, an important difference from the mere circle through which it passes, because it keeps it in a degree of confinement for a greater time, and more certainly obtains the end pointed out. In Mr. Belfour's specification the same end is to be obtained; and had the patent been taken out for that to be done by a tube, which was before done by a ring or circle, I should have thought the patent good, for that is a distinct substantial invention.

the addition, and was valid. (*k*) Lord Eldon seemed to lean very much against this patent, when it was before him in Chancery prior to its being examined in a court of law (*l*).

Peculiar kind of addition.

A person may take for the foundation on which he intends to erect the superstructure of his improvements, either a thing that has been long known, or one that has lately been made public; either the subject of an expired patent, or that of one which is void (*m*). But if the improvement cannot be used without the subject of an existing grant, he must wait until it is expired. He may, however, at once take out a patent for the improvement by itself, and sell it (*n*). In all these cases he must claim nothing more than the mere *addition*; and it is better to protest against considering any other part of the manufacture being taken as his own invention (*o*).

Peculiar quality.

The general quality most peculiar to an addition, is, that it must be *useful*. It must be a real substantial improvement (*p*). If the manufacture in its new state merely answer as well as it did before, the alteration is not such an invention as is worthy of a patent (*q*). Buller, J. observed that many parts of a machine may have been known before, yet, if there be any thing *material* and new which is an improvement of the

(*k*) 11 East. 109.

(*l*) 14 Ves. 133, 4, 5.

(*m*) Huddart *v.* Grimshaw, Dav. Pat. Cas. 271.

(*n*) Ex parte, Fox, 1 Ves. and Beam. 67.

(*o*) Post, Chap. IV. Specification.

(*p*) See ante, p. 66. as to the *utility* of the invention.

(*q*) King *v.* Arkwright. Printed Cas. 182. Dav. Pat. Cas. 129.

trade, that will be sufficient to support a patent. The only difference between Mr. Arkwright's two machines—the old one for spinning, and the new one for roving, consisted in a *can*. Supposing that the new patent had been obtained for an improvement of the old machine, then the question whether the *can* was absolutely necessary for roving would have arisen (*r*).

IV. A Combination or Arrangement of Things already known.

A combination or arrangment of old materials, when, in consequence thereof, a new effect is produced, may be the *subject* of a patent. This effect may consist, either in the production of a new article, or in making an old one in a better manner or at a cheaper rate.

This manufacture may be made of different substances mingled together; or of different machines formed into one; or of the arrangement of many old combinations. And there can be little doubt that if a person were to combine the different subjects of several expired patents, he would be the inventor of a new manufacture.

Each distinct part of the manufacture may have been in common use; and every principle upon which it is founded, may have been long known, and yet the manufacture may be a proper subject for a patent. It is not for those parts and principles, but for the new and useful

(*r*) Printed Cas. 185. Dav. Pat. Cas. 138. See ante, p. 66, n.

compound, or thing thus produced by combination, that the grant is made: it is for combining and using things before known with something then invented, so as to produce an effect which was never before attained (*t*).

If to an old machine, consisting of combinations, an *improvement* (*u*) be made by adding a

(*t*) Manton *v.* Manton, Dav. Pat. Cas. 346.

(*u*) Bovill *v.* Moore: For this case at Nisi Prius, see Dav. Pat. Cas. 361. In Bank see 2 Marsh. 211. The plaintiff was assignee of a patent granted to John Brown "for a machine for the manufacture of bobbin lace, or twist net, similar to and resembling the Buckinghamshire lace net, and French lace net, as made by the hand with bobbins on pillows."

At the trial, *Gibbs*, C. J. told the jury that if they thought Browne had invented a perfectly new combination of parts from the beginning, though all the parts separately might have been used before, his specification would be good. But if they should be of opinion that a combination of a certain number of those parts had previously existed up to a certain point, and that Browne had taken up his invention from that point only, adding other combinations to it, then his specification, which stated the whole machine as his invention, was bad. The jury were of opinion that, up to the point of crossing the threads, the combination was not new; and accordingly found a verdict for the defendants.

Gibbs, C. J. I think a little confusion has been made between a *new machine for making lace*, and *lace made in a new method* by a machine partly old and partly new. In order to try whether it be, or be not, a new machine throughout, we must consider what the patent purposes to give to the patentee, and what privileges he would possess under the patent. Now the patentee is entitled to the sole use of this machine; and whoever imitates it, either in part or in the whole, is subject to an action at the suit of the patentee. Suppose it had been a new invention from be-

set of new combinations, the patent must be for the new combinations only; for then, as in the case of a simple improvement, the patent is granted only for the *addition*. If it be taken out for the whole machine thus combined, it will be void. In all instances of this kind of manufacture the ostensible object of the patent must be the *new combined matter*, and not any part of the old article, materials, ingredients, or machine (x).

There may be, said Lord Eldon, a valid patent for a new combination of materials previously in use for the same purpose, or for a new method of applying such materials. But, in order to its

ginning to end, and after Browne had obtained his patent Heathcote had made a machine like those which he now makes;—is there any doubt that such a machine would have been an imitation, in part, of Browne's invention? Indeed all the defendant's witnesses agreed in stating that, though the same thought might have occurred to two persons, yet if Browne had seen Heathcote's machine, before he made his own, they should have had no doubt but that, up to a certain point, Browne's was an imitation of Heathcote's. It is not immaterial to consider that the drawing or plans of the machine were divided into six different sections, each containing a part of the machine in a different stage of its progress; and that as to one of them, which contained all the principles of the warp, the witnesses said that every part of that section existed in the old machine; and that a machine carried no further than that would have been a very useful invention. How then can it be said that Brown's specification, which described from its root a machine containing a part which was common to Heathcote's, does not contain more than Browne himself invented?

(x) 2 Hen. Bla. 487. Dav. Pat. Cas. 267, 8, 9.

being effectual, the specification must clearly express that it is in respect of such *new combination* or *application*, and of that only, and *not* lay claim to the merit of original invention in the *use* of the materials (*y*).

As to the possibility of combinations and proportions of quantities, times, &c., in a process being legal subjects of patents, mention will hereafter be made (*z*).

Peculiar quality.

The peculiar quality of an arrangement is its *novelty*. It is the new adoption of the old materials to the execution of any particular purpose that constitutes the invention (*a*). It must also be a substantial and *beneficial* alteration. A slight variation or transposition of parts will not sustain the patent.

V. A Principle, Method or Process carried into Practice by tangible Means.

Though a philosophical principle, an elementary truth, simply and by itself, unorganized and known only in theory, cannot be monopolized, yet, (it is said,) *that a principle carried into practice* may be the subject of a patent. It is, (as some observe) not for the principle itself, but for the *method*, mode, manner, or process (founded on that principle) by which a

(*y*) 3 Meriv. 629.
(*z*) Post. 84, &c.
(*a*) Huddart *v.* Grimshaw. Dav. Pat. Cas. 278.

thing new and beneficial is made, that the patent is granted. It is, (say others,) not so much for the method or process (as these words are used in common acceptation), as it is in fact for the device, substance, or thing made, or for the instrument or substantial means of producing the desired effect. In short, that the patent, though taken out for a *method*, is in reality for a *substance* or *machine*, if the thing described in the specification be some composition of *material* parts.

It will be endeavoured to shew, from the rules already laid down and investigated, that neither a principle nor a method, *as such*, can be the subject of a patent. The same conclusion will be deduced from the judgments delivered in several cases; and afterwards it will be the business of this section to attempt to establish, that it is for a principle or method, when it is carried into practice by tangible means, *and then only*, that a patent ought to be granted—that, in fact, it is for the tangible *means*, and not for the *method*; or in other words, that a patent, when it is *said* to be for a method, cannot be supported, unless the thing invented is a substance or machine.

And hence it will be proper to examine an invention of this description, whether it be a proper subject for a patent, when—

1. It is a *principle*.
2. It is a *method* or *process*.
3. Patent for a *method*, but the subject is something material.

1. As to a principle.

That a *mere abstract* principle (*b*) cannot, under any pretence whatever, be monopolized, admits of no doubt. The elements of every science are common property—data—upon which every man may exercise his ingenuity; or otherwise the means of making improvements would be entirely destroyed.

A patent must be for a *vendible* matter,—and how can a principle, be matter, and become capable of being sold ?(*c*)

Eyre, C. J. thought that a principle so far embodied and connected with corporeal substances, as to be in a condition to act and to produce effects in any art, trade, or mystery, or manual occupation, might be the subject of a patent. It is the better opinion that a patent for the *application* of a principle must be as bad as one for the principle itself. It seems impossible to specify a principle, or describe its application to all cases, which affords a very strong reason why it cannot possibly be the subject of a patent (*d*).

(*b*) The law on this division will be found in the cases of Boulton and Watt *v.* Bull, C. P. 2 Hen. Bla. 463. Hornblower *v.* Boulton, 8 T. R. 98: and King *v.* Wheeler, 1 Barn. and Ald. 345. and Hill *v.* Thompson, 2 B. Moore, 451

(*c*) Ante, 65.

(*d*) 2 Hen. Bla. 485. *Buller*, J. The very statement of what a principle is proves it not to be a ground for a patent it is the first ground and rule for arts and sciences, or, in other words, the elements and rudiments of them. A patent must be for some new production from those elements and not for the elements themselves. It is admitted that a man by science were to devise the means of making a double use of a thing known before, he could not have a patent

Though a person cannot have a grant for the discovery of a *double use* of a thing known before, yet it is no objection to a patent that its subject is founded on the *same principle* as another, if the former be for a substance distinctly different from the latter (*e*). In the case of Cutler(*f*) it was remarked by Ellenborough, C. J. that if the patentee had claimed a grant for his new instrument, by which he supplied the fire-grate with fuel from below, and had not confined himself to the principle, which was old, his patent might have been supported. An opinion in which it is evidently presumed that two grants might be made for manufactures on the same principle.

And in The King *v.* Wheeler,(*g*) Abbott, C. J. observed—But no merely philosophical or abstract *principle* can answer to the word manufacture. Something of a CORPOREAL and substantial nature, something that can be MADE *by man* from the matters subjected to his art and skill, or *at the least* some new mode of employing practically his art and skill, is requisite to satisfy that word.

Hence it may fairly be concluded, that neither a principle, nor the application or practice of principle, can be the subject of a patent.

for it. *A principle reduced to practice* can only mean a practice founded on principle, and that practice is the thing done or made; or, in other words, the manufacture which is invented.

(*e*) 2 Hen. Bla. 486.

(*f*) King *v.* Cutler, 1 Stark. Rep. 354. Ante, 60, 1.

(*g*) 2 Barn. and Ald. 350.

2. As to a method or process.

That a mere *method of making* a thing, or a *process*, or a *manner of operating*, cannot be the subject of a patent, is not quite so clear. Much discussion has taken place on this rule, which will be laid before the reader, that he may form his own opinion.

The first case which is to be met with on this point is that of Dr. Hartley, who had a patent for a *method* of securing buildings from fire. The invention consisted in disposing plates of iron in buildings so as to produce that effect.

That decision certainly goes the length of proving that a *method*, independent of the thing made, or the things used to produce the article, is a *new manufacture* within the meaning of the statute of James.

And the language of Eyre, C. J. (*h*) is very strong. He said that the effect produced was no substance or composition of things; it was a mere negative quality, the absence of fire: that the effect was produced by a new method of disposing iron plates in buildings; and that in the nature of things the patent could not be for the effect

(*h*) In Boulton *v.* Bull, 2 Hen. Bla. 493. Dav. Pat. Cas. 208. And see 2 Hen. Bla. 492., where the same learned judge observed, that "Under the *practice of making*—all new artificial *manners of operating* with the hand, or with instruments in common use, *new processes* in any art producing effects useful to the public;—*new methods* of manufacturing articles in common use, where the whole merit and effect produced are the *saving of time* and expense, and thereby *lowering the price* of the article, may be said to be new manufactures in one of the common acceptations of the word, and agreeable to the spirit and meaning of the act."

produced. He thought it could not be for the making the plates of iron, which, when disposed in a particular manner, produced the effect ; for they were things in common use. But, that the invention, consisting in the *method of disposing* those plates of iron so as to produce the effect, and that effect being a useful and meritorious one, the patent seemed to him to have been very properly granted to Dr. Hartley for his *method* of securing buildings from fire.

But it is worthy of observation, that Eyre, C. J. was the only judge who spoke in favour of the legality of Dr. Hartley's patent ; and that he was of opinion that *even a principle* might be the subject of a patent (*i*).

Dollond's patent for the *method* of making the object glasses of telescopes comes next in the order of time : but that decision cannot be an authority here ; for Buller, J. in a subsequent case said, (*j*) that "the question whether the *subject*, and specification of that patent were good was not agitated at the time."

Delivering the opinion of the Court in a late case, (*k*) Abbott, C. J. enumerated the different kinds of things which might become objects of a patent, and observed, that "the word manufacture MAY, PERHAPS, extend to a *new process* to be carried on by known implements, or elements acting upon known substances, and ultimately producing some other known substance ; but producing it in a cheaper and more expeditious

(*i*) Ante, 80. (*j*) 2 Hen. Bla. 470. Dav. Pat. Cas. 172.
(*k*) 2 Barn. & Ald. 349.

manner, or of a better and more useful kind." And afterwards he added, "SUPPOSING a new process to be a lawful subject of a patent, the patentee may represent himself to be the inventor of a new process, in which it should seem that the word '*method*' may properly be used as synonymous with *process*."

The doctrine of Eyre, C. J. had long been doubted; and the manner in which Abbott, C. J. expresses himself confirms that doubt, but imposes the duty of giving the point a full investigation. It is conceived that such a device, method, or process, cannot be a manufacture within the meaning of the statute of James, because it is destitute of one of the qualities absolutely necessary to be found in a *new manufacture*, or subject proper for a patent,—*materiality*. The description given by that very learned judge, Eyre, C. J., is not of any thing that can be *made*. There is nothing corporeal, —nothing tangible,—nothing that can be bought or sold; no instrument by which the supposed benefit is produced, and which might, as an article of trade, be purchased and used by another person. (*l*)

(*l*) Ante, 58., and see Boulton *v.* Bull, 2 Hen. Bla. 486. *Buller*, J. This brings us to the true foundation of all patents, which must be the manufacture itself; and so says the statute 21 Jac. I. c. 3. All monopolies, except those which are allowed by that statute, are declared to be illegal and void: they were so at common law; and the sixth section excepts only those of the sole working or making any manner of new manufacture; and whether the manufacture be

When an invention is not of *a thing made*, it can only be known, by being taught by the inventor himself, or by being learnt from *experiments* made on the faith of the description given of it in the specification. With that assistance, however well the method or process may be set forth, some time and experience must necessarily be required before a person can make use of the invention so beneficially as the discoverer. But the public are not bound to make experiments, (*m*) and therefore it seems reasonable to infer that a mere process or method cannot be the subject of a patent.

But, supposing it possible that a new method of operating with the hand, or a new process to be carried on by known implements or elements, might be so described as to be, by bare inspection, made as beneficial to the public as to the discoverer; that neither time nor labour, skill nor experience, are required to put it in practice: still it is not a substance or thing made by the hands of man, it is not *vendible*; which, it has been shewn, is an inherent primary quality of a new manufacture. (*n*)

To permit a *new method* to be a manufacture within the meaning of the statute of James

with or without principle, produced by accident or by art, is immaterial. Unless this patent can be supported for the manufacture, it cannot be supported at all. I am of opinion that the patent is granted for the manufacture, and I agree with my brother Adair that verbal criticisms ought not to avail, but that *principle* in the patent, and *engine* in the act of Parliament, mean, and are, the same thing.

(*m*) 2 Hen. Bla. 484. (*n*) Ante, 59.

would be to establish the rule that if a man could make a *double use* of a thing known before, he might have a patent for it ; a doctrine of which directly the reverse was laid down by Buller, J., and not disputed. (*o*)

The advantages of a method or process, in truth, arise from the *skill* with which it is performed. Suppose, for instance, that one person can with a certain machine produce a particular article of dress of a certain quality ; and another, with the same machine, by using it in a different manner, can make the same article in half the time, and reduce it to half the price; however new and ingenious this method may be, still it is nothing substantial or corporeal(*p*). But suppose, that in *thus* using the machine some *apparently* inconsiderable alteration is made, that would be sufficient to support a patent (*q*) ; and it is, indeed, difficult to imagine that any beneficial effect could be produced without some *material alteration* in the instrument itself; and then, why not oblige the inventor to take out a patent for the *improvement* ?

It is expressly enacted in the statute of the 21 James I., that the new manufacture must not be "*hurtful to trade, nor generally inconvenient.*" To monopolize such methods as above enumerated appears to be particularly hurtful to trade. In every branch of it there are workmen who use the machines employed in their respective trades more skilfully than their fel-

(*o*) In Boulton *v.* Bull, 2 Hen. Bla. 486., and see Manton *v.* Manton, Dav. Pat. Cas. 344.

(*p*) Ante, 58. (*q*) Ante, 67, 8.

lows. This superior skill may be in consequence of a particular method of applying their implements. But it would be carrying the doctrine to a great length to decide that the workmen are entitled to patents for their respective methods of working.

And further, every master is bound to teach his *apprentice* the best way or means within his knowledge of following his trade. If, therefore, a master obtained a patent for fourteen years for a particular *method of operating with known instruments,* to produce a known article in less time than usual, or of making it better and more useful, such apprentice would not be allowed to exercise his hands in the most skilful manner he was able until several years after he had commenced business for himself. Such a patent would, indeed, be "generally inconvenient." There would be a monopoly in every handicraft trade; (*r*) one person only in each calling would be allowed to work in the most skilful manner.

For these reasons,—that Dr. Hartley's case is the only one in support of the doctrine, and he did not first make iron, nor first discover the effect of iron on fire, so that he was not the inventor of any substance or *instrument*,—that a method does not possess the qualities which have been shewn to be inherent in the *subjects* of patents, and can be known only by making

(*r*) See Repertory of Arts, N. S. 27th Vol. 252, for some pertinent observations on the effect of patents taken out so extensively as to deprive mechanics of the materials used in their trades. And see ante. 68. n.

experiments,—and that it is inconvenient to the public, particularly to masters and apprentices that methods should be monopolized; it might perhaps be fairly inferred that a method or process is not a new manufacture within the meaning of the statute of monopolies. The same inference will hereafter be made from the cases, which shew that a patent for a method may be obtained and supported, provided the subject of it be some material tangible substance(s).

3. Patent for method, but subject is something material.

Though an attempt has been made to prove, that neither a philosophical principle nor a mere method or process can be monopolized, yet a principle, method, or process, when it is connected with corporeal substances, and when it is carried into effect by *tangible means*, may be the subject of a patent (*t*). Such is the technical use that has for a long time been made of the word "*method*" in patents, that it is quite common for inventors to ask for a patent for a method of doing something, and then to set forth a description of some new substance or machine. It is a convenient way to avoid giving a title to the invention. And therefore, it is now clearly established, that if the patentee claim a method, and yet in the specification describe some tangible matter, the grant is valid. In other words, though the patent is for *something called* a method, yet the *real subject* of the grant is either a substance, machine, improvement or combination.

(*s*) Post, 95.

(*t*) 2 Hen. Bla. 463. 8 T. R. 101. 2 Barn. and Ald. 350.

This rule rests for support upon the celebrated case respecting Watt's Steam engine. The patent was granted for a "*new method*" of lessening the consumption of steam and fuel in fire engines; thus using the old one with some alterations in a more beneficial manner than was before known. Watt's patent.

The specification stated that the method was founded on certain principles; and described the mode of applying those principles to the purposes of the invention, which was effected by certain *additions* to the old engine. The novelty consisted in keeping the steam vessel as hot as the steam that entered it; first, by inclosing it in a case of wood, or any other materials that transmit heat slowly; secondly, by surrounding it with steam or other heated bodies; and thirdly, by suffering neither water nor any other substance colder than the steam, to enter or touch it during the time of working. The condensation of the steam was produced in vessels distinct from the steam vessel. This was entirely new, as in the old steam or fire-engines water was admitted into the cylinder or steam vessel to condense the vapour. The remainder of the specification was merely speculative, and had not been carried into practice.

The *manner of making* these alterations was not set forth. An Act of Parliament reciting the patent to have been granted for making and vending certain *engines* invented by Watt, extended to him for a longer term than fourteen years the privilege of making, constructing, and selling the *said engines*.

In the Common Pleas no decision took place, although it was twice before the court. In the first instance, the judges were equally divided in opinion, and at the second time they confirmed the grant, upon an understanding that it should be carried on error into the King's Bench, for the opinion of the judges of that court.

So much doubt having existed, and so much discussion having taken place on this topic, it may be useful to extract a few sentences from the opinions of the learned judges, who expressed their sentiments on the validity of Watt's patent: and to state the judgments more at length in the notes.

Eyre, C. J. supported the grant, because he thought that a principle might be the subject of a patent (*u*).

Rooke, J. (*x*) What does method mean, but mode or manner of effecting? what method can there be of saving steam or fuel in engines, but by some variation in the construction of them. A new invented method therefore conveys to my understanding the idea of a new mode of construction.

Kenyon, C. J.(*y*) The principal objection made to this patent by the plaintiffs in error, is that it is a patent for a philosophical principle only, neither organized, nor capable of being organized; and if the objection were well founded in fact, it would be decisive, but I do not think it is so. No technical words are necessary to explain the subject of a patent. By comparing

(*u*) 2 Hen. Bla. 492.
(*x*) 2 Hen. Bla. 478.
(*y*) 8 T. R. 98.

the patent and the manufacture together, it evidently appears that the patentee claims a monopoly for an engine or machine composed of material parts, which is to produce the effect described; and that the mode of producing this is so described as to enable mechanics to produce it.

Ashhurst, J. was of the same opinion.

Grose, J.(z) I do not consider it as a patent for the old engine, but only for an addition to, or improvement of, the old engine.

Lawrence, J.(a) The word "engine" may signify *device*, and that Watt meant to use it in

(z) 8 T. R. 103. Taking it, however, as a patent for an engine, it is objected that the thing was made before, and that the patent should have been for the *addition only*, and not for the whole engine: but I do not consider it as a patent for the whole engine, but only for the addition to or improvement of the old engine. The *method* is disclosed in the specification, and it is by the adoption of what is there disclosed, and by managing it in the way described.

The patent, therefore, is only for that additional improvement as described in the specification. It signifies nothing whether the patent be for the engine so made, or for the method of making it, if that method be sufficiently described in the specification.

I incline to think that a patent cannot be granted for a mere principle: but I think that, although in words, the privilege is to exercise a method of making or doing any thing; yet if that thing is to be made or done by a manufacture, and the mode of making that manufacture is described, it then becomes in effect, by whatever name it may be called, not a patent for a mere principle, but for a manufacture, for the thing so made, and not merely for the principle upon which it is made.

(a) 8 T. R. 106. I should feel great difficulty in deciding that a principle might be the subject of a patent. In

that sense, and the legislature so understood it, is evident from the words "engine" and "method" being used as controvertible terms.

On the other hand Heath, J. (*b*) observed. No doubt the inventor *might have had* a patent for his *machinery*, but could not have one for a method. order to see what the invention was, it is necessary to refer to the specification. "Engine" and "method" mean the same thing, and may be the subject of a patent. "Method" properly speaking, is only placing several things and performing several operations in the most convenient order; but it may signify a contrivance or device. So may an engine, and therefore I think it may answer the word method. So principle may mean a mere elementary truth: but it may also mean constituent parts. The clause is not for an improvement to a fire engine for any particular purpose, but generally to an invention for lessening the consumption of steam, applicable to all fire engines for whatever purpose they may be used, and whatever may be their construction, by an alteration of, and addition to, parts which are common to all, and upon which their powers of working depend.

In the argument, the engine to diminish the consumption of steam was confounded with that which it was intended to improve. Some difficulties in the case have arisen from considering the word engine in its popular sense; namely, some mechanical contrivance to effect that to which human strength without such assistance is unequal. But it may also signify device; and that Watt meant to use it in that sense, and that the legislature so understood it, is evident from the word "engine" and "method" being used as controvertible terms. Now there is no doubt but that, for such a contrivance, a patent may be granted as well as for a more complicated machine; it equally falls within the description of a "manufacture," and unless such devices did fall within that description, no addition or improvement could be the subject of a patent.

(*b*) 2 Hen. Bla. 481. The question is, inasmuch as this invention is to be put into practice by means of machinery,

And Buller, J. said, (c) I consider the patent as granted for the whole engine, instead of an improvement; and void for requiring too much.

Hence it appears, that, of the very learned judges whether the patent ought not to have been for one or more machines; the method is a principle reduced to practice, it is in the present instance the general application of a principle to an old machine. No doubt that the patentee might have had a patent for his machinery. If there may be two different species of patents, the one for an application of a principle to an old machine, and the other for a specific machine, one must be good and the other bad; that which is the subject of a patent ought to be specified, and it ought to be that which is *vendible*, otherwise it cannot be a manufacture. Another objection may be urged against the patent, upon the application of the principle to an old machine, which is, that whatever machinery may be hereafter invented, would be an infringement of the patent if it be founded on the same principle. If this were so, it would reverse the clearest positions of law respecting patents for machinery, by which it has been holden that the organization of a machine may be the subject of a patent, but the principles cannot. If a patent were obtained for a principle, the organization would be of no consequence; the patent for the application of a principle must be as bad as the patent for the principle itself.

(c) 2 Hen. Bla. 488. We are not told wherein the invention consists, whether there be an addition to the old machine, or whether it be only in the application of the old parts of the machine, or in what is called at the bar the principle only, or in what that principle consists. There is nothing new in the engine. I consider this patent as granted for the whole engine. The fire engine was known before; and, though the patentee's invention consisted only of an improvement of the old machine, he has taken the patent for the whole machine, and not for the improvement alone. A patent for an addition is good: but then it must be for the addition only, and not for the old machine too.

who delivered their opinions upon Watt's patent for "A METHOD of lessening the consumption of fuel in the steam engine," and his specification, in which was described the *alterations and additions* of machinery to be made in that engine to produce the intended effect, *six* held that it was good, and *two* thought that it was void.

Among the six learned judges, who thought that this patent was valid, five conceived, that if it were doubtful whether a patent could be granted for a *method*, yet, technical words placed aside, this one was, in reality, for a substantial *improvement* in the steam engine, although it was *called a method*, and that it ought therefore to be supported: whilst the other judge, Eyre, C. J. thought that a principle or method, if reduced to practice, might, of itself, be the subject of a patent. And it may be collected from the expressions of the two learned judges who thought the patent void; that it was their opinion that the invention was a substantial *improvement*, and would have supported a patent for an improvement; but that inasmuch, as the patentee *claimed a method*, and in the specification described *an improved engine*; the latter did not support the former, and therefore that the grant was invalid.

From these opinions it is submitted that a method *as such* cannot be the subject of a patent(*d*)—that when an inventor obtains a patent for a new method, if he does not give to the world some new and useful substance, or ma-

(*d*) Ante, 88.

chine, something material and tangible, the grant is invalid.

Upon this point therefore the law seems to be—that the terms—*mode, manner, method, principle, process,* &c. are to be considered as synonymous. And that a patent for a method is only good, when in the specification there is something of a corporeal and substantial nature properly described.

It is to be lamented that Mr. Watt did not take out his patent for an improvement of the steam engine, as Buller, J. and Heath, J. thought that he ought to have done. Much discussion would then have been prevented, and the anomaly that a method *under any circumstances* could be the subject of a patent, would, in all probability, have never been introduced.

The judges who finally decided this case felt that Mr. Watt deserved to have the full benefit of his invention, and were therefore, perhaps, inclined to think favourably of his specification; and at last it was declared to be a valid patent because the invention, though *called a method,* was in fact *something substantial* and very beneficial to the public.

The circumstance, that the validity of that grant was questioned, when this part of the law had not been much investigated, accounts for the contrariety of opinions expressed upon it. Lest such a patent or specification should not be able successfully to bear the test of a legal enquiry, an inventor under similar circumstances had much better take out his patent for an improvement.

VI. A Chemical Discovery.

The discoveries in chemistry have of late been so numerous, and are become so important to the community by the assistance which is derived from them in the improvement of many articles of trade, that it is the opinion of many persons, that if methods or processes in general cannot be the subjects of patents, yet a *chemical process* ought to be considered as a new manufacture within the meaning of the statute of 21 James. It is upon that account that they have been placed in a division by themselves. If distinct rules should ever be laid down by which encouragement might be held out to ingenious men to make experiments in this branch of science; care at the same time must be taken that support and importance are not given to mere curiosities.

Patent medicines.

However, as the law now stands, a *chemical discovery* (*e*) comes within the description of a manufacture only when it gives to the community some substance, (*f*) or compound article, *new* and *unused, vendible* and *beneficial.* (*g*) Of this description are MEDICINES, a fruitful source of patents. They partake of the nature of a substance,

(*e*) The patents of this description which have come before the Courts, are in the cases of Turner *v.* Winter, 1 T.R. 602.; King *v.* Wheeler, 2 Barn. and Ald. 345.; Hill *v.* Thompson, 2 B. Moore, 424. The latter case at Nisi Prius, in 1 Holt. 636; and in Equity, 3 Meriv. 622, &c. neither of which patents could successfully bear a legal enquiry.

(*f*) Heath, J. 2 Hen. Bla. 481, 482., and by Buller, J. id. 487.

(*g*) Ante, 59.

and also of that of a *combination*, or a compound of ingredients.

It is no available objection to a patent for a medicine, that the properties of the several drugs of which the subject is composed were already known, if the grant be for the *specified compound*, and not for the articles or ingredients of which the mixture is made.

On the other hand authorities are not wanted to shew that the *mere process* of a chemical discovery is a new manufacture. Mr. Justice Dallas, in delivering the opinion of the Court on Hill's patent (*h*) for "The Invention of certain Improvements in the smelting and working of Iron," said, "It has not been contended that it is a patent introducing into use any one of the articles mentioned therein, as singly and separately taken; nor could it be so contended, for the patent itself shews the contrary; and if it had been a patent of such a description, it would have been impossible to support it, for slags, as well as mine rubbish and lime, had undoubtedly been made use of before it was passed. But it is said, it is a patent for combinations and proportions, producing an effect altogether new, *by a mode and process*, or series of processes, unknown before, or to adopt the language made use of at the bar, it is a patent for a *combination of processes* altogether new, leading to one end." From whence it might be inferred, that a *chemical* process may be the subject of a patent.

(*h*) Hill *v.* Thompson, 2 B. Moore 448. ante 82.

Referring the reader to the authorities quoted, and the arguments urged in a former part of this work, to shew that a method or *process in general* is not a *new manufacture,* I shall merely observe that if a new substance is really produced, the grant, by the same reasoning that a method may be claimed when the object is a machine, will be valid (*i*).

VII. A Foreign Invention.

The liberality of the Courts of English Jurisprudence soon gave to the words "New Manufactures" a signification so extensive and general, that, in the oldest case in our reports it was decided, that a patent might be granted for a new manufacture which was "*new in this realm,*" although it was originally invented abroad (*k*).

The *foreign article,* if it have the requisite qualities (*l*) when published in this kingdom may, to become a new manufacture within the meaning of the statute of James, belong to any one of the classes of subjects for patents above enumerated (*m*).

From the decision in Edgeberry *v.* Stephens it might be inferred, that if an Englishman publish an invention whilst abroad, he is nevertheless entitled to a patent for it, if he apply for one before it is known in this country.

(*i*) Ante 82 & 88.
(*k*) Edgeberry v. Stephens, 2 Salk 477.
(*l*) Ante 59.
(*m*) Ante 58.

This construction of the statute has been of the greatest benefit to commerce by thus naturalizing the inventions of other nations. And indeed without such a rule patentees would, upon almost every trial for infringements, be met with evidence that the manufactures or parts of them were not new, because they were known in some distant country.

General observations on new manufactures.

Though a new manufacture has really been invented, the benefits arising from it will be lost to the inventor, if the patent is not rightly taken out. Yet it is often very difficult to know under which of the divisions of this Chapter inventions ought to be arranged.

When the effect is some new *substance* or composition of things, the patent ought to be taken out for the new substance or composition without regard to the mechanism or process by which it has been accomplished; which, though perhaps also new, can only be useful as producing the new substance.

When the thing discovered is no particular substance, but is the means of producing one; when it is a *machine*, the patent can only be maintained for the mechanism. But whether it is best in the case of *improved machinery* that the patent should be obtained for the whole, protesting against any claim to the old parts, or whether it should be taken simply for the improvement, be it a single piece or combination, is a question for the judgment of the inventor.

It matters not that two patents profess by their titles to be for the same objects, if the inventions are really different in their nature, and in the effects they produce. Under the title *method*, patents are made for every kind of new manufacture: and several grants are often obtained at the same time with the general title for an *improvement* of a particular article.

CHAP. IV.

Of the Specification.

The part of the grant most important to the public, and with which the inventor is more immediately concerned, is the SPECIFICATION—the instrument in which is contained the *description* of the new manufacture for the information of the public.

The rules of law respecting the specification of an invention will lead to the consideration of

I. *Its nature and general properties.*

II. *Its connection with the patent.*

III. *The particular description of each kind of manufacture.*

I. The general Properties of a Specification.

IN the specification (*a*) the invention must be

(*a*) King *v.* Arkwright, printed case 172. Dav. Pat. Cas. 106.

accurately ascertained, and particularly described: it must be set forth in the most minute detail. The disclosure of the secret is considered as the *price* which the patentee pays for this limited monopoly; and therefore it ought to be full and correct, (for the benefits thus secured to him are great and certain,) in order that the subject of his patent may at its expiration be well known, and that the public may reap from it the same advantages as have accrued to him.

The courts of law have ever looked with jealousy on the specification, lest the *bargain* between the public and the inventor, as Lord *Buller*, J. Upon this point it is clearly settled, that a man, to entitle himself to the benefit of a patent for a monopoly, must disclose his secret, and specify his invention, in such a way, that others may be taught by it to do the thing for which the patent is granted; for the end and meaning of the specification is to teach the public, after the term for which the patent is granted, what the art is; and it must put the public in possession of the secret in as ample and beneficial a way as the patentee himself uses it. This I take to be clear law, as far as it respects the specification; for the patent is the reward which, under an Act of Parliament, is held out for a discovery; and therefore, unless the discovery be true and fair, the patent is void. If the specification in any part of it be materially false or defective, the patent is against law, and cannot be supported.

It has been truly said by the counsel that if the specification be such that mechanical men of common understanding can comprehend it to make a machine by it, it is sufficient: but then it must be such that mechanics may be able to make a machine by following the directions of the specification without any new inventions or additions of their own. The question is, whether upon the evidence this specification comes within what I have stated to you to be necessary by law in order to support it.

Eldon called it, should be too much in favour of the patentee (*b*); and hence more questions have arisen upon it in the courts of law than upon any other part of the grant, and more patents have been declared *void* on this than on any other ground. It therefore behoves the inventor to be very circumspect.

II. The connection of the Patent and Specification.

The patent and the specification have always been considered as connected together, and dependent on each other for support. The one may be looked at, to understand the other. If the specification be obscure, the patent may be referred to for an explanation; and to learn what the patent is the specification may be read (*c*). Still, however, the specification must contain within itself a full description of the invention. When taken together they should be complete, and afford every information that may be required.

The title of patent.

The patent and specification are linked together by the *title* given to the invention in the patent, and the *description* of it set forth in the specification.

The specification must support the title of the patent. The latter should not indicate one thing, and the former describe another as the subject of

(*b*) Dav. Pat. Cas. 434.

(*c*) 8 T. R. 95.; and see 2 Hen. Bla. 478.

the grant: because if the petitioner had represented himself as the inventor of the matter really discovered, it might perhaps be well known that the thing was of no utility, or was in common use, and he might not have obtained a grant as the inventor (*d*). And therefore a patent taken out for a tapering brush was not supported by the specification of a brush, in which the hairs or bristles were made of unequal lengths (*e*).

Claiming too much in the title.

This doctrine, with respect to the inventor claiming too much, was illustrated by Lord Eldon, who observed,—"I will go farther, and say that not only must the invention be *novel and useful*, and the specification intelligible, but also that the specification must not attempt to *cover more* than that which, being both matter of actual discovery, and of useful discovery, is the only proper subject for the protection of a patent. And I am compelled to add, that if a patentee seek by his specification any more than he is strictly entitled to, his patent is thereby rendered in-

(*d*) 2 Barn. and Ald. 350, 1.

(*e*) King *v.* Metcalfe, 2 Stark. N. P. C. 249. The patent was for the manufacture of hair brushes, which were described to be tapering brushes. It appeared that the hair or bristles in each compartment of the brush varied in length from a quarter of an inch to an inch.

Ellenborough, C.J.—Tapering means conveying to a point: according to the specification, the bristles would be of unequal length; but there would be no tapering, no conveying to a point.—His lordship advised the jury to find that it was not a tapering, but only an unequal brush.—Verdict for the Crown.

effectual, even to the extent to which he would be otherwise fairly entitled (*f*)." As if there be a patent for a machine, and for an improvement upon it, which cannot be sustained for the machine; although the improvement is new and useful, yet the *grant altogether* is invalid on account of its attempting to cover too much (g).

Indeed the title of the patent being a definition or short description of the patent, should not be very *extensive*, nor yet very *confined*, but should be commensurate with the thing invented, and correctly inform the public of the exact nature of the thing, which they may expect to find described more at length in the specification. A patent was therefore considered as taken too extensively, and consequently void, when, a new *lamp* being the object, the *title* indicated that the invention was an improved mode of *lighting cities*, towns, and villages (*h*).

(*f*) Hill *v.* Thompson, 3 Meriv, 629. See S. C. in 2 B. Moore, 454.; and 1 Holt, N. P. C. 636. ante 71, 2.

(g) George *v.* Beaumont, and others, Eq. Repertory of Arts, N. S. 2 Vol. p. 252., and see 2 Hen. Bla. 489.

(*h*) Cochrane *v.* Smethurst, K. B. 1 Starkie 205.; Same case Repertory of Arts, N. S. 27 Vol. 192. The patent was granted for "A method or methods of more completely lighting cities, towns, and villages." The novelty consisted in an improvement of Argand's lamp, in which the flame is placed between two currents of air, by bringing in a current of atmospheric air, whilst the impure air escaped by means of a tube, through the external part of the lamp, which conducts the air to the flame. The most important part of the invention, the exclusion of the foul air from returning, was obtained by the non-absorbing cover, which formed what was called the

And another patent, which was for a new or improved method of drying and *preparing malt*, was considered as incorrectly made, and not sustained by a specification, in which was described a method for heating, &c. *ready made malt* (*i*).

line of exclusion. It was contended by defendant, after some technical objections, that the specification was larger than the patent, because it alluded to ship lights, convoy signals, theatres, churches, &c, and to the *generality of the words*, "or otherwise by preserving it in a state of purity."

Le Blanc, J., inquired if there was any specification of the use of the line of exclusion, or a description of what it is.

The Attorney-General contended, that Lord Cochrane had not by his patent claimed too much, although he might have inserted too much in his specification.

Le Blanc, J. Under the general terms of the patent, must it not be taken with reference to the specification; *and if the specification is too large, is not the patent so too?*

The Attorney-General. Bringing in a current of pure atmospheric air is not new: but bringing the current of atmospheric air, and excluding all other air, is new. *Le Blanc, J.* I think the patent cannot be supported: it is in substance a patent for an improvement in street lamps, and should have been so taken. Plaintiff nonsuited.

(*i*) King *v.* Wheeler, 2 Barn. and Ald. 350. post p. 110. In fact the malt, by being thus exposed to a great degree of heat, would colour more beer than it otherwise would do. But such was not stated to be the object of the patent.

Abbott, C. J. Upon reading the patent and the specification, it appeared to me that the proviso had not been complied with.

It is obvious that if the patentee had not invented the matter or thing, of which he represents himself to be the inventor, the consideration of the royal grants fails, and the grant consequently becomes void; and this will not be the less true if it should happen that the patentee has invented some other

Many patents appear to be for the same thing, a circumstance which sometimes puts the grants in jeopardy. It is better to prevent all objections to the *title* that the patent should be taken out for those parts *by name*, which are new and essentially different from any prior invention.

And moreover if one thing be mentioned in the patent as a new manufacture, and the specification describe the manner of making another thing *quite different* although the patent would be good, if the manufacture claimed had been described, or if on the contrary the subject specified had been claimed, yet for this incongruity, and because the patent is not supported by the specification, it is void. Thus a patent for an invention founded on a principle already known, for lifting fuel into the fire grate from below the grate, in the specification whereof was described new apparatus, was held to be bad for not claiming the new instrument as the thing invented (*k*).

thing, of which upon a due representation thereof he might have been entitled to a grant of the exclusive use.

The language of the patent may be explained and reduced to a certainty by the specification; but the patent must not represent the party to be the inventor of one thing, and the specification shew him to be inventor of another, because perhaps if he had represented himself as the inventor of that other, it might have been well known that the thing was of no use, or was in common use, and he might not have obtained a grant as the inventor of it.

(*k*) King *v.* Cutler, 1 Stark. N. P. C. 354. Ante 60.

III. The Description of each Kind of Manufacture.

With respect to the description of the thing found out, whilst tracing the several properties of a good specification, the same arrangement of the different kinds of new manufactures will be adopted as that which was followed in the former Chapter. That classification was made to keep the several kinds of subjects distinct, in order that, being viewed apart, *general rules* for describing them might more easily be framed, and more readily understood.

I. Substance.

In the specification of a substance the *thing itself* should be accurately ascertained. The *materials* of which it is composed, the *method* by which it is made, and the *use* to which it is to be applied, should be accurately developed, and particularly described; for corporeal substances seldom afford any information of the mode of making, or the manner of using them.

In the former Chapter under the division *substance* were investigated the qualities that must necessarily be found in every manufacture fit to be the subject of a patent. At a similar and corresponding place in this Chapter will now be enumerated those causes which render all sorts of specifications incorrect, and in consequence make the patents void.

In the divisions appropriated for the rules illustrative of the modes for making proper de-

scriptions of each subject, will hereafter be investigated such mistakes as are likely to be fallen into by persons attempting to describe the subjects of patents.

General rules.

It is a *fundamental rule*, on which all others for making and judging of a specification depend, that the secret must be disclosed, and the invention described in such a manner, that men of *common understanding*, with a *moderate knowledge* of the art, may be enabled to make the subject of the patent.

The description must be *confined* to the manufacture, that the novelty may be known. Extraneous matter, however learned, must not be introduced to darken it. Though it is addressed to the public in general, it need not be so circumstantial, or so explanatory, that persons entirely ignorant of the elements of the science from which the subject is taken may thereby alone be able to learn and use the invention. Nor, on the other hand, should the description be so concise as to become obscure (*l*).

The *clearness* of the description will of course depend upon the matter of the invention: but upon the whole it may be observed, that if a person of moderate capacity, having a little knowledge of the science which led to the invention, can immediately see the method pointed out, and easily apprehend the purport for which the subject was invented, *without* study, *without* any

(*l*) Bull. N. P. 76. Dav. Pat. Cas. 106, 128. 2 Hen. Bla. 484, 496. 11 East. 107, 8. 2 Barn. and Ald. 354.

invention of his own, and without experiments, the disclosure is fully and fairly made.

That this general proposition, as to the requisite description, may be fully understood, the grounds upon which patents have been cancelled for the insufficiency of the specification will now be examined. The specification is bad, when

I. The terms are *ambiguous.*
II. Necessary *descriptions are omitted.*
III. Parts claimed are *not original.*
IV. Things are put in to *mislead.*
V. The *drawings* are incorrect.
VI. *One of different ways*, or different ingredients named, fails.
VII. *One of several effects specified* is not produced.
VIII. The things described are *not the best known* to the patentee.

1. Terms ambiguous.

If the *terms* in which the description of the subject is expressed be *ambiguous*; if the words are used in any other sense than that in which they are generally understood, the invention may be wholly or partially concealed: and therefore on that account the grant would be invalid.

It is mentioned in Turner's specification, (*m*) "take any quantity of lead, and calcine it; or minium, or red lead," from whence it was inferred that the lead only was to be calcined; and a doubt would arise whether the minium or the red lead was to be calcined. Such an objection, if the only one, would probably not invalidate a

(*m*) Turner *v.* Winter, 1 T. R. 602.

grant, though a similar ambiguity is carefully to be guarded against. In that case, however, calcination would not produce the effect; fusion was necessary.

It was objected to the same patent, that the substance intended to be produced, and *called* white lead, could only be applied to a few of the purposes of white lead. The answer, that it was not intended to make white lead, was not sufficient. In the specification the inventor should have stated that the effect produced a substance *similar* to white lead, and then have set forth the useful purposes to which this new substance might be *converted*; and *ought not to have misapplied* the *term* white lead.

There was also another word in that specification which was not intelligible. It was directed that *fossil* salt should be used. Now fossil salt is a genus having many species; and only one of the latter *sal gem* would answer the intended purpose.

If a term have a *technical* meaning, or one differing in the usage of trade from the ordinary sense annexed to it, the word may be received in its perverted sense; and, if the manufacture be otherwise intelligibly described, a mere verbal inaccuracy will not vitiate the patent: (*n*) but if a word be *not* used in *its common acceptation*, then it should be explained.

Thus, in Wheeler's specification (*o*) it ap-

(*n*) 2 Hen. Bla. 485.

(*o*) King *v.* Wheeler, 2 Barn. and Ald. 349. ante 105.

peared, that by the word malt the patentee meant barley fully prepared for making beer; but that the word malt, in its common acceptation, is applied to the grain as soon as it has germinated by the effect of moisture, and before it has been dried: and it was held that he ought to have explained his meaning.

If, in a manufacture something well known be used, and the inventor give a design of it which appears to be of a different thing, though he means that the thing known should be used, the specification is in terms ambiguous; and it will be considered as being worded with an endeavour to conceal the invention and deceive the public. Thus Mr. Arkwright, although he used the old spiral cylinder in his machine, so managed the drawing and description, that on the face of the specification it appeared that he intended to use a parallel cylinder. (*p*)

2. Necessary descriptions omitted.

The several distinct parts of the subject of a patent may be divided into the *new* and the *old*. In a specification all that is new must of course be clearly elucidated;—the old parts may be distinguished as they are *material* and *immaterial* in producing the desired effect.

Any particular thing, although in common use, when it is applied in a new manner to the production of a new effect, is material, and becomes a part of the substance of the invention, and must be described. And if it is not mentioned, and its use pointed out, the descrip-

(*p*) Printed Case, 175. Dav. Pat. Cas. 113.

tion will be defective. It is only the *well known and immaterial* old parts that need not be described (*q*).

A material alteration, from rollers in general, had been made in the rollers of Arkwright's machine of which no description was given; and it was considered as wilfully concealed. (*r*)

Mr. Arkwright's machine was intended to prepare for spinning not only cotton but silk, flax, and wool; yet he described all the parts of it as one entire instrument. He did not state, as he should have done, that the hammer in the front of it was *only* to be used in preparing flax (*s*). Other parts, which were put on or off as occasion required, appeared as though they were fixed, and to be used in every stage of manufacturing each of the articles (*t*). Which are omissions that were considered of sufficient importance to invalidate the patent.

But this rule must not be extended to the rudiments of a science, nor to the mere incidents of a subject. If gold were directed to be used in a state of fusion, the manner and *utensils* for putting it in that state need not be mentioned(*u*).

3. Parts claimed, not original.

That the new parts of the subject may be more clearly seen and easily known, the patentee must not only claim neither more nor less than

(*q*) Hill *v.* Thompson, 2 B. Moore, 450, 455, &c. ante 66.

(*r*) Printed Case, 173. Dav. Pat. Cas. 107.

(*s*) King *v.* Arkwright, printed case 175. Dav. Pat. Cas. 117.

(*t*) Id. printed case 173. Dav. Pat Cas. 109.

(*u*) Turner *v.* Winter, 1 T. R. 602.

his own invention, but he must *not appear* even unintentionally to appropriate to himself any part which is old, or has been used in other manufactures (x). Those parts that are old and

(x) Huddart *v.* Grimshaw, Dav. Pat. Cas. 295. *Ellenborough*, C. J. As to the bobbins, they are not worth mentioning; the springs and tube are the things in which it should seem the principal originality of the invention consists. It is contended that the springs are not an essential part of the invention: if they are enrolled as an essential part, whether they are so or not, it would certainly go to destroy this patent, because no deceptive things are to be held out to the public; those that are material are to be held out as material; according to the evidence of Mr. Rennie they are material. It appears to me that the springs in Belfour and Huddart's machine both produce the same end to regulate the tension. Now if it is a spring to regulate the tension of the yarn, which is essential to be regulated, it does seem to me; but it is for your judgment to say whether it is a material part of the invention, and relied upon as such, as it should seem it is by both; and if it is the same, then that which has been communicated by Mr. Belfour, Mr. Huddart cannot take the benefit of.

It is for you to say, for that is the substance of the case, as to the invention of the patent, *whether any essential part of it was disclosed to the public before.* If you think the same effect in substance is produced, and that the springs in Mr. Belfour's, by producing tension, obtains a material end in the making of ropes in this way proposed, and that it is in substance the same as in the other, this patent certainly must, upon principles of law, fall to the ground. If you think it is not the same, or if you think it is not material, though we have had the evidence of Mr. Rennie upon its materiality—if you think this patent has been for a new invention, carried into effect by methods new, and not too large beyond the actual invention of the party, in that case the patent may

immaterial, or are not of the essence of the invention, should either not be mentioned, or should be named only to be designated as old. The patentee is not required to say that a screw or bobbin, or any thing in common use, is not part of his discovery; yet he must not adopt the invention of another person, however insignificant it may appear to be, without a remark. If any parts are described as essential without a protest against any novelty being attached to them, it will seem, though they are old, that they are claimed as new (*y*). The construction will be against the patentee that he seeks to monopolize more than he has invented, or that, by dwelling in his description on things that are immaterial or known, he endeavours to deceive the public, who are not to be deterred from using any thing that is old by its appearing in the specification as newly invented. They are to be warned against infringing on the rights of the patentee, but are not to be deprived of a manufacture which they before possessed (*z*). It seems therefore to be the safest way in the specification to describe the whole subject, and

be sustained. But if you think otherwise in point of law or expediency, the patent cannot be sustained.

The verdict was for the plaintiff, with nominal damages: but it is evidently at variance with the opinion of Lord Ellenborough.

(*y*) Boville *v.* Moore, Dav. Pat. Cas. 404. and see Manton *v.* Parker, Dav. Pat. Cas. 329.

(*z*) Dav. Pat. Cas. 279. and 3 Meriv. 629.

then to point out all the parts which are old and well known.

Upon the same principles of reasoning, but certainly with much more force, if there be several things specified that may be produced, and *one* of them is *not new*, the whole patent is void. This point underwent a very full discussion in the case of Brunton *v.* Hawkes (*a*).

One of several things not new.

(*a*) 4 Barn. and Ald. 550. *Abbott*, C. J. It seems to me, therefore, that there is no novelty in that part of the patent as affects the anchor; and, if the patent had been taken out for that alone, I should have had no hesitation in declaring that it was bad. Then, if there be no novelty in that part of the patent, can the plaintiff sustain his patent for the other part, as to the mooring-chain? As at present advised, I am inclined to think that the combination of a link of this particular form, with the stay of the form which he uses, although the form of the link might have been known before, is so far new and beneficial as to sustain a patent for that part of the invention, if the patent had been taken out for that alone. But, inasmuch as one of the things is not new, the question arises whether any part can be sustained. It is quite clear that a patent granted by the crown cannot extend beyond the consideration of the patent. The King could not, in consideration of a new invention in one article, grant a patent for that article and another. The question then is, whether, if a party applies for a patent, reciting that he has discovered improvements in three things, and in the result it turns out that there is no novelty in one of them, he can sustain his patent. It appears to me that the case of Hill *v.* Thompson, which underwent great consideration in the Common Pleas, is decisive upon that question.

Bayley, J. I have no doubt that if the patent be bad as to part, it is bad as to the whole. If the patent is taken out for many different things, the entire discovery of all those things is the consideration upon which the king is induced to make

4. Parts or things put in to mislead.

If things useless and unnecessary have been mixed with a substance, or attached to a machine, though the *terms* are intelligible, and every necessary description has been introduced, and the *parts claimed* are only those which have been newly invented, the patent is void. Of this nature are those parts that have *never been used* by the patentee. It is from that circumstance inferred, that they have been introduced to overload the subject, and, by clouding the description, to mislead the public, and conceal the real invention. Thus in Arkwright's machine the introduction of several things (*b*), which were never used by him, was considered as done merely to mislead the public.

If any considerable part of a manufacture be *unnecessary* to produce the desired effect, it will be presumed that it was inserted only with a

the grant. That consideration is entire; and, if it fails in any part, it fails *in toto*. Upon an application for a patent, although the thing may be new in every particular, it is in the judgment of the crown, whether it will or will not, as matter of favour, make the grant to the person who has made the discovery. And when application is made for a patent, for three different things, it may be considered by the persons who are to advise the crown as to the propriety of the grant, that the discovery as to the three things together may form the proper subject of a patent, although each *per se* would not induce them to recommend the grant. It seems to me, therefore, that if any part of the consideration fails, the patent is *void in toto*.

(*b*) Ante, p. 53, 54, n, and see Printed Case 182, 186, 187, and see Dav. Pat. Cas. 129, 139, 140, also Hill v. Thompson, 2 B. Moore, 450.

view to perplex and embarrass the enquirer. In the specification to Turner's patent (*c*) for producing a yellow colour, among other things minium is directed to be used, which it appeared would not produce the desired effect. In the same case, among a great number of salts which were specified, it was left to the public to use those they pleased, without either of them in particular being pointed out, and only one would answer the intended purpose. For either of these reasons the validity of a patent could be impeached.

Although the unnecessary part had *occasionally* been used, it would still be a question whether it had not been put there to mislead the public.

But this rule is not so strictly enforced that a person is compelled to *go on using* every part of his invention to secure and continue his patent-right. If any particular parts have been once fairly introduced, and not laid aside, until, by some discovery or contrivance made subsequent to the date of the patent, they were found to be unnecessary, the patentee may, without prejudice, leave them out; or cease to make use of them. But the presumption is against the inventor, until he give a good reason for the discontinuance (*d*).

Matters of intention.

Watts in his specification gave a description of several things which, being incomplete, would not have supported a patent; and yet, inasmuch

(*c*) Turner *v.* Winter, 1 T. R. 602, ante.
(*d*) Boville *v.* Moore, Dav. Pat. Cas. 398.

as he did not claim them as part of the subject of his patent, it was considered that they were *matters of intention only*, and that the specification was not rendered less intelligible by introducing them (*e*).

5. The drawings incorrect.

It is not absolutely necessary to annex to the specification a model, diagram, picture, or drawing, descriptive of the manufacture (*f*). If without it the subject is clearly described, it is better omitted. It is however an easy way of illustrating the parts of a machine, and therefore has generally been adopted. It was formerly said that in every instance in which a drawing was introduced, it was indispensable that it should be drawn on a *scale*, &c. (*g*): that in it the diameters of wheels, the lengths of levers, &c., every proportion and relation of the parts, ought to appear in due ratio to each other: and that the whole should be capable of being put together without leaving the length, breadth, or relative velocity, of any of the parts to be found out by conjecture and experiments, or the patent would be void. Arkwright's machine (*h*), though shewn in a perspective drawing, could not be made for want of a scale to determine its dimensions.

This rule has of late been modified. If a

(*e*) Boulton *v.* Bull, 2 Hen. Bla. 480. Dav. Pat. Cas. 187, 8.

(*f*) 2 Hen. Bla. 479. Dav. Pat. Cas. 187. and see Ex parte Fox, 1 Ves and Beam. 67.

(*g*) Harmar *v.* Playne, 11 East. 112. 14 Ves. 130. S. C.

(*h*) King *v.* Arkwright, Printed Case 176. Dav. Pat. Cas. 114.

common mechanic can make the subject of the patent from the drawing in perspective, it is not necessary that there should be a scale. It was also formerly considered that the words of the specification ought of themselves to be sufficiently descriptive of the improvement; that the specification ought to contain within itself all the necessary information, without the necessity of having recourse to a diagram; and that, if a diagram were given, it ought to be taken merely as an illustration, and not constituting a principal, or essential part of the specification; and therefore that a person was not bound to look at the diagram to learn the invention. But a very learned judge has however held that if a drawing or figure enable a workman of ordinary skill to construct the improvement, it is as good as any written description (*i*).

6. One of different ways fails.

The consequences which attend the introduction of any thing into the specification, merely to misguide the public, have been mentioned. The means must be adapted to the end (*j*). The description must not give *several ways* and methods which may or may not answer, according to the skill exercised in the attempt to produce the manufacture. Thus, in the specification of Winter's patent (*k*), a great number of salts were

(*i*) Brunton *v.* Hawkes, 37 vol. Rep. of Arts, N.S. p. 105. and see S. C. 4 Barn. and Ald. 541. 1 Stark. N. P. C. 201. and post. 127.

(*j*) Dav. Pat. Cas. 331. And see Manton *v.* Parker, Dav. Pat. Cas. 328. 2 B. Moore, 457, 458.

(*k*) Turner *v.* Winter, 1 T. R. 602.

mentioned, by which it appeared that the public might take either of them to make the subjects of the patent. There was only one of them that would produce the effect, and therefore his patent was void. Even if there be only one thing which will not answer the intended purpose, the specification is incorrect.

7. Some of several effects specified, not produced.

Not only must there not be any unnecessary *means* mentioned in the specification, but *effects* that cannot accurately be produced must not be mentioned and described. The patentee should inform the enquirer of the *exact* nature of the manufacture invented. If the article described have not the qualities, or the machine produce not the results which are set forth in the specification, the grant is invalid.

Such is the law too, if the patentee take his grant for the invention of several things, and he fail in *any one* of them. By Winter's invention (*l*) three things were to be produced: one reason for its being considered void was, that the second article, which was called in the patent "white lead" was, in fact, quite a different substance, and which could be used only for a very few of the purposes for which common white lead is applied. Bainbridge's patent (*m*) for the improvement of the hautboy was for *new notes*;—in the plural number. On proof, it appeared that he had only found out *one* new

(*l*) Turner *v.* Winter, 1 T. R. 602.

(*m*) Baiubridge *v.* Wigley, K. B. Dec. 1810. Repert. of Arts, N. S. 18th Vol. p. 127.; and see Brunton *v.* Hawkes, 4 Barn. and Ald. 451.

note; and he consequently failed in an action of damages for an infringement of the grant, although great ingenuity had been exerted, and the fingering was rendered less complicated by the invention.

8. Thing described, not the best.

Although the description may be otherwise complete and correct; although the means may be adapted to the end, and the things specified be produced; yet, if the subject be not given to the public in the best and *most improved state* known to the inventor, the patent is void. If, at the time of obtaining the grant, he was acquainted with a mode of making his manufacture more beneficial than the one specified, the concealment will be considered fraudulent. Thus Lord Mansfield held a patent for "steel trusses" to be void, because the inventor had omitted to mention that in tempering the steel he rubbed it with tallow, which was of *some use* in the operation. (*l*)

In the specification for a patent for making verdigris, (*m*) aqua fortis, which was used by

(*l*) Liardet *v.* Johnson, Bull. N. P. 76.; and see 1 T. R. 608.

(*m*) Wood and Others *v.* Zimmer and Others, 1 Holt. 58. S. C. in Rep. of Arts, N. S. 27th Vol. 171. Ante 64. *Gibbs*, C. J. It is said that this patent makes verdigris, and is therefore sufficient. The law is not so.—A man who applies for a patent, and possesses a mode of carrying on that invention in the most beneficial manner, must disclose the means of producing it in equal perfection, and with as little expense and labour as it costs the inventor himself.

The price that he pays for his patent is, that he will enable the public, at the expiration of his privilege, to make it

the inventor, was not mentioned. It appeared that the patentee mixed the aqua fortis with great secrecy, which raised the presumption that he knew of its value when the grant was sealed. The patent was therefore declared to be void.

Nor can any *alteration*, known to the inventor before he procures the patent, be made, however insignificant it may be, even if it were nothing more than the means of working the machine a little more expeditiously, without raising a presumption that the patentee fraudulently concealed the best method. A lace machine, (*n*) for in the same way, and with the same advantages. If any thing which gives an advantageous operation to the thing invented be concealed, the specification is void. Now, though the specification should enable a person to make verdigris substantially as good without *aqua fortis* as with it; still, inasmuch as it would be made with more labour by the omission of aqua fortis, it is a prejudicial concealment, and a breach of the terms which the patentee makes with the public.

(*n*) Boville *v.* Moore, Dav. Pat. Cas. 400. *Gibbs*, C. J. There is another consideration respecting the specification, which is also a material one; and that is, whether the patentee has given a full specification of his invention; not only one that will enable a workman to construct a machine answerable to the patent, to the extent most beneficial within the knowledge of the patentee at the time; for a patentee, who has invented a machine useful to the public, and can construct it in one way more extensive in its benefit than in another, and states in his specification only that mode which would be least beneficial, reserving to himself the more beneficial mode of practising it, although he will have so far answered the patent as to describe in his specification a machine to which the patent extends; yet he will not have satisfied the law by communicating to the public the most

which Mr. *Boville* had obtained a patent, was worked with greater expedition *by bending together* two teeth of the dividers, or by making one longer than the others, than if it were used as specified. This mode of using it was known to the inventor before he obtained the patent; and, therefore, Gibbs, C. J. thought that the patent was bad on that account.

Cheaper materials.

If the patentee use *cheaper materials* in making the manufacture than those he has enumerated, his grant will not be sustained by his proving that the articles specified will answer the purpose as well. (*o*)

It signifies not in what manner this advantage accrues to the patentee;—it is not necessary that any palpable alteration has taken place; that something has been added or something taken away from the invention as specified, to render the patent void; it will be invalid if *by any means* whatever a benefit is derived by the patentee, which was concealed from the public at the time the patent was obtained, even if it be merely a small part of a machine on which a particular motion is impressed at a given moment in a particular direction. (*p*)

Inadvertency.

If this improved manner of using the inven-

beneficial mode he was then possessed of for exercising the privilege granted to him. And see Brown *v.* Moore, Rep. of Arts, 28th Vol. p. 60.

(*o*) 1 T. R. 607. 1 Holt's N. P. C. 60. King *v.* Wheeler, 2 Barn. and Ald. 345.

(*p*) King *v.* Arkwright, Printed Cases, 50. The cylinder in the specification was a parallel one: but that which was used, spiral.

tion be *unintentionally* left undescribed, still the patent is void. "If it was inadvertent," says Gibbs, C. J., speaking of Boville's omission in not describing the bending of the teeth, "if he actually knew and meant to practice that mode, and inadvertently did not state the whole in his specification, he must answer for his inadvertence." (*q*)

Subsequent discovery.

But if it appear that this better mode of using the manufacture be a *subsequent discovery*; that the patentee has since the date of the grant found out this new means of carrying on his own invention to a better effect; then the grant will continue valid (*r*): but, as before stated, the presumption of concealment will be against him.

II. *Machine.*

Upon these grounds, and for these reasons,

(*q*) Boville *v.* Moore, Dav. Pat. Cas. 413. *Gibbs*, C. J. observed to the jury,—You will say whether you think there is any fraudulent concealment in the specification. *A Juryman.*—It might be inadvertent, and not fraudulent. *Gibbs*, C. J.—Certainly; and if it were inadvertent, if he actually knew and meant to practise that mode, and inadvertently did not state the whole in his specification, he must answer for his inadvertence: but it might be a subsequent discovery. Verdict for the defendant.

(*r*) Boville *v.* Moore, Dav. Pat. Cas. 401. *Gibbs*, C. J. If Mr. Brown, since he obtained his patent, had discovered an improvement, effected by bending the teeth or adding a longer tooth, he might apply that improvement; and his patent will not be affected by his using his own machine in that improved state: but if, at the time he obtained his patent, he was apprised of this more beneficial mode of working, and did not by his specification communicate it to the public, that must be considered as a fraudulent concealment, although it was done inadvertently, and will render the patent void.

applicable to the specifications of almost all kinds of manufactures, many patents have been declared to be void. The inventor bearing them in mind, and attending to the nature of each kind of manufacture, whether it be a substance, or machine, &c. as it is distinguished from the rest in the last Chapter, will be able, by avoiding similar errors, to make a correct specification for any invention. Indeed, no further assistance can be given to him than that which may be derived from a few general observations on the description peculiar to each manufacture.

The *description of a machine* must disclose the nature of the invention, and the manner in which it is to be performed. It must be minute without perplexity, and luminous without being overwrought. When it descends to particulars, the elements that are known to all should not be noticed; nor yet, in its fulness, should any thing be included that is not necessary to render it intelligible. It should be such that a common mechanic, with a reasonable degree of skill upon the subject, may comprehend it. Though it need not be so full as to instruct a person ignorant of the first principles of mechanics in the method of its formation and use; yet, on the other hand, a person eminently skilled in the subject must not be required to make it. A reasonable knowledge and skill (of which the jury decide) must be possessed by the person who complains that the specification is obscure, and that he cannot make the machine. No contrivance or addition, no trial or experiment, it is

said, must be resorted to for a full knowledge of the invention (*s*). This rule must, however, be taken in a limited sense. Though no inventive faculty must be exercised, nor any thing new added, yet trials, if they are not essentially necessary, may be made. If the inventor leave any thing to be found out by experiment, the specification is bad: unless the data, manner of performing, and the expected results are so clearly given that it may easily be done.

Scientific books.

Reference may be made to the rudiments of that science by which the principles of the machine are explained, but not to scientific books. (*t*) A proposition, or truth generally known, needs no reference; and that which can be found only in some particular treatise must be explained, but not claimed as new.

If a piece of machinery be contemplated for the purpose of giving a full description of it, the several parts, as wheels, rollers, screws, springs, &c. &c., must be set forth, together with the proportion of their diameters, thickness, tension, &c (*u*). Then the method by which they are united, and the relative velocities of the moveable parts (*x*).

If the thing specified be the component parts of *two* machines, the union of the parts that make up each of them must be clearly shewn (*y*).

(*s*) 2 Hen. Bla. 484. (*t*) 11 East. 105.

(*u*) King v. Arkwright, Print. Cas. 174. Dav. Pat. Cas. 111.

(*x*) Id. Printed Cas. 62. 179. Dav. Pat. Cas. 122.

(*y*) Id. Printed Cas. 174. and 177. Dav. Pat. Cas. 111, and 117.

If parts of the machine are to be put on and off during some of its operations, in order to produce the desired effect, or if several articles are intended to be worked on, or several manufactures to be produced,—it must be distinctly stated *what* those parts are, their *proportions* for different purposes, and *where* they are to be applied (*z*).

III. *Improvements or additions.*

It has been shewn that the grant must not be more extensive than the invention (*a*); and that, where the patent is for an improvement or addition, the inventor cannot monopolize the whole subject. The specification will therefore be incorrect, if it contain a description of *more* than the improvement or addition (*b*); unless it particularly distinguish the new from the old parts.

The inventor is not bound down to any particular mode of describing his improvement, so that he informs the public *exactly* in what his invention consists. He may describe it by *words*, or by *diagrams* (*c*): but he must confine himself to his invention.

(*z*) Ibid. (*a*) Ante, 71.

(*b*) Williams *v.* Brodie, cited by counsel in King *v.* Arkwright, Printed Cas. 162., and see Dav. Pat. Cas. 97.

(*c*) Macfarlane *v.* Price, 1 Stark. 199. Action for infringement.—The patent was for certain improvements in the making of umbrellas and parasols. The specification professed to set out the improvements as specified in certain descriptions and drawings annexed: but no distinction was made either in the description, or by any marks in the drawings, between what was new and what was old.

Ellenborough, C. J. The patentee in his specification ought to inform the person who consults it what is new and

The patent for the improvement of a thing, or for the thing improved, is in essence for the same manufacture (*d*). The inventor may either accurately describe the addition, and then point out the method by which it is applied to the known parts; or he may describe the whole as one machine, and then particularize the parts newly discovered.

It is not absolutely necessary that the old parts should be described. They may be referred to generally, if the whole is not thereby rendered unintelligible. Thus in Jessop's case (*e*), whose invention consisted of a single movement in a watch, it was said to be sufficient to refer generally to a common watch, and then to give directions how the new part was to be added to it.

There is one decision on an *improvement* which appears to be an anomaly. Harmar (*f*) obtained a

what is old. The specification states that the improved instrument is made in manner following. That is not true since the description comprizes what is old as well as what is new. Then it is said, that the patentee may put in aid the figures. But how can it be collected from the whole of these, in what the improvement consists?

(*d*) 2 Hen. Bla. 481, 2. (*e*) 2 Hen. Bla. 489.

(*f*) Harmar *v.* Playne, 11 East, 101. The patent was for "a machine invented for raising a shag on all sorts of woollen cloths, and cropping or shearing them, which together come under the description of dressing woollen cloths, and also for cropping or shearing of fustians." There were drawings of the machine. Harmar afterwards invented some improvement of his machine, for which he prayed a patent; which patent was granted upon the usual condition, that he should ascertain the nature of the said invention or the said improvements. The second specification recited the first

patent for a machine. Having very much im-

patent, and described the *whole* of the machine, without shewing in words or marking in the drawing where the first machine ended, or from what point the improvements began. The improvement could only appear by comparing together the two specifications. It was contended for the plaintiff, that the patent and specification referring to it are to be construed together as one instrument. The first patent being enrolled, the public were bound to take notice of it: and being recited in the second, the improvements easily appeared by comparing them. That it was more convenient to give a description of the whole, than by a literal compliance to state what the improvements were.

For the defendant it was said, that improvements should be distinctly marked and made known by this second specification alone, without further search or trouble.

Le Blanc, J. Suppose the specification had merely described the improvements,—must not the party still have referred to the original specification, or at least have brought a full knowledge of it with him, before he could understand truly to adapt the new parts described to the old machine?

Ellenborough, J. It would lead to great inconvenience, if books of science were allowed to be referred to. A person ought to tell from the specification itself what the invention was for which the specification was granted, and how it is to be executed. If reference may be made to one, why not to many works It may not be necessary indeed, in stating a specification of a patent for an improvement, to state precisely all the former known parts of the machine, and then to apply to those the improvement: but on many occasions it may be sufficient to refer generally. But however, I feel impressed by the observation of my brother Le Blanc, that the *trouble and labour* of referring to and comparing the former specification with the latter would be fully as great if the patentee only described in this the precise improvements of the former machine. Reference may be made to general science. The court certified to the *Lord Chancellor* in favour of the specification.

proved it, he procured another patent, in which the first was recited. In the second specification, without any reference being made to the description of the former subject, the whole machine so improved was set forth, without the new parts being distinguished from the old ones. The second grant was held to be good, because the second patent by reciting the first referred to its specification, which by the enrolment was matter of record, and therefore supposed to be within every person's knowledge.

It must be here observed that Harmer referred to his own patent. It seems by the same reasoning, that it might be laid down as a general rule, that every person, making a manufacture from the subjects of several expired patents, might recite and refer to the specifications of them, without taking any notice of their contents.

Sometimes it is difficult to determine, whether the improvements be an addition of new parts, properly so called, or the parts of an old machine newly arranged with some material alteration. In the latter case it is safer to claim the whole as a new engine; and then in the specification to distinguish accurately between the old and new manufacture, shewing the peculiar qualities of each, the improvement effected, the means that produced it, and the use to which it is to be applied.

Different ways of specifying an Improvement.

From these decisions it appears that there are several ways of making a correct specification of an improvement:—

First. By describing the whole manufacture,

and then particularizing with great exactness the addition of the inventor.

Secondly. By a description of the whole manufacture, pointing out the parts that either are old or not material to the invention.

Thirdly. By giving an accurate and intelligent description of the improvement, and the manner in which it is applied to the subject, or parts that are old.

Fourthly. By describing the whole manufacture, if it be an improvement of another for which a patent has been obtained, taking care to refer in the new specification to that of the former patent.

IV. *Combination.*

Every combination appears at first sight to be subject to the same rules for describing it, as an improvement or addition. The same end, a clear and intelligent description of the manufacture, without any extraneous matter, is to be obtained: but the manner of attaining it is somewhat different.

If it is only a combination of substances, materials, or parts of machines in common use, previously applied for the same or different purposes, then the specification will be correct which sets out the whole as the invention of the patentee (g): if, he clearly express that it is in respect

(g) Boville v. Moore, 2 Marsh, 211. S. C. Dav. Pat. Cas. 411. A patent was taken out by Mr. Brown, for "a machine or machines for the manufacture of bobbin lace, or twist net, similar to and resembling the Buckinghamshire lace net, and French lace net, as made by the hand with bobbins or pillows," who assigned it to the plaintiff.

of such new combination or application, and of that only, without laying any claim to the merit of

Gibbs, C. J. Now, gentlemen, the objections made to this specification upon this part of the case are, that it goes farther than it ought; that it states more to be the invention of Mr. Brown than really was so; and I think I may state generally to you, that they say that all that precedes the crossings of the threads is old, whereas he has stated it as part of his invention; and besides that they state, that the forks and dividers which he has stated as part of his invention are equally old. I think with respect to the principle, if there existed at the time Mr. Brown took out his patent engines for the making of lace, of which his was only an improvement, then his patent ought to have been only for *an improvement*; and certainly, if he could have supported his patent for an *engine*, his specification ought to have pointed out those parts only which were of his invention, as those to which his privilege applied; and if you should be of opinion; that he has in his specification stated more than he is entitled to, as what was his invention, then in my opinion his specification is bad.

Now the answer that the plaintiffs have en d to give to that objection is this:—They say there is nothing in the world that is absolutely new; you may refer it all to first principles. The wheels are well known; and yet you may state them in your specification as one of the means by which you effect your purpose. Levers are well known: but yet you may state them in the same way; that certainly is so. They go on to say, their invention consists not in this or that particular part, of which their machine is composed, as being new, but in the conformation of all the parts of it; the novelty consisting in that conformation: and if the new conformation of all those parts was of the plaintiff's invention, then, although every one of the parts was old, they would be entitled to a patent for a machine composed by that new conformation of the whole; but if you find that another person had combined all those parts up to a given point, and that Mr. Brown took up

original invention in the use of the materials. Nothing more than the invention must be claimed. Every old part which is essential and

his combination at that point, and went on combining beyond that, if the subsequent combinations alone were his invention, the former combinations he will have no right to. Those combinations could not exist before, unless there had existed an engine in which they were found; and if there existed before this time an engine in which they were found, it is for you to say, whether this which Mr. Brown has invented is any more than an improvement of that engine, or whether it is the invention of a new engine. If Mr. Brown has only invented an improvement of the old engine, be it Heathcote's, or be it any one or two engines which existed before, then his specification by which he claims the whole to himself will be bad. If, on the other hand, you think that he has invented an engine, which consists of a perfectly new conformation of parts, although all the parts were used before, yet he will be entitled to support his patent for a new machine.

Now I wish to have what I state upon this subject, observed by the counsel on both sides, that they may be aware how I put it. If a combination of those parts existed before; if a combination of a certain number of these parts existed up to a given point before, and Mr. Brown's invention sprung from that point, and added other combinations to it; then I think this specification, stating the whole machine as his invention, is bad. If on the other hand you think he has the merit of inventing the combination of all the parts from the beginning, then I think the specification is good, and that he is entitled to your verdict.—Verdict for the defendant.

Gibbs, C.J.—Gentlemen, I will just ask you this:—do you find that the combination of the parts up to the crossing of the threads is not new?

Foreman,—Yes, my Lord.

Juryman,—The threads then taking a new direction, and

material in producing the intended effect will be considered as claimed, if it be not designated as old. If the part in common use be even an elementary principle, or a single combination, and effect a new end, it becomes a part of the substance of the invention, and must be protested against as not being claimed.

If he invention consist of a new *set of combinations* added to a manufacture composed of combinations, then, though the effect produced be different throughout, the specification should only describe the new combinations which have been invented, and how they are to be added to the old ones.

If the *combination* consist of the subjects of *several patents* which have expired, or of *some new ones* that have been bought, it would appear from the reasoning of Ellenborough C. J., that a description of the method by which they were combined, with a reference to the several specifications, would be all that was required to sustain the patent (*h*).

V. Method carried into practice.

Pursuing the same order in giving rules for making specifications as was followed in the former Chapter when the different subjects of patents were examined, the necessary description of the fifth kind of new manufactures—principles, or methods carried into practice by tangible means—must now be investigated.

certainly the most valuable part to the plaintiff, is a new invention: but we are of opinion it is nothing more than an improvement.

(*h*) Harmar v. Playne, 11 East. 107. ante 129.

Specification of a principle.

It was shewn in the last Chapter that a principle could not be the object of a patent. The impossibility of giving a description of it, in every instance in which it might be used, was urged as a strong argument against its being allowed to be monopolized.

Specification of a method.

Reasons have also been assigned why a method *merely as such*, is not a proper subject for a patent. If a method can be the subject of a patent, the description of it must indeed be very accurate. It must be so clear and evident that no experiments must be necessary to learn it, and to put it in practice as beneficially as the patentee enjoys it.

Specification of the tangible means of principle carried into practice

If neither a principle nor a method can be the subject of a patent within the meaning of the statute of James; if, when a patent is obtained for a method, it is in fact granted for *the tangible means* of carrying that method into practice (*i*); it is quite evident that the specification of a method is governed by the same rules as if the description was to be given of some one kind of the above mentioned manufactures, whether the *real subject* of the patent be a machine, improvement or combination, and therefore that any further comment would be superfluous.

VI. *Chemical discovery.*

When a chemical discovery is the foundation of the invention for which the patent has been granted, inasmuch as the substance or thing produced, and not the principle, process, or method, is the legal subject of the patent, it ought to be described. The ingredients, their pro-

(*i*) Ante 80, 82-88.

portions, the times of mixing, &c., ought to be fully stated, and then the beneficial *use* to which the substance can be applied (*j*).

VII. *Foreign Invention.*

A manufacture when first introduced into England, whether it be a substance or machine, an improvement of something already known here, or a combination of native discoveries, still it must be fully and correctly explained. Its specification is regulated by the same laws, and is subject to the same critical examination, as if it were an English invention.

General Observations on Specifications.

Thus it appears that *every part* which is new, however minute, must be clearly described. In the specification of a *substance*, the simplest elements of which it can be formed, and the best modes of making and using it, must be accurately stated. In descriptions of *machines* there must with scrupulous fidelity be set forth the cheapest materials, the most exact proportions of the parts, the most expeditious and the best mode of conducting them, with the precise times of putting on, or taking off, any part of the machine: and an *improvement* or new *combination* must be kept distinctly apart from the old manufacture.

The public must be put in possession of the manufacture in a way as ample and beneficial as the patentee enjoys it.

(*j*) Turner *v.* Winter, 1 T. R. 602. The specification to this patent is what a scientific man, unacquainted with legal strictness, would naturally have made. It contains almost every fault generally found in the descriptions of this class of manufactures. It is therefore given fully in the different parts of the text.

CHAP. VI.

OF THE PRACTICE OF OBTAINING LETTERS PATENT FOR INVENTIONS.

HAVING pointed out the person, who is the first inventor, and shewn what things are new manufactures within the meaning of the statute of James, and what are the several properties of the specification,—*the practical part*, the mode of obtaining the patent, next demands attention.

That no improvident grant may be obtained from the Crown, the petitioner is required to attend at several offices under government, that the claims set forth in his petition may be carefully scrutinized and fully considered by the law officers of the Crown. Hence many instruments are made preparatory to the patent itself. This course necessarily increases the price of money paid for the patent: but it secures alike the public from imposture, and the Crown from deceit; and prevents the evils arising from an illegal privilege of exclusively making and vending some particular manufacture which may not be worthy of protection.

As many of the instruments are furnished at the public offices, those only are given in the APPENDIX which must be prepared either by the petitioner or his agent. But it is thought that the interest of the enquirer would not be best consulted, nor the fullest information afforded to him, without a full description of the contents of every one of the documents; as by that means he will be enabled not only to examine whether the instruments are correct, but at once be able to see the whole routine of procuring the patent, and the conditions upon which it is obtained.

The manner in which all letters patent are to be passed is pointed out by the statute 27 Hen. VIII. c. 11.: but it would be useless to shew how the method varies according to the matter of the grant, and therefore this Chapter will be confined to the manner of passing *patents for inventions.*

1. The petition.

The first step to be taken by an inventor is to present a *petition* (*a*) (which is written on unstamped paper) to the King, to grant him letters patent.

It recites that he has discovered something (naming it) likely to be of general benefit, of which he is the true and first inventor, and that it has never before been used. He then prays for letters patent to secure to himself the sole use of his invention for fourteen years.

The patent is in general made out for England only: but it will be extended to the Colonies, if they are named in the prayer of the petition.

(*a*) See Form of the Petition, in the Appendix.

The affidavit.

An *affidavit* (*b*) sworn before a Master, or master extraordinary in Chancery, must accompany and support the allegations of the petition.

The *petition* and *affidavit* are then left at the office (*c*) of the Secretary of State for the Home Department.

2. Attorney-General's report.

When the petition has lain a few days in the office at the Home Department, an answer, which is a reference of it by the Secretary of State to the Attorney or Solicitor General for his opinion, will be given. It is generally written on the back or margin of the petition, which, when thus marked, is taken to the chambers of either of those crown law officers, from whom in a few days a report thereon may be obtained.

The report, after reciting the reference, the petition, and the affidavit, states, that inasmuch as it is at the hazard of the petitioner whether the invention be new, or will have the desired success, and as it is reasonable that his Majesty should encourage arts and inventions which may be for the public good, it is therefore the opinion of the reporter that the royal letters patent should, as desired, be granted to the petitioner, *provided a particular description* of the nature of the invention should be enrolled within a given time in the Court of Chancery.

It is this opinion that a *particular description* of the invention should be enrolled, which gives rise to that important instrument, the "*specification.*"

(*b*) See Form of the Affidavit in the Appendix.

(*c*) At the Treasury staircase, Whitehall.

This report is now made as matter of course, and without any trouble to the petitioner, unless a caveat, of which mention will be made hereafter, has been entered.

3. The bill for the patent.

The report is taken from the office of the Attorney General to that of the Secretary of State for the King's warrant.

This warrant is an echo of the report, and gives authority to his Majesty's law officer to prepare a bill containing the grant for the royal signature. In it the exact time in which the specification must be enrolled is mentioned.

The warrant is carried to the patent office (*d*) of the Attorney or Solicitor General for the bill which is to be marked as examined by him. At the bottom his Majesty is informed by his Attorney General that all such clauses, prohibitions, and provisoes, as are therein inserted, are usual and necessary in grants of the like nature.

The bill is the rough draft of the patent, and contains all its allegations. Indeed, it is verbatim the same as the patent, except the attestation to the latter instrument.

When prepared, the bill is carried to the office of the Secretary of State, for the *King's sign manual*, (*e*) from whence it is taken to be passed at the *signet office*. (*f*) The clerk of the signet prepares a warrant to the Lord Keeper of the Privy Seal, whose clerk gives another warrant,

(*d*) No. 4, Old Buildings, Lincoln's Inn.

(*e*) Equity Cas. 54—209; and see 2 Inst. 554, 555.

(*f*) In Somerset House.

in which the body of the patent is recited, directed to the Lord Chancellor.

4. The patent.

The warrant from the Lord Keeper of the Privy Seal is taken to the patent office of the Lord Chancellor, where the patent is made out and sealed. (g)

When a patent has once passed the great seal, its date cannot be altered. (*h*)

5. The specification.

The nature of the description required in the specification, and the manner in which it must be given, have been fully investigated. (*i*) It must be under the *hand and seal* of the inventor ; (*k*) and is sometimes accompanied with a design or drawing in the margin, to which, from the body of the patent, references must be made, to render the whole instrument intelligible.

Before the invention is particularly described in the specification, a recital is made, that a patent had been granted to the inventor to secure to him the whole benefit arising from it ; and that therein a proviso was inserted requiring a description of the invention, and that in consequence of such requisition the patentee makes the specification. The terms of that proviso are given in the Introduction. (*l*)

(g) For an abridgment of the contents of a patent see the Introduction, ante, p. 48. ; and for its parts at full length, see Appendix.

(*h*) Ex parte Beck, 1 Bro. Cha Ca. 578.

(*i*) Ante, Chap. IV.

(*k*) 21 Jac. I. c. 3. sect. 6.

(*l*) Ante, 46. A copy of Mr. Watt's specification will be found in the Appendix.

The time allowed for enrolment.

The time formerly allowed for the enrolment of the specification was four months: but it is now generally confined to *one month*, unless the inventor make an affidavit that he intends to apply for patents for Scotland and Ireland, and then it is extended to six months. A few instances have occurred in which a still longer time has been allowed to enrol the specification: but in a late case the Lord Chancellor would not put the great seal to a patent by which the specification was to be concealed for a considerable length of time. The Attorney General will, under special circumstances, enlarge the usual period at any moment before the patent is sealed.

When the patent is once sealed, the *specification* must be *acknowledged* before a Master in Chancery, and lodged in the *Enrolment Office* (*m*) before the expiration of the time therein mentioned. The day is inclusive. If the patent, therefore, be enrolled on the last day of the month, when that is the given time, it is sufficient. (*n*)

The legislature alone can grant relief, if the time has transpired: the Lord Chancellor has refused to interfere on such an occasion. (*o*)

(*m*) Petty Bag Office, Rolls Yard, Chancery Lane.

(*n*) Watson v. Pears, 2 Campb. 294.

(*o*) Ex parte Hoops, printed by mistake for *Koops*, 6 Ves. Jun. 599. Ex parte Beck, 1 Bro. Cha. Ca. 578. Application was made for time to enrol Koop's specification. Lord *Eldon*, C. I cannot do that; for the patent is void if the proviso be not complied with. You should have applied to the Attorney General before the patent passed for a longer time upon the special circumstances. I cannot take the great

If the time for the enrolment is expired, or any thing else has occurred in suing for the patent, whereby it will be rendered void, it is advisable to conceal the invention, and to begin *de novo* with another petition for a patent. It is a very safe way to remedy all defects in form.

A *certificate* of the enrolment, which is always indorsed on the back of the specification, may be had at the same time. Certificate of enrolment.

The specifications are kept open for the inspection of the public, and copies of them may at all times be obtained. Attempts have been made to induce the Lord Chancellor to dispense with the enrolment of the specification, or to keep it concealed, which have always been unsuccessful (*q*). In some cases the legislature Inspection of specification.

seal from a patent, and repeal it in the most essential point: it is a legal grant, with a proviso for the benefit of all the King's subjects. You can do nothing except by an act of Parliament to enlarge the time mentioned in the proviso.

(*q*) Ex parte Hoops (for Koops) 6 Ves. 595. The object of the petition was, that the Lord Chancellor would dispense with the enrolment, or that some provision should be made to prevent the specification from being made public: suggesting the danger that foreigners might obtain copies of the specification in consequence of the enrolment.

Lord Eldon. How can I do this? Either upon this or some other case in the last sessions a clause for this purpose was inserted in an act of parliament; and upon the motion of Lord Thurlow, upon reasons applying not only to that, but to all cases, and seconded by Lord Rosslyn, the clause was universally rejected, and rejected as it appeared to me upon very substantial grounds, in which I readily concur. As to the worth of the apprehension suggested, a man has

has however permitted the specification to be concealed. Mr. Lee (*r*) obtained an act of parliament 53 Geo. III. c. 179, by which his specification was ordered to be deposited in the Court of Chancery, to be kept secret from the public for fifteen months; and to be produced only by order of the Lord Chancellor, and by him to be examined whenever occasion required.

6. Caveat. The caveat is an instrument by which notice is requested to be given to the person who enters it, whenever any application is made for a

nothing more to do than to pirate your invention in a single instance; and he will then force you to bring an action, and then the specification must be produced.

But, with regard to the king's subjects, a very strong objection occurs, which makes it necessary that the specification should be capable of being produced. They have a right to apply to the patent office to see the specification, that they may not throw away their time and labour, perhaps at a great expense, upon an invention, upon which the patentee might afterwards come with his specification, alleging an infringement of his patent; when, if those persons had seen the specification, they never would have engaged in their project. The enrolment is therefore for the benefit of the public.

(*r*) See Lacy's Case, Rep. of Arts, N. S. 29 Vol. p. 250. The *Lord Chancellor* observed that Mr. Lee's case was a very peculiar one: it was for securing to the state, in the time of war, the benefit of a most important discovery. If Mr. Lacy could make out that the state was to be benefited by his invention in any peculiar way, as in the case of preparing hemp and flax, it might be doubtful whether he might not have a secret specification. His lordship was of opinion, however, that the legislature would pause a long time before they passed such an act in future. He could not put the great seal to a patent without seeing the specification.

patent for a certain invention which is therein described in general terms (*s*).

One caveat is left at the chambers of the Attorney General, another at those of the Solicitor General. They must be annually *renewed.*

If application be made for a patent for an invention similar in its nature to that mentioned in the caveat, then all the parties are summoned to attend upon the Attorney or Solicitor General, who separately examines each party. If he thinks that the inventions are not the same, both parties are entitled to patents: but if he should be of opinion that they are the same, then his report shews to whom the patent ought to be granted.

(*s*) Ex parte O'Reily, 1 Ves. Jun. 112. Several caveats were entered against sealing a patent for a new Italian Opera House. From the whole of this long case, which is very full of facts, the opinion of *Lord Thurlow* respecting caveats may be collected. He declared that he would not sign a patent which did not hold the parties under some controul (if the case required it), even though there should be no caveat against it; and that it was not sufficient merely to answer objections, but that the party petitioning must lay a proper case before him.

Nothing is required from those who oppose a patent, but to shew that they have an interest.

There were many considerations, he observed, which certainly would not rest with him to be determined upon that petition. The use the *King* might derive from its having been before him, was, that the true state of that part of the case upon which the King's judgment would turn had come out more intelligibly than it had before.

The thing that came nearest to his office was to see that the King was not deceived, and that he did not throw out of his hands that authority which ought to be retained.

If the disappointed party think that he is injured, he should immediately enter a caveat at the *Chancery patent* office; and when the grant comes for the great seal, the Lord Chancellor will privately examine all the parties concerned, and do justice between them.

Other reasons may induce persons to enter a caveat at the chancery office; as was done in one case, to prevent the great seal from being put to a patent, wherein the petitioner was allowed *fifteen* months to enrol the specification; The Lord Chancellor in consequence refused to seal it (*t*). And where a petitioner applied for a patent in respect of certain improvements in steam engines a caveat was entered under an existing grant, from which, it was alleged, the subject of this new patent was borrowed. The Lord Chancellor sealed the patent, upon reading the affidavits, in one of which, made by an engineer, it was stated that the subjects did not resemble each other (*u*).

Costs of caveat.

Although the Lord Chancellor is very averse to a caveat, at this late stage of the business; yet, if he think that the opposition was not unreasonable, he will not give costs (*x*).

Such is a caveat, the manner of entering it, and the practice respecting it.

Of its nature and effect much misconception has arisen. It does not create any right: but is simply a request to be *favoured* with information.

(*t*) Ex parte *Heathcôte* in the matter of *Lacy*, Rep. of Arts, N. S. 29 Vol. p. 250.

(*u*) Ex parte Fox, 1 Ves. and Beam. 67. (*x*) Id.

If the applicant think that he is unjustly deprived of an invention, after he has been heard before the Lord Chancellor, he has no remedy but a *scire facias*, to repeal that which has been sealed (*y*).

Upon the whole, therefore, the entering a caveat is nothing more than giving information that there is an invention nearly completed; and requesting that, if any other person should apply for a patent for the same thing, the preference may be given to him who entered it. Which request is complied with, by the courtesy of the crown, upon its being satisfied of its reasonableness by the report of the Attorney-General, or the opinion of the Lord Chancellor. And when the patent is granted, it is to be judged of as though no caveat had ever been entered.

VII. *Patent's for other places besides England.*

The privileges derived from a patent take effect only in England: but if the Colonies are named therein, then it extends to them.

If it is the wish of the inventor to exercise his invention exclusively all over the united kingdoms, he must take out separate patents for *Scotland* and *Ireland*.

By Act of Parliament, this exclusive privilege may be preserved to the inventor in any other places, over which this government has authority, as in the West India Islands.

(*y*) Post Chap. IX.

II. The Acts of Parliament to enlarge Patents.

Now that the necessary forms and instruments have been described; the manner of soliciting, and the matter contained in the acts of parliament, which are sometimes passed to give greater utility to the statute of James, shall be stated.

I. *An Act to prolong the Term of a patent.*

An Act to procure the term of a patent is procured in the usual manner, in which private ones are obtained, by notice and petition.

The notice (*a*) after stating that an application will be made to parliament for an act to prolong the term, or rather to grant a new term to the patentee for the sole enjoyment of the benefits accruing from the invention (naming it) granted to him on a certain day. If the patent has been made for Scotland and Ireland, then the notice must state that the act is to extend its

(*a*) Order of the House of Commons, 30 June, 1801.

The substance of acts to prolong the term of a patent.

The *substance* of an act to prolong the term of letters patent may thus briefly be described. After reciting that letters patent have been granted for England, Scotland, and Ireland, and setting forth their respective dates, and the clauses for the inrolment of the specification in the respective Courts of Chancery in England, Scotland, and Ireland; the act further recites that the specification has been so enrolled. Then, if *improvements* have been made, the dates of the several patents for them, and the inrolment of their specifications, are recited in the same manner. Then follows an abstract of the assignments of the patent right, if any have taken

authority over those places. If a subsequent patent has been obtained for *improvements* and additions, then it should be stated that it is the patentee's intention to apply for a new term for the use thereof in England, Scotland, and Ireland.

This notice should be *signed* by the solicitor or agent for the patentee, and should be inserted three times in the *London Gazette.* If the patent be also for Scotland and Ireland, then the notice should be inserted three times in one of the *Edinburgh papers*, and three times in the *Dublin Gazette.* These advertisements must appear in the respective months of August and September, or one of them (*b*) preceding the sessions in which the application is to be made.

A *petition*, with a copy of the patent annexed to it, for leave to bring in the bill, is then prepared.

It describes the invention as in the patent (*c*), place. After which it is usual to state the special circumstances that induce the petitioners to ask for an enlargement of the term. The *reasons generally assigned* are, the impossibility of the patentee receiving any reward for his labour and ingenuity, in the short space of fourteen years, arising either from the great expense and length of time taken up before the machine or invention could be beneficially used, the large capital necessarily employed, or that the public will not be much benefited, unless, by a greater length of time, the patentee should be enabled to sell his invention at a lower price. Sometimes the reason given is the heavy expense of suits at law. At another time the patentee asks for these indulgences to avert impending ruin,

(*b*) Order, 30 June, 1801. (*c*) Order, 26 May, 1685.

and gives the dates of the three grants for the use of the inventors in England, Scotland, and Ireland. And if patents for improvements have been obtained for those three kingdoms, then the several dates of those three patents must be stated. Afterwards the special matter, with the reasons for the application (*d*) that may appear to the patentee to be important, should be set forth. *Then* follows the *prayer* of the petition. It must be signed by the parties who are suitors for the bill.

This petition is referred to a select committee, who examine the *witnesses*, and inspect the newspapers in which the notice has been inserted. The chairman then reports to the house that the committee have examined the matter of the petition, and that the standing orders of the house relative to bills for confirming or prolonging terms of letters patent have been complied with. Leave is then given to bring in the bill, to which a copy of the pa-

caused by the great expense he has been put to in endeavouring to perfect his invention: and he therefore calls on the legislature to assist him, and thus encourage ingenuity that is exercised for the advantage of the public. It is then enacted, that the sole right to the invention, or the improved inventions, be vested for a given number of years, being an addition to the original term, in the patentee; or, if it has been assigned, then in his assignee. If it be a machine, the rules at which it shall be vended are particularly specified; and all contracts for using it remain the same as though the act had not passed.

(*d*) Order, 24 November, 1699.

tent is annexed (e). This bill is read a *first* time, and ordered to be read a *second*. On the second reading, upon being presented, it is referred to a select committee, who hear witnesses, and then report to the house that they have examined the allegations of the bill, and find the same to be true; upon which the house orders the bill to be *engrossed*. On the *third* reading it is passed, and carried up into the House of Lords, by the member who conducted the bill through the House of Commons into that of the Lords.

The usual routine in the House of Lords of passing a private *act*, by which term the bill is there designated, is to read it immediately a first time, and then for the chairman of the select committee to move that it be read a second time, and referred to a select committee; before whom the witnesses are examined by the chairman, who reports to the house that the allegations in the act are true. Upon his motion the act is read a third time, and passed. The Commons are informed of the agreement of the Lords to the act, and it receives the royal assent.

It is provided that nothing therein shall hinder any person from making or using an invention that is different from the one mentioned in the act.

If the subject of the patent has been gradually improved, then the act provides that a specification of the whole invention, in its improved state, shall be enrolled in the Court of Chancery within a given time, which is generally six months.

It is enacted, that *objections*, which would have affected the validity of the patents *before* the passing of the

(e) Order, 13 May, 1690.

II. *An Act to enable the patentee to assign to more than five persons.*

In an Act of Parliament to enable a patentee to assign to more than five persons: after a recital of the date of the patent for the original subject, and also of that for the improvements (if any have been granted); the proviso by which the patent is declared to be void, if it be transferred to any number of persons exceeding five, is set forth. Then follows the *special circumstances*; as, that the undertaking requires a large capital; and that, to make it beneficial to the public, such large sums of money are required, that rendered it impossible for five persons to use it.

It is thereupon enacted, that the patentee may transfer his right to any number of persons not exceeding the number therein mentioned; with a proviso, that nothing in the act contained shall be construed to confirm or give greater force or validity to the letters patent than they legally possessed before the passing of it.

The act, though private in its nature, is generally made a *public one*, to prevent the expense of pleading it specially. (*f*)

act, shall *afterwards* have the like force and effect in law as before the passing thereof; and that the invention shall not become the property of more than *five* persons. It is generally added that the act (to prevent the trouble and expense of pleading it specially) shall be deemed a public one.

(*f*) See 41 Geo. III. c. 125. *Local and personal acts.*

CHAP. VI.

Of the Construction of Letters Patent.

The inventor having obtained a patent, it is now time to state the principles, and expound the rules by which it is to be *construed*. The matter may be divided for consideration into three parts as it respects the construction—

1. Of letters patent in general.
2. Of those for inventions.
3. Of the acts of Parliament enlarging the patent-rights.

"In ordinary cases," says Mr. Chitty, Jun. in his Treatise on the Prerogatives of the Crown, (*a*) "between subject and subject, the principle of construction is, that the grant shall be construed, if the meaning be doubtful, most strongly against the grantor, who is presumed to use the most cautious words for his own advantage and security. But in the case of the King, whose grants chiefly flow from the royal bounty and grace, the rule is otherwise; and crown grants have at all times been construed most favourably for the King, where a fair doubt exists as to the real meaning of the instrument, as well in the instance of grants from his Majesty, as in the case of transfers to him."

(*a*) See page 391, 2, and the Authorities there collected.

"But the rule that grants shall be construed most favourably for the King," he adds, "is subject to many limitations and exceptions. (*b*)

"In the first place, no strained or extravagant construction is to be made in favour of the King.

"If the intention be obvious, royal grants are to receive a fair and liberal interpretation accordingly. And, though the general words of a grant may be qualified by the recital; yet, if the intent of the crown be plainly expressed in the granting part, it shall enure accordingly, and shall not be restrained by the recital.

"In the second place, the construction and leaning shall be in favour of the subject, if the grant shew that it was not made at the solicitation of the grantee, but *ex speciali gratiâ, certâ scientiâ, et mero motu regis.* Though these words do not of themselves protect the grantee against false recitals, &c.

"In the third place, if the King's grants are *upon* a valuable consideration, they shall be construed strictly for the patentee for the honour of the King.

"So where the King's grant is capable of two constructions, by the one of which it will be valid and by the other void, it shall receive that interpretation which will give it effect; for that will be more for the benefit of the subject, and the honour of the King, which ought to be more regarded than his profit.

"A decided *uncertainty* (*c*) will avoid a grant from the Crown, not only as against the pa-

(*b*) Id. p. 393, 4. (*c*) Id. p. 394.

tentee, but also as against the King, because it raises a presumption of deceit." "But the rule *id certum est quod certum reddi potest* obtains, even in case of the Crown; and therefore, if a grant refer or has relation to that which is certain, though it be not matter of record but mere matter of fact, or *in pais*, it is sufficient." "But where a particular certainty precedes, it shall not be destroyed by an uncertainty or a mistake coming after."

"*Misrecitals and false suggestions or deceit* (*d*) will in certain cases invalidate a grant from the Crown."

2: Construction of a patent for inventions.

Such are the *general rules* for the construction of all kinds of letters patent. It becomes necessary to state the principles upon which the decisions respecting patents for inventions in particular are founded.

The exposition of the patent, whether it regard the invention or other matters connected with it, is in truth nothing more than a statement of the meaning of the statute of monopolies which was made *in favour of the subject*, and ought therefore to be explained most liberally to his advantage.

The formal parts,—the usual covenants, and the provisoes—must be expounded by the *general* rules above laid down.

The patent for an invention contains the expressions *ex speciali gratiâ, certâ scientiâ, et mero motu*; and upon that account the construction

(*d*) Id. p. 396.

must lean in favour of the patentee. Moreover there is a clause inserted, whereby it is *expressly declared* that the letters patent shall be taken, construed, and adjudged, in the most favourable and beneficial sense, for the best advantage of the patentee, notwithstanding the not full and certain describing the nature and quality of the said invention, or of the materials thereto conducing and belonging. (*e*)

Although many of the judges have construed the statute of monopolies in favour of the inventor, (*f*) yet formerly they inclined to give to the patent and specification, (which must be taken together when considering the proper construction of this grant) a narrow limit; and, in fact, to no greater extent than the literal meaning of its terms. Mr. Justice Buller, however, observed, (*g*) Whenever it appears that the patentee has made a fair disclosure, I have always had a strong bias in his favour, because in that case he is entitled to the protection which the law gives him. How far that law which authorizes the King to grant patents is politic, it is not for us to determine. When attempts are made to evade a fair patent, I am strongly inclined in favour of the patentee: but, where the

(*e*) See Form of a Patent in the *Appendix.*

(*f*) Lord Loughborough—"There is no matter of favour that can enter into consideration in a question of this nature. The law has established the right of patents for new inventions: that law is extremely *wise and just.*" Dav. Pat. Cas. 55.

(*g*) In Turner v. Winter, 1 T. R. 606.

discovery is not fully made, the Court ought to look with a very watchful eye to prevent any imposition on the public.

But Kenyon, C. J. observed, (*h*) "I am not one of those who greatly favour patents; for though, in many instances, the public are benefited by them, yet, on striking the balance on this subject, I think that great oppression is practised on inferior mechanics by those who are more opulent."

It is said that Lord Eldon, when Chief Justice of the Court of Common Pleas, in the case of Cartwright *v.* Amatt, (*i*) put the question for consideration,—Whether the specification was such that the machinist could make the machine from the description there given, considering the case of a patent not in the light of a *monopoly*, as it had been generally put, but as a *bargain with the public*, and therefore to be construed upon the same principle of *good faith* that regulated all other contracts; and therefore if the description was such that the invention could be communicated to the public, the statute was satisfied.

The extent of signification which has been given to the words "first inventor" (*k*) and "new manufacture," (*l*) and also by what rules the specification (*m*) is to be judged, have been fully explained; and therefore I shall only add,

(*h*) In Hornblower *v.* Boulton, 8 T. R. 98.

(*i*) In Easter Term, 1800; not reported, but mentioned in argument 11 East. 107, and 14 Ves. 131. His Lordship afterwards said that he adhered to the law as he stated it in that case. 14 Ves. 136., and see Dav. Pat. Cas. 434.

(*k*) Ante, Chap. II. (*l*) Ante, Chap. III.

(*m*) Ante, Chap. IV.

that patents now receive a construction more in favour of the grantee than they formerly did, and that the opinion of Lord Eldon is generally adopted; that, as the disclosure of the new invention is the equivalent for which the grant is obtained, letters patent come within that general rule, by which, when a valuable consideration is given, the grant is to be construed strictly in favour of the grantee. (*n*)

3. Of the acts of Parliament to enlarge them.

Statutes, it has been shewn, (*o*) are sometimes made to enlarge the benefits arising from patents for inventions.

It was formerly contended that the view taken of letters patent by the Legislature, as expressed in the act of Parliament extending the term of a grant, supported the validity of the patent *itself*: but it was considered that the legislative provisions left the patent exactly in the same situation in which it was placed before they were enacted, and that the act could not be looked at as a *legislative reading* of the patent.

An attempt was lately made to put a similar construction upon an act of Parliament, by which the patent of Koops (*p*) was made assignable

(*n*) Ante, p. 50. (*o*) Ante, p. 148.

(*p*) Hesse *v.* Stevenson, 3 Bos. and Pull. 578. *Lord Alvanley*,—It is contended that the act of Parliament stated in the case vested a legal interest in Koops; for that he must be taken against all the world to have that interest which the act of Parliament recites to be vested in him, that act being a public act. But though the act be public, it is of a private nature. The only object of the proviso for making it a public act is, that it may judicially be taken notice of instead of being specially pleaded, and to save the expense of proving

to sixty persons: but Lord Alvanley on that occasion observed, that he could not look into the act for any explanation of the contents of the patent or specification.

The patent and specification must, in fact, stand or fall by themselves; and no extraneous matter can be introduced to explain them and establish their legality. If they are bad in themselves, nothing whatever can make them legal instruments.

an attested copy. But it never has been held that an act of a private nature derives any additional weight or authority from such a proviso; it only affects Koops, and those claiming under him; and authorizes him to do certain acts which by the letters patent he could not have done. It recites the letters patent, containing a clause which prevents him assigning to more than five persons; and then enables him to assign to any number of persons not exceeding sixty. It is not possible then to consider this act as giving title to Koops which he had not at the time when it passed. Such has been the construction which has always been put upon acts of Parliament of this nature. We are therefore of opinion that no aid is to be derived to the defendant from the act of Parliament.

CHAP. VII

Of the Property in an Invention.

The inventor, being possessed of a patent, with a knowledge of the manner in which it must be construed, is next to be informed of the *nature of the property* he has acquired, and the uses to which it may be applied. The grounds upon which assistance is refused, in the courts both of common law and equity, to those persons who conceal their inventions, to relieve them from the effects of any breach of faith, will afterwards be investigated.

I. Property in a Patent.

Its nature generally. Personal property.

Though the statute merely mentions the "*inventor*;" yet the patent is always granted to him, his executors, administrators, and assigns, and to such others as they at any time shall agree with.

It is a personal chattel (*a*), peculiar in its nature as to

1. Its *duration*, or the time it may be enjoyed.
2. The *number of persons* to whom it may be assigned; or who may at the same moment be interested in it.

(*a*) See 2 Bla. Com. Chap. 27.

3. Being sometimes *enlarged* by an act of the state.

But in every other respect it is to be viewed in the same light as that in which personal property in general is considered.

1. Duration.

This privilege, so valuable to an inventor of the sole working or making his new manufacture, is by the statute(*b*) allowed to be enjoyed *for fourteen years or under*: which term, by express enactment, is to be accounted from the date of the first letters patent or grant of such privilege. Though the king, therefore, when he sees occasion, may grant this right for any time less than fourteen years, yet a patent in which it should be attempted to extend that term would in consequence thereof be void.

2. Number of persons interested.

It is one of the most material conditions (*c*) upon which the grant is made, that, if the person interested in it should make any transfer or assignment of it, or divide it into shares, or declare any trust, or seek public subscriptions, or should presume to act as a corporate body, or do any thing contrary to the Act of Geo. I. so that *more than five persons* should in any manner become interested, and claim a benefit in the patent, it is declared to be void.

Executors and administrators are to be *reckoned, accounted, and considered, as and for the single person* whom they represent, as to the in-

(*b*) 21 Jac. 1. c. 3. s. 6.

(*c*) Ante 49, 50. and see Appendix for copy of a patent.

terest they shall be entitled to in right of the testator or intestate. (*d*)

Assignment of patent.

Subject to the above mentioned restrictions as to its duration, and the number of persons that may, at any one time, be interested in it, a patent may be *assigned* in the same manner as other personal property. (*e*)

1. *Generally.*

2. *Under Commission of Bankrupt.*

Assignment generally.

If the grant be valid, the assignment of it in the usual way is of course good and effectual. Where a patentee, having a lawsuit respecting the validity of his patent, made an absolute grant of it, (reserving to himself the legal right until the disputes were ended) in trust for the assignee, with a covenant to further assign: it was held, that, upon the determination of the suit, the patent vested without such second assignment.(*f*)

If patent be void.

But far different is the effect of an assignment of a grant which afterwards appears to be an invalid one.

If he who has a patent-right (*g*) agree with another person, for a valuable consideration,

(*d*) 21 Jac. I. c. 3. s. 6.

(*e*) The property in a patent, and the right to exercise it, should go together. See Ex parte O Reily, 1 Ves. Jun. 118.

(*f*) Cartwright *v.* Amatt, 2 Bos. & Pull. 43.

(*g*) Hayne and another *v.* Maltby, 3 T R. 438. (and see 14 Ves. 132, 3.) The plaintiffs were assignees of one J. Taylor, of a patent for an engine or machine, to be fixed to a common stocking frame, for making a sort of net or open work, called point net. Permission by an agreement was given to the defendant to use the engine, *provided he worked it according to the specification*, and would not use any other

that the latter may use the manufacture for a certain time, upon certain conditions; yet if the patentee, for a breach of the contract and covenant, bring an action, it may be answered by shewing in any manner that the patent is a bad one, and invalid.

But where an action was brought by the assignee of a grant against the *patentee himself*, for using an invention, *the latter* was not permitted, in violation of his own contract, to infringe the patent-right which he had assigned, and to deny that he had any power to convey, patent engine for the same purpose. In an action at law on the agreement breaches were assigned upon the latter condition. It was pleaded, amongst other things, that the specification was not enrolled in time: that the plaintiff Taylor was not the inventor, nor was the machine a new one. To which the plaintiffs demurred.

Kenyon, C. J. It is contended that the defendant shall be bound by his covenant, though the consideration of it is fraudulent and void. This is not to be considered as a covenant to pay a certain sum in gross at all events; but to use a machine in a particular way, in consideration of the plaintiffs having conferred that interest on the defendant, which they professed to confer by the agreement. The doctrine of estoppel is not applicable here. The person supposed to be estopped is the very person who has been cheated and imposed upon.

Buller, J. We must consider the intention of the parties. If the plaintiffs had the exclusive right to the machine, they might convey it to any other person. It is now discovered that they had no such right; and therefore the defendant has not the consideration for which he entered into his covenant, and notwithstanding which, they say he is still bound. Judgment for defendant.

by shewing any thing that would invalidate his own patent. (*h*)

On the other hand, if a person, imagining that he has discovered something new, obtain a patent for it; (*i*) and then assign it for a valu-

(*h*) Oldham *v.* Langmead, Sittings after Trin. 1789, coram Lord Kenyon, cited by Mr. Wigley in arg. 3 T. R. 439.

(*i*) Taylor *v.* Hare, 1 New Rep. 260. (and see 13 East. 348. 16 East. 207, 8. 4 M. & S. 37.) The patent was granted for "an apparatus for preserving the essential oil of hops in brewing." The defendant assigned his right to the plaintiff, upon condition of receiving from him and his partner, since deceased, an annuity of 100*l* per ann. during the term of the patent. After the plaintiff had used the apparatus, and paid the annuity to defendant for several years, it was discovered that he was not the inventor. The patent had never been repealed. The plaintiff therefore now brought the action to recover back the money which had been paid to the defendant.

Mansfield, Sir James, C. J. In this case two persons, equally innocent, make a bargain about the use of a patent; the defendant supposing himself to be in possession of a valuable patent-right, and the plaintiff supposing the same thing. Under these circumstances the latter agrees to pay the former for the use of the invention; and he has the use of it. *Non constat* what advantage he made of it. For any thing that appears, he may have made considerable profit. He would never have thought of using this invention, if the privilege had not been transferred to him.

Heath, J. As well might it be said that if a man lease land, and the lessee pay rent, and afterwards be evicted, that he shall recover back the rent, though he has taken the fruits off the land.

Chambre, J. Both parties were mistaken. Both have thrown away their money. In the case of Arkwright's patent, very large sums of money were paid for using the

able consideration to another, who uses it for some time; the assignee, though the grant afterwards prove to be a bad one, cannot recover the sum of money he originally gave for the purchase of it.

There must not however be the least appearance of *fraud* in the transaction. Both must have acted under the mistaken notion that it was a legal patent.

If it were discovered to be an invalid patent before the assignee had made any use of it, according to the rules of equity and good conscience, it would seem that the purchase money ought to be returned.

And where the assignee of certain shares in a patent-right covenanted that he had full power to convey, and that he had not by any means, directly or indirectly, forfeited his right over the same; it was held, that the generality of the former words were not restrained by the latter.(*j*)

Bankruptcy.

Not only can this property be assigned generally, but it will pass to the assignees of a bankrupt patentee. (*k*) The grant obtained by an *uncertificated* bankrupt (*l*) for an invention

patent-right: but no money was ever recovered back after the patent had been cancelled. Judgment of nonsuit.

(*j*) 3 Bos. & Pull. 565. and see 2 N. R. 71.

(*k*) See Montag. Bank. Laws.

(*l*) Hesse *v.* Stevenson, 3 Bos. & Pull. 577. *Lord Alvanley.* It was next contended that the nature of the property in this patent was such, that it did not pass under the assignment. That the fruits of a man's invention do not pass. It is true that the schemes which a man may have in his own

made since the act of bankruptcy is affected by the previous assignment of the commissioners; and, vesting in the assignees, is liable to be seized by them: even in the hands of third persons.

From the case of Hesse v. Stevenson,(*m*) we dis-

head before he obtains his certificate, or the fruits which he may make of such schemes, do not pass; nor could the assignees require him to assign them, provided he does not carry them into effect until after he has obtained his certificate. But if he avail himself of his knowledge and skill, and thereby acquire a beneficial interest, which may be the subject of assignment, I cannot frame to myself an argument why that interest should not pass as any other property acquired by his personal industry. We are therefore clearly of opinion that the interest in the letters patent was an interest of such a nature as to be the subject of assignment by the commissioners.

(*m*) Hesse v. Stevenson, 3 Bos. & Pull. 565. This was an action of covenant. It appeared by a case reserved, that in June 1790, one Koops was duly declared a bankrupt. That on the 17th and 18th of May 1801, the said Koops obtained patents. That Koops had assigned a certain share of the patent to the defendant, who had assigned a part of that share to the plaintiff. That an act had passed by which Koops was enabled to assign the use of the said patent to any number of persons, not exceeding sixty; which act was declared to be a public act. On 9th September, 1801, the creditors of Koops executed a deed of composition with him; to which several of his creditors were not parties. The assignees, and most of the creditors, by that deed, did remise, release, and quit claim unto the said Koops, his heirs, executors and administrators, all actions, rents, claims, and demands whatsoever. Koops failed in the performance of the consideration of the said deed; whereupon the assignees entered up judgment upon the warrant of attorney, on 31st March 1802, and on the 14th October following issued a

cover in what manner patents for inventions are viewed by the bankrupt laws. After deciding generally that a composition entered into by the

fieri facias; and, after taking the goods, &c. of Koops, entered upon the premises where the manufactory under the patents and act of parliament was carried on, and took possession of the same. In the deed-poll between the defendant of one part, and the plaintiff of the other, was the usual covenant for good title, that the said defendant had good right, full power, and absolute and lawful authority, to assign and convey the said shares, &c.; and that he had not by any means, directly or indirectly, forfeited any right or authority he ever had or might have had in the said shares. Breach that he had not good title.

Alvanley, C. J. We shall consider the case as though the whole deed were before us. From all the cases upon this subject it appears to be determined, that however general the words of a covenant may be if standing alone, yet if, from other covenants in the same deed, it is plainly and irresistibly to be inferred that the party could not have intended to use the words in the general sense which they import, the court will limit the operation of the general words. The question therefore always has been, whether such an irresistible inference does arise. The warranty in this deed, in the usual and almost daily words, where parties intend to be bound by their own acts only, *viz.* "for and notwithstanding any act by him done to the contrary," omits them altogether; besides which, the defendant covenants that the assignee shall enjoy the property assigned in as ample a manner as the assignor. The omission of the words is almost of itself decisive. We are therefore of opinion, that the covenant for absolute right to convey is not restrained by the other parts of the deed.

It is said, secondly, that the assignees have reconveyed the whole of their interest: but I am of opinion that deed was not intended to convey, nor did it operate in law as a conveyance.

bankrupt, his assignees, and most of his creditors, by which, upon certain terms, the bankrupt had all his goods and chattels attempted to be reconveyed to him, was not a conveyance in law: it was held that the general covenant for good title of a patent-right was not restrained by the covenant in which Stevenson, assignee of Koops the patentee and bankrupt, says that he has not done any act to impeach his title. This decision arose principally from the words "for and notwithstanding any act by him done to the contrary," being omitted.

It may be well to observe that an uncertificated bankrupt, before he attempts to carry his schemes into execution, should obtain from his assignees a renunciation of all benefit of the patent.

A Trust of patent.

It was doubted by Lord Thurlow (*n*), whether a patent, meaning letters patent generally, could be the subject of a *trust*: but it is humbly conceived that one for an invention might become so, in the same manner as other personal property.

Indeed it is expressly granted (*o*) that it shall not be *assigned in trust* to more than five persons; thus allowing it to be made a trust for the benefit of that number.

There was a trust declared in Cartwright's patent; and no objection was raised to it *on that account.* (*p*)

Proper for a devise.

It may be bequeathed in any manner the pa-

(*n*) 1 Ves. Jun. 129. Ex parte O'Reily.

(*o*) Form of Patent, Appendix. (*p*) 2 Bos. & Pul. 44.

tentee pleases. If he make not a will, it is assets in the hands of his administrator. (*q*)

Licence to use it.

If the patentee does not wish to part wholly with his patent, he may grant *licences* to persons to *use* it. And it would appear, in the event of an infringement of the patent-right, that all who have licences may maintain actions for damages. (*r*)

3. Enlargement of the patent right by parliament.

The transcendent power of parliament has, however, often been called forth to give a better effect to the right of patentees for inventions, by *extending the term* of its duration, or *increasing the number* of persons that may, at any one time, become interested in a patent.

The extension of the term is made, when it appears that the application, labour, and expense, of the patentee have been so great, that he has not been able to receive, within the time allowed by his patent, an adequate reward from his great undertaking. Other causes have had their due effect upon parliament:—as when the patentee has discovered some improvements which have been attended with great expense, and by which the machine is become much more profitable to him, and beneficial to the community; or where, dying, he has left his family unable to proceed with the manufacture without that indulgence.

And the legislature will also lend its assistance when the undertaking is of such a magnitude

(*q*) 1 Ves. Jun. 118. and see 3 B. & P. 573.

(*r*) Ante 49. See George v. B. Wackerback and another, Repertory of Arts, N.S. Vol. XXVII, 252.

that five persons are unable by themselves to reap any benefit from the grant, by making an act of parliament, giving power to the patentee to assign the patent-right to any number of persons. The interest in Koops's patent was, by an act of parliament made capable of being divided into *sixty* shares. (*s*)

In almost every instance in which the legislature has interfered, a proviso is introduced, that every objection in law competent against the patent shall be of the same force against the act to all intents and purposes. (*t*) But even if that clause is not introduced, yet the patentee, as to the *validity* of the patent, or his *title* to it, is in the same situation as though the act had never been passed. (*u*)

II. Property in Discoveries not protected by a Patent.

Some persons, alarmed at the frauds frequently practised upon inventors, and strongly impressed with the difficulty of making a sufficient specification, and perhaps suspicious of the manner in which the patent may be construed, have preferred to keep their discoveries secret, and to use or vend their manufacture without the protection of a patent. No one, however, can have a property—an exclusive right—in

(*s*) 3 Bos. and Pull. 565.
(*t*) Ante 152. n.
(*u*) 3 Bos. and Pull. 578.

such a subject. (*v*) Injury and remedy are inseparable in law: but as there is not any rule of law, even in equity, to punish or to prevent any one from making use of such manufactures, we may conclude that such discoverers do not sustain an *injury* to any legal property.

Of course, the case is altered, when any *fraud* is practised in getting at the secret. One

(*v*) Canham *v.* Jones, 2 Ves. & Beam. 221; (and see Williams *v.* Williams, 3 Meriv. 157.) The bill stated that Isaac Swainson was, for upwards of thirty years before his death, the sole proprietor of the secret or recipe for preparing the medicine called Velno's vegetable syrup, which he had purchased for 600*l.*, and by his will bequeathed to the plaintiff; who, since his decease, continued to make the same preparation as specified by the recipe; and made great profit; and would have made much greater, if the defendant had not imposed on the public a spurious composition under the same name. Demurrer.

Sir Thomas Plumer, V. C. This bill proceeds upon an erroneous notion of exclusive property now subsisting in this medicine; which Swainson having purchased, had a right to dispose of by his will; and, as it is contended, to give the plaintiff the exclusive right of sale. If this claim of monopoly can be maintained without any limitation of time, it is a much better right than that of a patentee. But the violation with which the defendant is charged does not fall within the cases in which the court has restrained a fraudulent attempt by one man to invade another's property; to appropriate the benefit of a valuable interest in the nature of good will, consisting in the character of his trade or production, established by individual merit; the other representing himself to be the same person, and his trade or production the same, as in Hogg *v.* Kirby, 8 Ves. 215. combining imposition on the public with injury to the individual. Demurrer allowed.

person must not use the name of another, nor represent his article to be the same as the one thus secretly made; or he will be liable to answer for damages in an action at law; or be restrained from using it by an injunction. (x)

Nor will the court prevent a person from imparting the secret of an invention which had been the subject of a patent long since expired; the specification of which was so incorrect, that the discovery still remained undisclosed. (y)

But a man has such a property in his invention before a patent is procured, that if he agree to inform another person of the secret, who binds himself in a penalty not to avail himself, or take any undue advantage of the communication; he may maintain an action for the breach of that contract. (z)

(x) Yovatt *v.* Arnyard, 1 Jac. & Walk. 394. And the Case of Day & Martin, E. T. June 1821, before Abbott, C. J.

(y) Newberry *v.* James, 2 Mer. 446.

(z) Smith *v.* Dickenson, 3 Bos. & Pul. 630. post.

CHAP. VIII.

Of the Infringement of a Patent, and the Remedies for that Injury.

THE patentee having ascertained the nature of the property he has acquired by the grant, the next topic for investigation will be the conduct of persons, when it is considered as an *infringement* of that right, and the necessary *remedies* which the law has prescribed for the injury.

I. What amounts to an Infringement.

Whether the act of the defendant is really an infringement of the grant is a question for the jury. (*a*)

The law cannot be evaded by fraud or deceit of any kind. It has been decided that the making or using of any the *least part* of a manufacture (*b*) is an infringement. If the article manufactured by the defendant be of a different *form*, (*c*) or made with slight and immaterial

(*a*) 2 Hen. Bla. 480.

(*b*) In Manton *v.* Manton, Dav. Pat. Cas. 348. the alleged infringement consisted in making a perforation in the hammer of a gun, in a direction a little different to that in the patent article.

(*c*) 2 Hen. Bla. 477. and see Bovill *v.* Moore, Dav. Pat. Cas. 405. *Gibbs*, C. J. I remember that that was the ex-

additions, or by the substitution of things somewhat different from those used by the patentee; yet, if the manufactures are really and substantially the same, the patentee is entitled to a remedy at law. (*d*)

pedient used by a man in Cornwall, who endeavoured to pirate the steam engine. He produced an engine, which, on the first view of it, had not the least resemblance to Boulton and Watt's. Where you looked for the head, you found the feet; and where you looked for the feet you found the head. But it turned out that he had taken the principle of Boulton and Watt:—it acted as well one way as the other; but if you set it upright, it was exactly Boulton and Watts' engine.

(*d*) See the elaborate opinion of the court in Hill *v.* Thomson, 2 B. Moore, 447. *Dallas*, J. Whether the patent be valid or not signifies nothing in this particular case, if the defendants have not worked according to the specification. To prove the infringement of the patent one witness only was called; this part of the case therefore depends entirely upon his testimony; and, before adverting to the evidence in question, it will be necessary to look at the patent, as far as it relates to this part of the subject. It has not been contended that it is a patent introducing into use any one of the articles mentioned therein, as singly and separately taken; nor could it be so contended, for the patent itself shews the contrary; and if it had been a patent of such a description, it would have been impossible to support it; for slags, as well as mine rubbish, and lime, had undoubtedly been made use of before it was passed. But it is said, it is a patent for combinations and proportions, producing an effect altogether new, by a mode and process, or series of processes, unknown before; or, to adopt the language made use of at the bar, it is a patent for a combination of processes altogether new, leading to one end;—and this being the nature of the alleged discovery, any use made of any of the ingredients singly, or used in partial combination, omitting some, and making use of all or some, in proportions essen-

If there are some articles well specified, and others that are only mentioned in the specification, without any intention of their being considered as perfect instruments, but merely as speculative matter, as was done by Mr. Watt in his patent, (*e*) although the latter cannot be protected, and may consequently be infringed with impunity; yet an infringement of the former parts or articles cannot be excused.

Even if the improvement of a manufacture be so great and important that the *substratum* is insignificant in comparison with it, still no claim can be laid to the whole. The addition may be made and vended by itself. (*f*)

II. Remedy at Common Law.

It is a wise maxim in our law that there is not an injury without its concomitant remedy. Formerly, patent-rights were investigated in the Star Chamber: (g) but, by the statute of Monopolies, 21 Jac. 1. c. 3. s. 5. the jurisdiction of that court was taken away, and the common law courts have since had cognizance of the subject. The remedy is by action on the case, and the plaintiff may recover damages for the injury he has sustained. (*h*) The defendant may also be restrained by injunction from using the invention, (*i*) and the plaintiff may have an account of the profits made by the defendant. (*k*) The plaintiff may also have a writ of scire facias to repeal the patent, (*l*) and the defendant may plead that the patent was obtained by false suggestion. (*m*)

The question of infringement is generally one of fact, and not of law. (*n*) The jury must determine whether the machine used by the defendant is substantially the same as that described in the specification, although it may differ in some trifling particulars, or in some immaterial circumstances. (*o*) If the machine used by the defendant be substantially different, and yet producing a result equally, if not more beneficial, will constitute an infringement of the patent. It is scarcely necessary here to observe, that a slight departure from the specification for the purpose of invasion only would of course be a fraud upon the patent; and therefore the question will be, whether the mode of working by the defendants has or has not been *essentially or substantially different.*

(*e*) Ante 116. It has been doubted whether the insertion of imperfect articles ought not to invalidate the grant. See ante.

(*f*) 1 Ves. & Beam, 67. and see ante 72 and 126.

(g) 3 Inst. 183.

polies,(*h*) it was enacted "that monopolies, letters patent, &c., and their force and validity, ought to be, and shall be, examined, heard, tried, and determined, by and according to the *common laws* of this realm, and not otherwise." Hence the remedies for this injury are

An *action at law* for damages; or

Proceedings in Equity for an injunction and account.

When the king has granted a patent for the sole use of any invention, the common law gives a right of action against every person who infringes it. (*i*) It is in form an action on the case. (*j*)

Although the patentee has been defeated in one action, still he may maintain fresh suits against other persons: as was done by Mr. Arkwright (*k*) and by Mr. Watt. For actions

(*h*) 21 Jac. I. c. 3. s. 2.

(*i*) Buller, N. P. 76. (*j*) 1 Chit. Pl. 142.

(*k*) Arkwright *v.* Nightingale, Dav. Pat. Cas. 55. *Lord Loughborough.* It has been said that many persons have acted upon an idea that Mr. Arkwright had no right, he having failed to establish it when this cause underwent an examination in another place, in which the event was unfavourable to him. If the question at present were what damages Mr. Arkwright should have received for the invading that right, I would have allowed the parties to have gone into evidence to shew to what extent persons had acted upon the faith of the former verdict: but the question now is upon the mere right; and if the result of this case is in favour of the plaintiff, the verdict will be with one shilling damages. A future invasion of this right would entitle Mr. Arkwright to an action for damages: but in the present case they are not asked.

on the case will lie, notwithstanding the patent is really void, until it has been cancelled. (*l*)

1. The pleadings. The parties.

If the patent has been assigned, the assignee may sue alone, or he and the patentee may join in the action. (*m*)

The declaration.

When a grant by letters patent is pleaded, it ought to be shewn under *what* seal it is made;(*n*) and therefore, in the declaration for an infringement, the patent must be stated to be under the *great seal.* (*o*)

A profert is made of the letters patent, which are recited: but oyer of them is never allowed, (*p*) because they are matters of record.

Venue.

The venue in this action must always be laid in the county of Middlesex. In *Cameron* v. *Gray*, (*q*) a motion was made to change the venue from Middlesex to Northampton. The rule was refused, because the patent, which is the substratum of the action, is tested at Westminster.

Plea, &c.

The usual plea is *not guilty*; which, putting in issue the whole of the declaration, forces the plaintiff to support the grant in all its parts, and gives to the defendant the greatest latitude for evidence. (*r*)

(*l*) 2 Ventr. 344. Dav. Pat. Cas. 55.

(*m*) 2 Wils. 423. 2 Saund. 115, 6. a.

(*n*) 2 Inst. 555, 1 Vent. 222. 9 Co. Rep. 18.

(*o*) For precedents of declarations see the record at full length in King *v.* Arkwright, printed case. And see Boulton *v.* Bull, 2 Hen. Bla. 463. Dav. Pat. Cas. 162. 2 Chit. Pl. 355. 8 Went. Pl. 431.

(*p*) Rex *v.* Amery, 1 T. R. 149. 1 Saund. 96. a. 1.

(*q*) 6 T. R. 363. and see Rex *v.* Haine, 2 Cox 235.

(*r*) If the patent be void in itself, *it is said* that *non con-*

Demurrer. The defendant, for any thing on the face of the declaration, by which it clearly appears that the patent is void, may *demur generally*; as if the grant be of a thing for which a patent ought not to have been obtained.

2. Evidence. By plaintiff to support the patent.

By the common law (*t*) a *constat* or *inspeximus* of the king's letters patent could not be shewn forth in court, but the letters patent themselves must have been produced: but by statute 3 and 4 Ed. VI. c. 4., explained by stat. 13 Eliz. c. 6., "patentees, and persons claiming under them, may make title in pleading, by shewing forth an exemplification of the letters patent, as if the letters patent themselves were pleaded and shewn forth;" and now they are to be given in evidence in the same manner as if they were pleaded.

It is necessary in this, as in every other case, that the plaintiff should be prepared to prove the material allegations in his declaration;—that the invention in all the parts to which the patent applies is *new* and *useful*; (*u*)—that he is the *inventor*, and that the *specification* is sufficient in law. "I do not agree," said Mr. Justice *Buller*, (*x*) "with the counsel who have

cessit may be pleaded to it without a *scire facias* to repeal it. 2 Roll. Abr. 191, (s.) pl. 2. 2 W. Saunders, 72. q.

(*t*) Olive *v.* Gwyn, Hardr. 119. Phil. on Evid. 498. and see 5 Co. 53. Bro. Surrender 51. Co. Lit. 225, b. Dyer 167-179. Att. Gen. *v.* Taylor, Prec. Ch. 59.

(*u*) Boville *v.* Moore, Dav. Pat. Cas. 399. Manton *v.* Manton, *id.* 348, 9.

(*x*) Turner *v.* Winter, 1 T. R. 606, 7. and see 2 B. Moore, 250.

argued against the rule, in saying that it was not necessary for the plaintiff to give any evidence to shew what the invention was, and that the proof, that the specification, was improper, lay on the defendant; for I hold that a plaintiff must give some evidence to shew what his invention was, unless the other side admit that it has been tried and succeeds. But wherever the patentee brings an action on his patent, if the novelty or effect of the invention be disputed, he must shew in what his invention consists, and that he produced the effect proposed by the patent in the manner specified. Slight evidence of this on his part is sufficient, and it is then incumbent on the defendant to falsify the specification."

It is good *prima facie* evidence that experienced and intelligent men, versed in the art or mystery in which the invention has been made, have never before heard of it; (*y*) yet the novelty of the invention cannot be thus proved if one witness is produced who states that he has used it. (*z*)

Evidence of the infringement.

After the plaintiff has thus supported his patent, he is required to prove that the defendant has infringed it, to whom it will be open to shew that he has not worked according to the specification. (*a*)

What amounts to an infringement has been

(*y*) Manton *v.* Manton, Dav. Pat. Cas. 350.

(*z*) Ante, p. 62.; and see King *v.* Arkwright, Printed Case, 183. Dav. Pat. Cas. 135.

(*a*) Hill *v.* Thompson, 2 B. Moore, 447, and ante, 174. n.

considered, (*b*) from which it is easy to determine what evidence is necessary in each particular case.

Proof by inspection of manufactures.

In several instances it has been very difficult to prove the infringement, especially where it is to be ascertained by the examination of the manufactures. It is possible that two persons might make articles equally good and cheap by machines constructed upon different principles; but it is hardly probable that the manufactures would agree in all their parts.

It was observed to the jury by Lord Ellenborough, in Huddart *v.* Grimshaw, (*c*) after it was proved that the defendant would not allow his manufactory to be inspected to furnish evidence for the cause,—"When one sees the rope of the defendant agree in all its qualities with a rope actually made upon the plaintiff's plan, it is *prima facie* evidence, till the contrary is shewn, that it was made upon his method; and therefore, as against him it should seem, supposing the patent in full force and a valid one, it is reasonable fair evidence, in the absence of contrary evidence, to presume that it was made in that way. There is certainly great weight in the observation of the counsel,—Am I to come forward and divulge my mode of making rope, and from which I reap a great advantage? Whether it was necessary to have gone that length in proof does not appear. Persons might have been called upon

(*b*) Ante, 173.

(*c*) Dav. Pat. Cas. 288, 289.

who might not be privy to the making of strands in the small room: however, whether it puts him to inconvenience or not, the question is, whether it is *prima facie* probable presumptive evidence, in the absence of evidence on the other side; and it is a competent ground for you, if you think the facts bear you out, to form that conclusion upon."

Evidence by the defendant.

When the plaintiff has closed his case, the defendant may give any evidence which will shew that the grant is invalid, as that the patentee was not the inventor, or that the subject is not a proper object for a patent, or that the specificatiou is incorrect. Or he may otherwise shew that the plaintiff has no right to sue.

Intention of patentee to conceal invention.

The question generally arises on the specification. It is often attempted to be shewn that it was the intention of the patentee, at the time he made the specification, to conceal the invention.

It was proved that Mr. Arkwright said, that his description would operate as a specification, but that he had made it as obscure as the nature of the subject would allow; (*d*) and also that he had, in a petition to the House of Commons, admitted that he had not properly specified how the machine was to be made, on purpose that foreigners might not use it. (*e*)

A witness may be asked whether the invention might not with ease have been clearly described,

(*d*) King *v.* Arkwright, Printed Case, 173. Dav. Pat. Cas. 108.

(*e*) *Id.* Printed Case, 176. Dav. Pat. Cas. 115, 116.

and whether he does not think that the description is *very* obscure. (*f*)

To prevent the miscarriage, which will almost always take place, in the endeavour to prove an infringement by comparison of the manufactures, it is prudent first to apply to a court of equity to appoint persons to inspect the manufactories, as was done in several cases. (*g*)

Trial by comparing specification with patent.

The validity of the patent may, however, be questioned upon the putting in and reading of the specification. If they do not support each other: if the description in the latter be palpably at variance with the title of the thing claimed by the former instrument, the plaintiff must fail. In the King *v.* Wheeler (*h*) Abbott, C. J., did not leave any point to the jury, because he conceived that on the face of the record it was clear that the patent was void, whatever evidence might be produced.

New trial in law.

The patentee must be very careful in collecting his evidence; for, after a verdict has once been given, the Court is very anxious not to put the parties to further expense by sending them back to a new trial.

A rule *nisi* for a new trial was refused to Mr. Arkwright, (*i*) although he stated in his affidavits that he did not expect the *originality* of his invention to be attacked; that he was taken by surprise; and that on a future occasion he

(*f*) *Id.* Printed Case, 96.
(*g*) Remedies in Equity, p. 187.
(*h*) 2 Barn. and Ald. 345.
(*i*) Page 188 of the Printed Case. Dav. Pat. Cas. 142.

would adduce evidence to contradict or explain the evidence given against him. That he did not conceive that the point, that some of the articles were immaterial, and inserted only for the purpose of causing misconceptions, would have been litigated.

If judgment be given for the patentee, he may of course bring other actions against every person who has infringed his right. If it be against him, still he may proceed in fresh suits, for no one is at liberty to use and vend the manufacture without subjecting himself to be sued, until the letters patent have been *cancelled.* (*j*) Judgment.

III. Remedy in Equity.

The jurisdiction exercised by the Court of Chancery over patents for inventions is merely in aid of the common law; from which, by the delay sometimes arising in its proceedings, some injury might be felt by the patentee. This interference is made between the parties in order to give full effect to the provisions of the statute of James; and is never allowed to be called for, but upon the supposition, that the property in the patent, generally inferred from his possession of it, belongs to the applicant, and that he has been fraudulently dealt with by the defendant. (*k*) I. The jurisdiction of a Court of Chancery.

The great advantage gained by commencing

(*j*) 2 Ventr. 344. See Arkwright *v.* Nightingale, Dav. Pat. Cas. 55.

(*k*) Boulton *v.* Bull, 3 Ves. 140; and see 14 Ves. 132. 6 Ves. 607. 1 Maddox. Chan. p. 113. and post. Book III. c. 8.

proceedings in equity (*l*) for an infringement, before recourse is had to the common law courts, arises from the power of that court immediately to restrain the party from any further use of the patent-right, and to order him to give an account of his profits.

The grounds on which injunctions are granted.

"The principle," said Lord Eldon, (*m*) "upon which the Court acts in cases of this description, is the following:—where a patent has been granted, and an exclusive possession of some duration under it, the Court will interpose its *injunction* without putting the party previously to establish the validity of his patent by an action at law. But where the patent is but of yesterday, and upon an application being made for an injunction it is endeavoured to be shewn, in opposition to it, that there is no good specification, or otherwise that the patent ought not to have been granted, the Court will not, from its own notions respecting the matter in dispute, act upon the presumed validity or invalidity of the patent, without the right having been ascertained by a previous trial; but will send the patentee to law, and oblige him to establish the validity of his patent in a court of law. It will, however, in the mean time, grant him the benefit of an injunction."

Although possession has been distinctly proved; yet, if there be a strong doubt whether the speci-

(*l*) Mitford's Chanc. Plead. 124.

(*m*) Hill *v.* Thompson, 3 Meriv. 624. and see Prodgers *v.* Phrazier, 1 Vern. 137. 2 Atk. 286. 391. 485. 1 Vern. 120. *id.* 275. Amb. 406.

fication is not bad in law, the court will *brevi manu* interfere, and put an end to the injunction (*n*).

2. The practice. Filing a bill.

Of the manner of filing the bill for relief, which in general prays for an injunction and an account, with the method of issuing the subpœna, its service, &c. reference must be made generally to the books of practice (*o*), observing that for each distinct invasion of the patent there must be separate bills filed (*p*).

An injunction.

The remedy sought in equity is for INSTANT RELIEF (*q*). It is usual to move for the injunction upon filing the bill before the answer is put in. It is generally granted upon the *ex parte* affidavits. The defendant is commanded *either* to refrain in future from using or vending the manufacture, or to keep an account of the proceeds, until it can be determined whether the patent is valid, and whether it has been infringed by the defendant.

The affidavits.

In Hill *v.* Thompson (*r*), Lord Eldon said, "he doubted whether the injunction ought to have been granted in the first instance, unless the *affidavits* had stated more particularly in what the alleged infringement of the patent consisted; and that it should have been shewn to be, by working in the *precise proportions* men-

(*n*) Harmer *v.* Playne, 14 Ves. 132. Grierson *v.* Eyre, 9 Ves. 341.

(*o*) 2 Maddox. Chan. ch. 7. and Eden on Injunctions, ch. 15.

(*p*) Dilly *v.* Doig, 2 Ves. jun. 486.

(*q*) See *ex parte* O'Reilly, 1 Ves. jun. 112., and see 1 Ves. jun. 430. 2 Ves. jun. 486. 3 Ves. 141. 6 Ves. 689. 14 Ves. 130. 1 Ves. and Beam. 67.

(*r*) 3 Meriv. 624. And see Hill *v.* Wilkinson, Rep. of Arts, Vol. XXX. p. 382.

tioned in the specification, as *being* of the essence of the invention. That when, in future, an injunction is applied for *ex parte*, on the ground of a violation of a right to an invention, secured by patent, it must be understood, that it is incumbent on the party making the application to swear, at the time of making it, as to his belief that he is the original inventor; for although, when he obtained his patent, he might very honestly have sworn as to his belief of such being the fact, yet circumstances may have subsequently intervened, or information been communicated, sufficient to convince *him* that it was not his own original invention, and that he was under a mistake when he made his previous declaration to that effect."

The answer.

In the usual time the defendant must bring in his answer to the bill, which generally contains a statement of facts, verified by affidavit, that shew, either that the patent is not a good one, or that the defendant has not infringed it.

Plea.

The defendant may plead any matters, as in other cases in equity, or he may demur. A demurrer, alleging that the right to the patent had not been previously established at law, was immediately overruled (*s*).

The hearing.

When the answer is read, the plaintiff may move to make the *injunction perpetual*, if one has previously been obtained; or, on the other hand, the defendant may move to have it dissolved. (*t*) But if, when the bill was filed, an in-

(*s*) Hicks *v.* Raincock, 2 Dick. 647.

(*t*) See Gibbs *v.* Cole, 3 P. W. 355.

junction was denied, it may now be moved for (*u*). The court will exercise its own discretion, and, in continuing it, will perhaps direct *an issue at law* to try the validity of the patent; or, in dissolving it, will leave the party to bring an action for the supposed infringement. In the latter instance the court will, in general, order that the party against whom the application is made shall still keep an account pending the litigation (*v*): but sometimes, when the affidavits are very contradictory, it will dismiss the suit altogether.

5. Feigned issue at law.

It is unnecessary to go into the manner of making the record of a *feigned issue* directed by the Court of Chancery (*w*).

Evidence.

The evidence to be given at the trial is nearly the same as if the suit had been originally commenced at the common law court (*x*).

The Lord Chancellor will place the parties under such conditions as will meet the equity of the case. He will order admissions to be made of facts, which, though true, could not easily be proved. If the infringement is done secretly, he will order the *manufactory to be inspected* (*y*).

New trial.

When a verdict has been given, and the plaintiff moves to revive or to make an injunction per-

(*u*) 1 Ves. jun. 430.

(*v*) 3 Meriv. 628. And see 1 Stark. N. P. C. 205. Wood v. Cockerell, Aug. 1819. Rep. of Arts, N. S. Vol. XXXV. p. 254.

(*w*) See Tidd's Practice, p. 750.

(*x*) Ante, 178—182.

(*y*) See Huddart *v.* Grimshaw, Dav. Pat. Cas. 265. and Boville *v.* Moore, *id.* 361. and see ante, 182.

petual; or the defendant having been successful moves to dissolve it, either motion may be opposed on the ground that the verdict is bad, and that it is his intention to move for a new trial.

If the Lord Chancellor thinks that, in point of law, he is not so well satisfied with the patent as to take it for granted that no argument can prevail upon a court of law to let the question be reconsidered in a new trial, then he will not revive the injunction, but direct the account to be kept until that motion has been made. But if he is convinced that a court of law must and will consider the verdict of the jury as final and conclusive, then he will revive the injunction, and make it perpetual. (*a*)

In one instance (*b*) in which the judges of the court of common law were equally divided in opinion as to the validity of the grant, the Court of Chancery directed a new trial to be had, but would not impose any terms on the patentee, nor dissolve the injunction in the mean time.

Costs. At the same time the party that is successful may move for the costs and expenses which he has sustained by an allegation of right which could not be supported. (*c*)

General observations. Thus it appears that, before a suit is commenced at law, it is often preferable to take proceedings in equity. If the patent is really good, the injunction prevents any further in-

(*a*) 3 Meriv. 631.
(*b*) Boulton *v.* Bull, 3 Ves. 141.
(*c*) 3 Meriv. 629. and see Tidd's Prac. 1001.

fringement; and, if it be a doubtful one, the defendant will be restrained from using it until its validity has been examined. The order for an account puts the patentee in a better situation than if he had to depend upon a jury for damages; and, if he wants any indulgence, any alleviation from the strict rules of law as to evidence, &c. it becomes absolutely necessary to sue first in chancery.

CHAP. IX.

Of Letters Patent when void, and the manner of having them Cancelled.

Although the infringement of an invalid grant may, by shewing its defects, be justified in an action at law, or in an answer to a bill in equity; and the Courts may declare, that, in their opinion, the patent is voidable; yet, until it is actually cancelled, the patentee may go on against different parties, maintaining proceedings upon it in law and equity, (*a*) although the jury, under such circumstances, would of course give their verdict for the defendant. And the reason assigned is, that the patent must for the honour of the grantor,—the King,—be protected; until it is found by inquisition at law, that the grant either ought

(*a*) Ante, 177. 2 Ventr. 344. and see Attorney-General v. Vernon, 1 Vern. 277. 370. 2 Chan. Rep. 353.

not to have been made, or cannot with propriety be enforced. It is, therefore, necessary that the public should be provided with means of destroying a bad patent. This object is effected by a *writ of scire facias.*

All the instances in which patents are considered as void will first be enumerated, and then those things will be stated which do *not* vitiate patents; and afterwards the *proceedings* by *scire facias* will be investigated. (*b*)

I. What renders a Patent Void.

1. What makes all kinds of patents void.

The construction, which in law is put upon royal grants in general, was considered in a former Chapter. And it was there pointed out, as far as the law of patents in general was necessary to elucidate that of patents for inventions, how all kinds of grants were rendered void for uncertainty, misrecitals, and false suggestions. (*c*)

2. Patent for invention void generally under the statute.

A patent may be void, although the invention be new, either altogether, or for something in particular.

It is expressly provided by the statute of Monopolies, (*d*) that letters patent shall be void altogether, or generally, if they are—

1. Contrary to law; or
2. Mischievous to the state.

(*b*) See George *v.* B. Wackerback and Another, Repertory of Arts, N. S. Vol. XXVII. p. 252.

(*c*) Ante, Chap. VI. and see Chit. jun. Prerog. of Crown, 391—399.

(*d*) 21 Jac. I. c. 3. s. 6.

The mischief contemplated may, it appears, be done,

1. By their raising the price of commodities at home.
2. Or being hurtful of trade.
3. Or being generally inconvenient.

Contrary to law.

If an inventor obtain a patent for a proper object, and give a correct specification, and it be otherwise valid; yet, if it produce the baneful effects by which Lord Coke distinguishes monopolies, as described in Book I. of this Treatise, it will be contrary to law. (*e*) It will then be void for being a monopoly. It is almost impossible, that, at the present day, a patent, professing to be for a new invention, (which would be invalid on the grounds that grants were formerly declared to be monopolies,) could be *obtained*; and therefore it is unnecessary to add more on that subject.

Mischievous to the state, &c.

It has been shewn that by the common law, and the statute of James, all monopolies are illegal. (*f*) According to the letter of the statute, the exception of patents for inventions, from the consequences attendant on monopolies, goes only to the *sole working* and *making*; the sole buying, selling, and using, continue under the general prohibition: and with apparent good reason, for the exclusive privilege of *buying*, selling, and using, could hardly be brought

(*e*) 3 Inst. ch. 85. and see the case of Darcy *v.* Allen, 44 Eliz. 11 Co. Rep. 85. Noy. Rep. 179.

(*f*) Ante, p. 12.

within the qualification of not being contrary to law, and mischievous to the state. (g)

Raising the price of commodities at home.

That injurious effect of monopolies in general, of raising the price of commodities at home, will seldom be produced by the limited monopolies of grants for inventions; for one of the objects of almost every patent is to diminish the price of the manufacture; or, by furnishing a better article, to render it, at the same nominal price, of more intrinsic value.

Being hurtful of trade.

One of the issues (*h*) to be tried on the *scire*

(g) 2 Hen. Bla. 492. by Eyre, C. J.

(*h*) K. *v.* Arkwright, Printed Case, p. 30. Mr. Justice *Buller*.—Mr. *Bearcroft*, what do you understand to be the meaning of the first issue? Mr. *Bearcroft*.—The evidence on our side will be to shew that the grant is prejudicial and inconvenient to his majesty's subjects in general. I mean to say, there is great danger from such a grant as this, that it will go into foreign countries, if the monopoly is permitted. Your lordship will permit me to state it. I mean to say, it is of such a sort that it may be taken into other countries without all doubt; and if you can only work it here, loaded with a monopoly, and in another country it may be worked without, it will be a great danger to the whole trade, as applied to all the cotton manufacturers. Mr. Justice *Buller*.—I dont see, with respect to that issue, you can be permitted to give any evidence at all: it is merely a consequential issue; it is a question of law, whether it is prejudicial or not? When the facts are stated, therefore, if you thought it necessary to attack the patent upon those general words of the Act of Parliament, you should have stated it in what respect it was so then,—the fact would be put in issue. This is such a surprise upon the party, he can never come prepared to answer it. Mr. *Lee*.—It strikes me the prejudice must be, in the nature of it, a matter of fact; and your lordship sees it is a condition annexed to every patent by the terms of the Act

facias to repeal Mr. Arkwright's patent was, whether the grant was not prejudicial and inconvenient to the king's subjects in general. It appeared, from the opening speech of the counsel, of Parliament. Now there is no making any sense, use, or application of that, but upon some idea the patent is to stand or fall upon the ascertainment of that fact. My lord, if the patent is to be void, if proved prejudicial to the public; and good, if no such prejudice arises from it, in the nature of it; then *ex vi termini* there must be some mode of ascertaining it. Mr. Justice *Buller*.—That is no answer to my question, Mr. *Lee;* my idea is, if the patent is void as a question of law, if prejudicial or hurtful to the country, you can only take issue upon some fact that makes it so; therefore your issue should not be in general terms prejudicial to the country: but you should state how, and then the party comes prepared to answer it. Mr. *Bearcroft*.—Then, according to your lordship's observation, it is an immaterial issue; and we should state the fact, in order to give notice to the party. Mr. Justice *Buller*.—Upon that issue, upon this record I must take it thus:—the other three are precise pointed issues; but the first is of consequence to stand or fall as they are proved. Mr. *Lee*.—Suppose this principle is assumed, and I conceive it may be fairly assumed, there is no one thing of equal importance in any country to the employing of the inhabitants that compose it. I will suppose any invention, and you have a right to put the most extravagant supposition upon earth. I will conceive all that manufactory which has been for ages carried on by men, women, and children, and the sustenance of them all, to be performed by an invention that does not admit of any human hands at all. It is possible, in the nature of the thing, all those spindles might, for aught I know, be worked by a turnspit dog, and afford no subsistence at all to any human being. I should conceive such a thing upon proof would be directly a public inconvenience, and destructive of the happiness of mankind. And yet it would not be necessary to shew that was the nature of it: but only

sel, that he intended to give evidence to shew that the patent would be hurtful to trade by loading the cotton manufactories of this country with a monopoly. Mr. Justice Buller would not allow him to call any witnesses to prove it, upon the ground that it was merely a consequential issue, and that it was a *question of law*, whether the patent was or was not prejudicial to the community.

The observations of that very learned judge were founded on the circumstance, that no facts shewing the inconvenience were stated in the record to be proved. The defendant was not able to learn by the pleadings from whence the supposed inconvenience arose. Such an investigation would be a surprise upon him. He could not possibly come prepared with evidence to rebut an undefined accusation.

Generally inconvenient.

A question of inconvenience arose in an early case, (*k*) whether Mr. Arkwright should obtain

to state that. Mr. Justice *Buller*.—Then you should state the fact upon record. Then he knows what he comes to answer. Whether you attack it upon one ground or the other, as to the inconvenience to thep ublic, it is impossible for a man to come to answer that.

(*k*) Arkwright *v.* Nightingale, Dav. Pat. Cas. 55. Lord *Loughborough*.—It is said, it is highly expedient for the public that this patent, having been so long in public use after Mr. Arkwright had failed in that trial, should continue to be open: but nothing could be more essentially mischievous than that a question of property between A. and B. should ever be permitted to be decided upon considerations of public convenience or expediency. The only question that can be agitated in Westminster Hall is, which of the two parties in law or justice ought to recover.

a verdict after having submitted upwards of three years to a nonsuit on a former trial, inasmuch as many persons had, in consequence of his apparent abandonment of the patent, laid out great sums of money in constructing his machine. Such submission merely prevented him from obtaining damages, because the patent still remained uncancelled.

Hence it is evident, that if an issue were joined on certain facts stated in the record of *scire facias*, which shewed that the patent had a tendency to produce any of the bad effects, of being contrary to law, hurtful to trade, or generally inconvenient, such issue would be capable of trial; and the patent might on that account be declared to be void.

Grant void in particular under the statute.

That the grant is invalid when the patentee is not the *inventor*, (*l*) when its *object* is not a manufacture, (*m*) and when the *specification* is not sufficiently correct, (*n*) has already been shewn. If the patent has not been *obtained* (*o*) in the usual mode, or will not bear the *construction* (*p*) that must necessarily be put upon it, it is also void. *Any one* of these circumstances appearing in evidence will be the means of destroying the patent; and it is not necessary to prove more than one objection or cause for cancelling the grant. (*q*)

Lord *Thurlow* declared that letters patent, even if they were granted in fee, could not stand half an hour, if *abused*, 1 Ves. jun. 118.

(*l*) Chap. II. ante, p. 52. (*m*) Chap. III. ante, p. 57.
(*n*) Chap. IV. ante, p. 100. (*o*) Chap. V. ante, p. 136.
(*p*) Chap. VI. ante, p. 153.
(*q*) K. v. Arkwright, Printed Case 187. Dav. Pat. Cas. 141.

II. What things do not vitiate Patents generally.

There are some instances in which mistakes do not vitiate a grant. (*r*)

1. Every false recital in a thing not material will not vitiate the grant, if the king's intention is manifest and apparent.

2. If the king is not deceived in his grant by the false suggestion of the party, but from his own mistake, upon the surmise and information of the party, it will not vitiate or avoid the grant.

3. Although the king is mistaken in point of law, or of matter of fact, if that is not part of the consideration of the grant, it will not avoid it.

III. Proceedings by scire facias to Repeal a Patent.

Upon these grounds letters patent are voidable in themselves, but cannot be treated as of no effect in law until they are cancelled by the legal process of a writ of *scire facias*; in the investigation of which it will be necessary to consider

1. By whom it may be obtained.
2. The necessary instruments.
3. The surrender of the patent.

(*r*) Bull. N. P. 75. and see as to construction, ante, p. 153.

If a patent be void for any of the reasons which have been assigned as sufficient to invalidate the grant, the king, *jure regio*, for the advancement of justice and right, may have a *scire facias* to repeal his own grant. (*s*)

1. By whom obtained.

A Subject also, who is prejudiced by a grant, may of *right* petition the king to use his name for its repeal. All persons are injured by the existence of an illegal patent for an invention, and every one is therefore at liberty to petition for a *scire facias* to have it cancelled. (*t*)

But between subject and subject, if the king has granted a patent to each of them for the same thing, then generally the *first* patentee may have a *scire facias* to repeal the second patent: (*u*) but the second patentee cannot bring a *scire facias* to repeal the first patent, though the better right should be in him. (*x*) In the case of two patents for the same invention, supposing the object to have been simultaneously discovered by the patentees, the second grant would necessarily be bad, even if the first were for some informality rendered invalid. (*y*)

2. The necessary instruments.

The *scire facias* for repealing letters patent is an original writ, and must be founded on some matter of record. (*z*) A patent for an in-

(*s*) 4 Inst. 88. For the law and practice of repealing letters patent by *scire facias*, see Tidd. Prac. 7th edit. 1123. 2 Wms. Saund. 72. p. q. Com. Dig. Patent F. 6. *id.* Pleader.

(*t*) Dyer 276. b. 2 Ventr. 344. 3 Lev. 220. S. C. 6 Mod. 229.

(*u*) 4 Inst. 88. Dy. 197. b. 198. n.

(*x*) Dy. 276. b. 277. a. (*y*) Ante, p. 61, 2.

(*z*) 4 Inst. 88. 3 Lev. 223.

vention is a record in Chancery, and therefore the writ must issue out of that court. It is directed to the sheriff of Middlesex, and made returnable in the petty bag office. (*y*) The record of the proceedings upon the writ is made up in that court, and sent into one of the courts of common law, to be tried. (*z*)

Memorial. The first step to be taken is to present a petition or *memorial* (*a*) to the crown for a *scire facias*. The next is to obtain the king's *warrant* to sue; (*b*) which is directed to the Attorney General, who thereupon grants his *fiat*. (*c*)

Summons. A summons is then sent to the defendant; which informs him that this writ has been issued against him, and warns him to appear to it. (*d*)

The *scire facias* in *form* recites the patent, and states the grounds upon which it is meant to be impeached; as that the patentee was not the first and true inventor, but that it had been previously invented or used by others, (*e*) &c.

Plea. After the defendant has appeared, he may plead either in abatement or in bar. The most usual defence is the *general issue* to force the prosecutor to prove all the allegations in the writ.

Demurrer If the matter be insufficient in law, upon the

(*y*) Rex v. Haine, 2 Cox 235. and see 3 Lev. 223. 6 Mod. 229. and ante p. 177.

(*z*) See 21 Jac. 1. c. 3. s. 6.

(*a*) 2 Rich. Prac. C. P. 391. (*b*) Id. 392.

(*c*) Id. 395. (*d*) See Tidd's Pract. 1158-1172.

(*e*) For precedents, see the printed account of Mr. Arkwright's patent, where the whole record is set out; and Tidd's Pract. Appendix, chap. XLI. § 6. Lil. Entr. 411. 2 Rich. Pr. C. P. 395.

face of the proceedings, to support the writ, the defendant may demur. (*f*)

If there be a demurrer to part and issue on the residue, the whole record is sent by the Lord Chancellor to the court of common law; and judgment is given there upon the demurrer as well as upon the issue. (*g*)

Judgment by default.

After the defendant has been warned, and *nihil* twice returned, judgment for annulling the patent may be taken by *default*. (*h*) It is obtained by *confession*, if no defence is made after the appearance. (*i*)

The record is delivered to the court of common law by the clerk of the petty bag: (*k*) and it is not necessray that the issue should be tried at bar; it may be at *nisi prius*. (*l*) And the court will not now grant trials at bar, unless some particular reasons are assigned.

Evidence.

The *evidence* is similar to that which must be produced upon the trial for an infringement; (*m*) except that the patentee being here the defendant, he does not want any *prima facie* evidence of the novelty of the invention, and the sufficiency of the specification; but he must be prepared strongly to rebut every allegation in the writ.

New trial.

If the patentee can, on an application to the court, shew any thing to induce them to believe

(*f*) 3 Lev. 221. (*g*) Latch. 3. 1 Eq. Cas. Abr. 128.
(*h*) Dyer 198. (*i*) Dyer 197. b.
(*k*) 1 Eq. Cas. Abr. 128, 9. 2 Wms. Saund. 6. (1.)
(*l*) Cro. Car. 313. (*m*) Ante.

that his case has not undergone the fullest investigation, they will grant a *new trial*: (*n*) but otherwise they will deny it.

Judgment

It is said that after trial the record is to be remanded into chancery, and judgment to be there given; yet the practice has been to give the judgment in common law courts.

If the verdict be for the *King*, the court adjudges that the letters patent be revoked, and the inrolment be cancelled; if it be for the *defendant*, then the judgment will be that the letters patent are valid.

This judgment is final. No writ of error, no appeal to another tribunal, can be made. The very nature of the proceedings precludes it.

Costs.

Although the statute 8 and 9 Will. III. c. 11. gives costs in suits upon writs of *scire facias*; yet inasmuch, as this proceeding is criminal, in its nature, that statute does not extend to it; and therefore *costs* are not payable to the crown, prosecutor, or defendant, on this *scire facias*. (*o*)

3. Surrender of the letters patent. Cancelling patent.

When the patent has thus been adjudged to be void, it must be delivered up to be cancelled. For until there is an actual *surrendering*, *cancelling*, or *vacatur*, entered *on* the enrolment of the patent, it is not sufficiently cancelled as to be of no effect in law.

If a patent be granted to two persons jointly for a simultaneous invention, and the Lord Chancellor, making a duplicate, deliver the ori-

(*n*) Ante. (*o*) The King *v.* Miles, 7 T. Rep. 367.

ginal to one and the duplicate to the other; if a surrender of the original patent be made, the grant is vacated, although the duplicate be not surrendered or cancelled; for the duplicate is made by the Chancellor without warrant.

The *surrender* must be enrolled; for it is then only that the patent is vacated. Enrolment.

A certificate should be obtained of the *vacatur* having been entered on the roll. The certificate.

BOOK III.

ON COPYRIGHT.

CHAP. I.

INTRODUCTION.—OF COPYRIGHT IN GENERAL.

THE history of that right by which authors have an exclusive power over the productions of their minds may be given in a few words; for it would be foreign to the plan of this work to enter into a discussion to shew whether that right existed at common law; upon which topic the most learned men have held different opinions.

It may suffice to say, that it was formerly supposed that the author of a book had at common law an unrestricted right to dispose, even after publication, of such productions in any manner he pleased; and that the statute 8 Ann. c. 19. was passed merely to *protect* that right, by subjecting those who encroached upon such literary property to severe penalties.

This doctrine was questioned; and underwent a learned discussion in the court of Common Fleas, in the case of Tonson *v.* Collins: (*a*) but the point was not determined. It was after-

(*a*) 1 Bla. Rep. 301, 321.

wards agitated in the court of King's Bench, (*b*) where three judges, among whom was Lord Mansfield, delivered very elaborate opinions to prove the existence of the right. But Mr. Justice Yates, in a most profound and eloquent opinion, declared that an author had not such a common law right. The same question arose for consideration in the case of Beckett *v.* Donaldson, (*c*) when it was decided without dis-

(*b*) Millar *v.* Taylor, 4 Burr. 2303. (and see 1 Bla. Rep. 675.) This was an action of trespass in the case. The plaintiff stated in his declaration that he was the true and only proprietor of the copy of a book of poems intituled the SEASONS, by James Thomson; and whilst he was sole proprietor of the said copy, caused 2000 books of it to be printed for sale at his own expense, and had a great number of the said 2000 books remaining in his hands for sale. That the defendant Taylor published and exposed for sale, several other books of the like copy, and bearing the same title; which latter books had been injuriously printed by some person or persons without the licence or consent of the plaintiff Miller; the defendant knowing that they had been so injuriously printed by some person or persons, without such licence or consent; by means whereof the plaintiff was deprived of the profit and benefit of the said copy and book, and of the books, printed at his expense as aforesaid, and then remaining in his hands unsold. Not guilty was pleaded, and the jury found a special verdict.

The question was "whether after a voluntary and general publication of an author's work by himself, or by his authority, such author had a *sole and perpetual property* in that work, so as to give him a right to confine every subsequent publication to himself and his assigns for ever." *Lord Mansfield*, C. J. *Willes*, J. *Aston*, J. were of opinion that an author had such right. *Yates*, J. contra.

(*c*) 2 Bro. P. C. 145. and 4 Burr. 2408. In this case,

cussion in favour of the right, in order that it might immediately be carried by writ of Error into the House of Lords: where it was settled that if the right contended for did ever exist, it had been abrogated by the statute of 8 Anne; and that all remedies for any violation of it

which came before the House of Lords, by appeal from the Court of Chancery, the judges were directed to deliver their opinions on the following points.

1. Whether, at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale; and might bring an action against any person who printed, published, and sold the same without his consent?

Upon this question, the judges Nares, Ashhurst, Blackstone, Willes, Aston, Perrot, and Adams; and Smythe, C. B. and De Grey, C. J. of the Common Pleas; delivered separately their opinions against Baron Eyre, that, at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale, and might bring an action against any person who printed, published, and sold the same without his consent.

2. If the author had such right originally,—did the law take it away upon his printing and publishing such a book or literary composition? and might any person afterwards reprint and sell for his own benefit such book or literary composition against the will of the author?

Upon this question, the judges Nares, Ashhurst, Blackstone, Willes, and Aston, and Smythe, C. B., were of opinion against Eyre, Perrot, Adams, and De Grey, C. J. of the Common Pleas, that the law did not take away his right upon printing and publishing such book or literary composition; and that no person might afterwards reprint and sell for his own benefit such book or literary composition against the will of the author.

3. If such an action would have lain at common law—is it taken away by the statute of 8 Ann. c. 19. (See this act).

cease at the expiration of the terms therein mentioned.

Supposing then that no right existed at common law; by the exercise of which an author might prevent others from multiplying the copies of his work, after he had published it: it follows therefore that when a person prints a literary composition—when he publishes a book—he has

And is an author by the said statute precluded from every remedy, except on the foundation of the said statute, and the terms and conditions prescribed thereby?

Upon this third question the judges Eyre, Nares, Perrot, Gould, and Adams, and De Grey, C. J. C. P. delivered their opinions against Ashhurst, Blackstone, Willes, Aston, and Smythe, C. B., *that such action at law is taken away by the* statute 8 Anne; and that an author by the statute is precluded from every remedy, except on the foundation of the said statute, and the terms and conditions prescribed thereby.

4. Whether the author of any literary composition, and his assigns, had the sole right of printing and publishing the same in perpetuity by the common law?

The judges Nares, Ashhurst, Blackstone, Willes, Aston, and Gould, and Smythe, C. B. delivered their opinions (contra Eyre, Perrot, Adams, and De Grey, C. J.) that the author of any literary composition, and his assigns, had the sole right of printing and publishing the same in perpetuity, by the common law.

5. Whether this right is any way impeached, restrained, or taken away, by the stat. of 8 Anne?

The judges Eyre, Nares, Perrot, Gould, and Adams, and De Grey, C. J. C. P. delivered their opinions upon this fifth question against Ashhurst, Blackstone, Willes, and Aston, and Smythe, C. B., that this right is impeached, restrained, and taken away, by the stat. 8 Anne.

The Lord Chancellor (Lord Apsley) seconded Lord Camden's motion to reverse; and the decree of the court of Chancery was reversed accordingly.

now no other property in it than that which is recognized or vested in him by legislative enactments.

The rights conferred by the statute of copyright, 8 Ann. c. 19. have, at different times, been altered and enlarged, by the 41 Geo. III. c. 107. and by the 54 Geo. III. c. 156.

There is other property of a literary kind, differing in some degree from that claimed under the copyright acts, given by several statutes; as in prints and engravings, models and statues.

Hence all literary property or copyright is either founded by construction on the statute of 8 Anne, or given by the positive provisions of other acts of parliament.

This chapter being devoted to general matters, I shall proceed to state

1. The *enactments* of the several acts of parliament.
2. The *construction* which they generally have received.
3. The effect of any *obscenity, libels,* or *immorality,* contained in a work.
4. What in general amounts to a *piracy.*

1. Statute Law, 8 Ann. c. 19.

The excellent statute of 8 Anne (*d*) gave to the author or proprietor of a book, then (10th April 1710) already printed, the sole right of printing it for twenty years. And to the author and his assignee of a work then already com-

(*d*) 8 Anne, c. 19. § 1.

posed but not published, or of one that should thereafter be composed and published, the sole liberty to print and reprint it for the term of fourteen years; to commence from the day of first publishing it, *and no longer*.

It was further provided that if the author should be living at the expiration of that term, then the sole right of disposing of the copies of the work should *continue in him* for another term of fourteen years. (*e*)

15 Geo. III. c. 53. Next in chronological order comes the act of parliament (*f*) giving to each of the Universities a *perpetual* right over the literary property that had been, or might thereafter be, bequeathed to them. This statute will be more particularly noticed under the head of Universities.

41 Geo. III. c. 107. Immediately after the union with Ireland, an act of parliament (*g*) was passed to make the law of copyright in every respect the same all over the united kingdom.

In it were introduced provisions, extending the benefits arising from literary property to authors in Ireland, which are similar to those contained in the statutes of 8 Anne, and 15 Geo. III.

54 Geo. III. c. 156. The most important act of parliament on copyright was passed on the 29th July, 1814, in which all the provisions of the former statutes were consolidated, and at the same time considerable alterations were made in the law.

The time of copyright. By that act the *time* limited for enjoying the

(*e*) 8 Ann. c. 19. § 11.

(*f*) 15 Geo. III. c. 53. and see post, Chap. VII.

(*g*) 41 Geo. III. c. 107.

fruits of the copyright of a work, then not published, was extended from fourteen to *twenty-eight years*; (*h*) with a further provision, that if the author should be living at the end of that period, then that he should receive the profits accruing from it for the residue of his life. (*i*)

For the benefit of the *families* of those authors who were alive at the time the act passed, but who might die before the first fourteen years, from the day of publishing their works, had expired, a further term of fourteen years was given to their *personal representatives*, without prejudice to the assignees of all or any part of the former term. (*k*)

Places of protection.

The *places* of protection for copyright, named in that statute, are the United Kingdoms of Great Britain and Ireland, the Isles of Man, Jersey, and Guernsey, and every other part of the British dominions. (*l*)

Such are the acts of the Legislature by which the copyright in books is vested in authors and their assigns.

2. Construction of the statutes.

Before entering into the discussion of the law, as it respects each species of literary composition, the matter of this *Third Book* will be rendered more intelligible by first shewing in what manner these statutes, which, in the opinion of Lord Hardwicke, (*m*) are far from creating a monopoly, have generally been construed, and what things affect the property in all kinds of literary works.

(*h*) 54 Geo. III. c. 156. § 4.
(*i*) Id. § 9.
(*k*) Id. § 8. and see post, Assignee, Chap. VII.
(*l*) Id. § 4.
(*m*) 2 Atk. 143.

Duration and resulting term.

An author, who sells his work in general terms, without making any limitations, has no resulting right against his own assignee after the first term, formerly of fourteen, but now of twenty-eight years, is expired. Thus a book of roads, printed in letter press, was at the expiration of the first fourteen years sold again by its author to a person who published the high roads upon *copper plates*, and the cross roads in *letter press*. An injunction was granted to restrain the second publication of the letter press: but it did not extend to the delineations on copper plates, which were considered as forming a *new work*. (*p*)

It was ruled in the case of Brooke *v.* Clarke,(*q*) that if a work has been published more than twenty-eight years *before* the time of passing the stat. 54 Geo. III. c. 156. the author is not entitled to the copyright in it for the remainder of his lifetime; for that act was made to extend the rights *then existing*, and not to re-create any expired right. It was in that case admitted that if any persons had published the work after the expiration of the twenty-eight years, and before the act of 54 Geo. III. had passed, the author could not have interfered with them; and certainly, whether the public had or had not actually exercised that right, no difference could exist without some express words in the statute for that purpose.

General assignment.

The distinction between the point decided in

(*p*) Carnan *v.* Bowles, Trin. T. 26 Geo. III. 2 Bro. C. C. 80. and 1 Cox. 283. Rennett *v.* Thompson, Id.

(*q*) 1 Barn. and Ald. 396.

the case of Carnan *v.* Bowles, (*r*) and the *eighth* clause of the 54 Geo. III. c. 156. by which a second term of fourteen years, (when the author dies within fourteen years from the publication of a book published before the passing of that act,) is given to the personal representative, without prejudice to the assignee of the former term, must be carefully noticed.

The distinction appears to be this:—if an author, who has assigned away his right generally, under the act of 8 Anne, outlive the first fourteen years; or, according to the time now allowed, if he survive twenty-eight years, then his assignee by the *general assignment* will have the benefit of the resulting terms—fourteen years—or for the remainder of the life of the author. But if an author, who has assigned his right for fourteen years only, die after the enactment of 54 Geo. III., but within that term, then his assignee will enjoy the copyright for the first fourteen years only, and the personal representatives of the deceased will have the benefit of a further term of fourteen years without prejudice to the sale of the books printed by the assignee within the first term.

Entry at Stationers' Hall.

An entry of the title page of each book, (for certain purposes which will hereafter be explained,) must be made at Stationers' Hall, under penalties for every neglect.(*s*) It is not, however, absolutely necessary that it should be done to give a property in the work, and to sustain an action at law. In fact, any one who first

(*r*) Ante, 210.

(*s*) 54 Geo. III. c. 156. § 5. and post, Chap. VII.

publishes a book, may bring an action for an infringement, although he may not be the real author of it. (*t*)

3. Obscenity, immorality, *libels*, &c.

The courts of common law, and of equity, strive to protect the *morals* of the public. It is a principle on which this part of the law rests, that there cannot be a copyright in any work, the tendency of which is *obscene* or *immoral*. And whether the offensive matter be represented in prints (*u*) or pictures, (*x*) or expressed in a book, it makes no difference.

Bad public tendency.

And if a work be of such a libellous or mischievous nature as to affect the *public morals*, so that the author cannot maintain an action at law (*y*) upon it, a court of equity will not interpose with an injunction, to protect that which by the policy of the law cannot be called property, not even upon a *submission* in the answer to a bill. Not only will the Court not interfere when it *plainly* sees that the work is obscene or immoral: but even, if there be *a doubt* as to its

(*t*) 4 Esp. N. P. C. 169. Vide post, Chap. VIII.

(*u*) Fores *v.* Johnes, Esq. 4 Esp. N. P. C. 97. *Lawrence*, J. For prints, whose objects are general satire, or ridicule of prevailing fashions or manners, I think the plaintiff may recover: but I cannot permit him to do so for such whose tendency is immoral or obscene; nor for such as are libels on individuals, and for which the plaintiff might have been rendered criminally answerable for a libel.

(*x*) 2 Camp. 511.

(*y*) Hime *v.* Dale, 2 Camp. 27. n. See 2 Meriv. 427. where it is said that evidence of Priestley's MSS., which were burnt in the Birmingham riots, being libels on government, would have been admitted by Eyre, C.J. and see 60 Geo. III. c. 9.

evil tendency, the Lord Chancellor will not be prevailed on to grant an injunction. (*z*)

And protection has been denied to a translation of an immoral work. (*a*)

Libels on private individuals.

It seems that neither the courts of equity nor of law will support a copyright in any work which is a *libel on an individual,* and for which the author might have been rendered civilly or criminally answerable. In an action for destroying a picture, from the exhibition of which great profits were derived, Lord Ellenborough observed, (*b*) that the only plea on the record being the general issue of not guilty, it was unnecessary to consider whether the destruction of the picture might or might not have been justified. The material question was, as to the value to be set upon the article destroyed. If it were a libel upon the persons introduced into it, the law could not consider it valuable as a picture. He directed the jury, in assessing damages, not to consider it as a work of art, but merely to give the value of the canvass and paint.

The principle of law, that no action can be maintained for pirating a work calculated to do injury to the public, and that no injunction will be granted to protect the author, although his character as an individual may suffer by the pub-

(*z*) Walcot *v.* Walker, 7 Ves. 1. Southey *v.* Sherwood, 2 Meriv. 438. Murray *v.* Benbow, MSS. Lawrence *v.* Smith, MSS. And see an article in Quarterly Review for April, 1822, p. 123., and Blackwood's Mag. for July 1822.

(*a*) Burnet *v.* Chetwood, 2 Meriv. 441. n. post. 241.

(*b*) Du Bost *v.* Beresford, 2 Campb. N. P. C. 511. and see 4 Esp. N. P. C. 97.

lication, was fully recognized in Southey *v.* Sherwood. (*c*) In that case, Lord Eldon observed, "It is very true, that in some cases it may operate so as to multiply copies of mischievous publications, by the refusal of the Court to interfere by restraining them: but to this my answer is, sitting here as a judge upon a mere question of property, I have nothing to do with the nature of the property, nor with the conduct of the parties, except as it relates to their civil interests. If the publication be mischievous, either on the part of the author, or of the bookseller, it is not my business to interfere with it."

And so strong is this objection that Lord Ellenborough has held an *apprehension of a prosecution* for the immorality or illegality of a work, proved to be well founded by the production of the part printed, would justify a person for refusing to supply a bookseller with the remainder of the manuscript agreeable to a contract. (*d*)

But there seems to be an exception to the general rule, that equity will not interfere to protect a book of *bad* tendency, when the author *repents* of his work, and wishes to suppress it. In that case Lord Eldon has intimated that he might grant an injunction. (*e*)

4. What amounts to a piracy.

Having thus shewn the protection to which the author is entitled, it is necessary to enquire what are the acts of other persons which are considered as causing an injury to him.

(*c*) Southey *v.* Sherwood, 2 Meriv. 438. see ante, 213. n.(*z*.)
(*d*) Gale and another *v.* Leckie, 2 Stark. 107. post, Ch. VII.
(*e*) Southey *v.* Sherwood, 2 Meriv. 438.

The identity of any literary works consists entirely in the *sentiments* and *language*. The same conceptions, clothed in the same words, must necessarily be the same composition; and whatever method is taken of exhibiting that composition, to the ear or to the eye, by *recital* or by *writing*, or by *printing*, in any number of copies, or at any period of time, the property of another person has been violated; for the new book is still the identical work of the real author. (*f*)

Thus, therefore, a transcript of nearly all the sentiments and language of a book is a glaring piracy. To copy part of a work, either by taking a few pages *verbatim*, where the sentiments are not new, (*g*) or by imitation of the principal ideas, although the treatises in other respects are different, is also considered to be illegal.

Although it was held (*h*) by Ellenborough, C.J.

(*f*) 2 Bla. Com. 406.

(*g*) Trusler *v.* Murray, 1 East. 363. n. This was an action for pirating a book of chronology. It was proved by the plaintiff that some parts of the defendant's work were different; yet in general it was the same, and particularly from page 20 to 34, it was a literal copy.

Kenyon, C. J. was of opinion that if such were the fact, the plaintiff must recover, though other parts of the work were original. He said Lord Bathurst had been of that opinion; and he thought rightly with respect to an abridgment of *Cook's voyages* round the world. The main question here was, whether in substance the one work is a copy and imitation of the other; for undoubtedly, in a chronological work, the same facts must be related. The books were then referred to an arbitrator to be compared. Mich. Term, 1789. and see Pinnock *v.* Rose, cov. Sir J. Leach, V. C. 2 Bro. C. C. 85. n. Belt. Ed.

(*h*) In Cary *v.* Kearsley, 4 Esp. N. P. C. 169.

that a variance in *form* and *manner* is a variance in *substance*, and that any material alteration which is a *melioration* cannot be considered as a piracy; yet a piracy is committed, whether the author attempt an original work, or call his book an abridgment; if the *principal parts* of a book are servilely copied, or unfairly varied.

But if the main design be not copied, the circumstance that part of the composition of one author is found in another is not of itself piracy sufficient to support an action. A man may fairly adopt part of the work of another; he may so make use of another's labours for the promotion of science, and the benefit of the public: but having done so, the question will be—Was the matter so taken used fairly with that view, and without what may be termed the *animus furandi?* (*i*)

Quotations.

In judging of a quotation, whether it is fair and candid, or whether the person who quotes it has been *swayed* by the *animus furandi*; the *quantity* taken, and the *manner* in which it is adopted, of course must be considered.

If the work complained of is *in substance* a copy, then it is not necessary to shew the *intention* to pirate; for the greater part of the matter of the book having been purloined, the intention is apparent, and other proof is superfluous. A piracy has *undoubtedly* been committed.

But if only a *small portion* of the work is quoted, then it becomes necessary to prove that it was done *animo furandi*; with the intention of depriving the author of his just reward, by

(*i*) Roworth *v.* Wilkes, 1 Campb. 97. and see 17 Ves. 424.

giving his work to the public in a cheaper form. And then the *mode* of doing it becomes a subject of inquiry. For it is not sufficient to constitute a piracy, that part of one author's book is found in that of another, unless it be nearly the whole; or so much as will shew, (being a question of fact for the jury,) that it was done with a bad intent, and that the matter which accompanies it has been *colourably* introduced.

This view of the law on copyright, as it respects quotations, reconciles the opinions of Lord Ellenborough in Cary *v.* Kearsley, (*k*) and Roworth *v.* Wilkes, (*l*) which at first sight appear to be incongruous. (*m*)

It is my intention to state and illustrate the principles of the law on copyright, as it now stands, in the following order—

1. By describing the *different kinds* of literary property.
2. By inquiring into the *rights of persons* who are interested in them.
3. And concluding with an investigation of the *means of protecting* that property, and the *remedies* for violating it.

(*k*) 4 Esp. N. P. C. 170.

(*l*) 1 Campb. N. P. C. 97.

(*m*) See Eden on Injunctions, 281. n.

CHAP. II.

Of the Different Kinds of Literary Property.—Of original Compositions.

In the endeavour to treat with perspicuity of the different kinds of literary property, I have arranged them in such order, that those which are similar in their nature, or depend upon the same principles, may be found together in the same part of the work. Thus in one chapter are given *original compositions*, whether printed in a book, or preserved in manuscript; in another, *particular treatises on general subjects*, whether compilations, books of calculations, abridgments, translations, or notes and additions. The laws on *periodical publications*, as reviews, magazines, newspapers, or pamphlets; and *theatrical compositions*, as music or plays, will be found in other chapters distinctly apart by themselves. And then will follow a concise statement of the several acts of parliament which give a property of a literary nature in works arising from the exertions of genius in the *fine arts*, as in engravings and prints; in models and sculptures.

This Chapter is set apart for *compositions*, which, in the common and strict sense of the word, are called *original*, whether printed or in manuscript. And, therefore, it will be occupied

by an investigation of the laws relating to books on common topics, as contra-distinguished from those works, which, according to their peculiar contents, are subjected to different laws. I shall afterwards explain the reasons why manuscripts come within the meaning of the several acts of parliament on copyright thus—

1. Of a book generally.
2. Of works in manuscript.

I. A Book Generally.

Definition of a book.

Though it was for a long time doubted, yet it is now clearly settled, that a literary production, to be entitled to the protection of the statutes on copyright, and to come within the words mentioned in the recital of the statute of 8 Anne, "*Books and other writings,*" need not be a book in the common and ordinary acceptation of that word;—a volume made up of several sheets bound together. It may be printed only on *one sheet*, as the words of a song, (*a*) or the music accompanying it.

(*a*) Hime (or Hine) *v.* Dale, Sittings after M. T. 1803, 2 Car. 27. n. and in 11 East. 244. n. S. C. (see Amb. Rep. 404.) was an action for piracy the words of a song called aham Newland," published on a single sheet of paper. Erskine, contending that this was a book, said, If a different construction were to be put upon the act, many productions of the greatest genius, both in prose and verse, would be excluded from its benefits. But, might the papers of the Spectator, or Gray's Elegy in a country church-yard, have been pirated as soon as they were published, because they were first given to the world on single sheets? The

Every distinct and independent *part* of a work, is also a book within the meaning of the statute, as one tale or piece of music printed and bound up with other tales or pieces of music. (*b*)

2. Without author's name.

It will be shewn hereafter that the name of

voluminous extent of a production cannot, in an enlightened country, be the sole title to the guardianship the author receives from the law. Every man knows that the mathematical and astronomical calculations, which will inclose the student during a long life in his cabinet, are frequently reduced to the compass of a few lines. And is all this profundity of mental abstraction in which the security and happiness of the species in every part of the globe depend, to be excluded from the protection of British jurisprudence? But there is nothing in the word *book*, to require that it shall consist of several sheets bound in leather, or stitched in a marble cover. *Book* is evidently the Saxon boc; and the latter term is from the *beech-tree*, the rind of which supplied the place of paper to our German ancestors. The Latin word *liber* is of similar etymology; meaning originally only the bark of a tree. *Book* may, therefore, be applied to any writing: and it has often been so used in the English language. Sometimes the most humble and familiar illustration is the most fortunate. The *horn-book*, so formidable to infant years, consists of one small page, protected by an animal preparation; and in this state it has universally received the appellation of a *book*. So, in legal proceedings, the copy of the pleadings after issue joined, whether it be long or short, is called the paper *book*, or the demurrer *book*. In the Court of Exchequer a roll was anciently denominated a *book*, and so continues in some instances to this day. An oath as old as the time of Edw. I. runs in this form, "And you shall deliver into the Court of Exchequer a book fairly written," &c.: but the book delivered into Court in fulfilment of this oath has always been a roll of parchment.

(*b*) *Id.* and White *v.* Gerock, 2 Barn. & Ald. 298. 1 Chit. Rep. 24. S. C.

the *printer* and *publisher* must be printed on every book. (c) But it is not necessary that the author's name should appear to secure any right given by the statutes passed for the protection of literary property.(*d*) If the author's name were omitted in the title page, says Yates, J., he might equally insist on his claim; for if the property be absolutely his own, he has no occasion to add his name to it. (*e*) But in the case of Hogg *v.* Kirby, in which it was endeavoured to be shewn that a new magazine was a fraudulent continuation of a similar work, the Lord Chancellor expressed a doubt whether he ought to interfere, because the latter book bore a *fictitious name.* (*f*)

By several acts of parliament it is enacted that the name of the publisher, and the time of publication, must be marked on pieces of music, (*g*) and engravings. (*h*)

The *property* in a book generally will be investigated under the title Author and his Assignee. (*i*)

II. Works in Manuscript.

As a literary work or treatise must necessarily exist in manuscript before it is printed, it ap-

(c) Post, Chap. VII.
(*d*) Beckford *v.* Hood, 7 T. R. 620.
(*e*) 4 Burr. 2366.
(*f*) 8 Ves. 226.
(*g*) Post, Chap. V.
(*h*) Post, Chap. VI.
(*i*) Post, Chap. VII.

pears at first sight more logical that manuscripts should have been treated of before the law, as it regards books in general, had been enquired into. But upon inspection it will be seen, that the protection given to manuscripts is founded on principles which are corollaries from the rules respecting the copyright in a book. One of the points proposed to the judges by the House of Lords in the case of Donaldson *v.* Becket, (*k*) was, whether an author had full power over his work as long as it remained in manuscript; and, with only the dissentient voice of Mr. Baron Eyre, the reply was that he had complete controul over it. It follows that literary compositions in their original state, that is, the *manuscripts*, with the right of first publishing them, are the private and exclusive property of the author. In that condition they may be kept for ever; and if they are taken from him, an action of trover, detinue, or trespass, may be maintained.

Compositions in manuscript may be arranged for consideration in the following manner:—

1. Manuscript works *not used.*
2. Manuscript works that have become *known.*
3. *Epistolary* writings.

1. Manuscript works not used.

The Courts of Equity soon interfered to restrain all other persons besides the author from printing and publishing manuscripts, as in the cases of Mr. Webb and Mr. Forrester: (*l*) the

(*k*) 2 Bro. P. C. 144. 4 Burr. 2408.

(*l*) Amb. 695. See Webb *v.* Rose, cited 2 Bro. P. C. 138.

former of whom had his precedents of conveyancing stolen out of his chambers and printed, and the latter had his notes on legal subjects, lent to a gentleman for his perusal, copied by a clerk, by whom they were printed. (*m*)

2. Manuscripts already published.

And accordingly it has been determined that a copyright in a piece of music was not lost, although it had been published in manuscript *a year* before it was printed. (*n*) The words "*printed and published,*" used in the statutes, have reference only to the *time* at which the author's exercise of the right is *to be dated ;* and, therefore, the circumstance, of an author having previously published in manuscript any composition which is afterwards printed, only varies the period of time, from which the twenty-eight years is to be calculated. (*o*)

and Forrester *v.* Waller, *id.* and see Knaplock *v.* Curl, 4 Ven. Abr. 278. 2 Evans. Collec. Stat. p. 625.

(*m*) See Burnett *v.* Chetwood, 2 Mer. 443. n.

(*n*) White *v.* Gerock, 2 Barn. and Ald. 298. (Chit. Rep. 24. S.C.) *Abbott,* C. J.—I am of opinion that an author does not lose his copyright by having first sold the composition in manuscript; for the statute 54 Geo. III. c. 156. must be construed with reference to the 8 Ann. c. 19. which it recites, and which, together with the 41 Geo. III. c. 107. were all made *in pari materia,* for the purpose of enlarging the rights of authors. The 8 Ann. c. 19. gave to authors a copyright in works, not only composed and printed, but *composed and not printed;* and I think that it was not the intention of the Legislature, either to abridge authors of their former rights, or to impose upon them as a condition precedent that they should not sell their compositions in manuscript before they were printed. Rule refused.

(*o*) White *v.* Gerock, 1 Chit. Rep. 27.

And in Equity it was held that a copyright exists in the manuscript of a play, even after it has been performed at a Theatre. (*p*)

3. Epistolary writings.

There is a peculiar class of manuscript literary property—*Epistolary writings*. They appear to be of several descriptions.

Letters written, originally intended for the press.

The first species is that in which the *form* of letters is merely given to a work in order to allow the author a latitude of expression, for rendering himself intelligible, or for any other purpose, whilst the work is *really* a literary composition; differing in no other respect from a book in general than in the dress it has assumed; and consequently it is protected by the law like every other kind of literary property.

Letters of literary persons.

Letters of the second species are those, which, although they have passed from one person to another, may, from the nature of the subjects mentioned in them, and the literary character of the writer, be considered, when a great number of them are collected together, as forming a literary work.

When letters thus take the *character* of a literary composition, the writer, by the mere transmission of them to the person to whom they are addressed, does not give the receiver any right to publish them.

When it was objected that where a man writes a letter, it is in the nature of a *gift* to the

(*p*) Macklin v. Richardson, Amb. 694. and post, Chap. V. The *property* in MSS., and the right which possessors of them have over them, will be investigated under the division "Author and his Assignee," post, Chap. VII.

receiver, Lord Hardwicke observed, (*q*) "I am of opinion that it is only a special property in the receiver. Possibly the property in the paper may belong to him: but this does not give a licence to any person whatsoever to publish them to the world; for at the most the receiver has only a joint property with the writer."

If individuals, to whom such letters are addressed, have not the power to publish them, how much more strictly ought third persons, into whose hands they may have fallen, to be prevented from printing them? Lord Hardwicke granted and continued an injunction to restrain Curl, (*r*) from republishing in England a book containing Letters of Pope, Swift, &c., and their friends, which had been obtained without their consent, and first published in Ireland. The injunction being originally granted at the instance of Pope, it was made to extend to the letters written by him, but not to those which he had received from other persons.

Upon the same principle Lord Apsley granted an injunction to prevent the publication of Lord Chesterfield's Letters to his Son, although the widow of Mr. Stanhope was the publisher; because she had not obtained either the consent of Lord Chesterfield in his lifetime, or that of his executors after his death. (s)

The third species consists of common letters Common letters.

(*q*) 2 Atk. 342. (*r*) Pope *v.* Curl, 2 Atk. 342.

(*s*) Thompson *v.* Stanhope, Amb. 737. and Duke of Queensberry *v.* Shebbeare, cited in 4 Burr. 2330. S. C. 2 Eder. Rep. 329. and see 2 Evans. Collec. Stat. p. 624.

on business, and on every other subject that can occur in the intercourse of private life, but which never could have been intended to be published, and therefore *cannot be considered as literary* compositions, and entitled to protection on the ground of a copyright existing in them.

Although the courts of Equity will sometimes interpose to stop the publication of such letters; yet it is not upon the ground of copyright, but that the publication is a *breach of contract*, or *confidence;* or when they are intended to be made a source of *profit*, at the risk of wounding private feelings.

If in such cases ..rts of Equity were to interfere on any oth.. ..inciple, they would defeat the end of justice. An individual would be deprived of his defence in proving agency, orders for goods, the truth of an assertion, or some other fact; merely because the proof is contained in letters in which a pretended copyright is claimed.

Thus, upon the principle of *breach of contract*, an injunction was granted to prevent the publication of letters written by an old lady to a young man, to whom she had been foolishly attached; there being an agreement not to publish the letters, but to deliver them up for a valuable consideration; and a sum of money having been actually paid to the defendant. (*t*)

In a case before Lord Manners,(*x*) upon a bill

(*t*) — *v.* Eaton, 13th April 1813. cited 2 Ves. & Beam. 27.

(*x*) Earl of Granard *v.* Dunkin, 1 Ball. & Beat. 207. cited in 2 Ves. & Beam. 21.

filed by an executor, it appeared that the defendant, who was a relation of the testatrix, and as such had been *permitted to reside* in her house in Dublin, where she left a great number of letters, had refused to deliver them up, and threatened to publish them by subscription; an injunction was granted to restrain the publication.

But the court of Chancery (*y*) dissolved an

(*y*) Perceval *v.* Phipps, 2 Ves. & Beam. 28. *Sir Thomas Plumer*, V. C. This is the naked case of a bill, certainly, to prevent the publication of private letters; not stating the nature, subject, or occasion of them, or that they were intended to be sold as a literary work for profit, or are of any value to the plaintiff. Upon such a case it is not necessary to determine the general question, how far a court of Equity will interpose to protect the interest of the author of private letters. The interposition of the court in this instance certainly is not a consequence from the cases that were cited (Pope *v.* Curl—Thompson *v.* Stanhope); upon which I shall merely observe that, though the form of familiar letters might not prevent their approaching the character of a literary work; every private letter, upon any subject to any person, is not to be described as a literary work, to be protected upon the principle of copyright. The ordinary use of correspondence by letters is to carry on the intercourse of life between persons at a distance from each other, in the prosecution of commercial or other business; which it would be very extraordinary to describe as a literary work, in which the writers have a copyright. Another class is the correspondence between friends or relations upon their private concerns; and it is not necessary here to determine how far such letters, falling into the hands of executors, assignees of bankrupt., &c., could be made public in a way that must frequently be very injurious to the feelings of individuals. I do not mean to say that would afford a ground for a court of Equity to interpose to prevent a breach of that sort of confidence independent of contract and property.

injunction obtained on account of agency and *confidence,* when the answer denied confidence and avowed that the defendant's object in publishing them in a Newspaper, of which he was the proprietor, was not to obtain profit, but to *vindicate his character* from the imputation of having published false intelligence, publicly cast on him by the plaintiff; who failed on both grounds for the interference of a court of Equity—copyright and confidence.

CHAP. III.

Of particular Works on General Subjects.

MANY inconveniences would arise from allowing one person to engross a *general subject;* and therefore each original *particular treatise* on a general subject will always be protected by the courts of justice. (*a*)

When two persons exert their talents upon the same subject, they may produce works of great similarity, but each of them will justly be entitled to full power over his own book; and any priority of publication will not affect the property in the one last published. Taking the

(*a*) See Matthewson *v.* Stockdale, 12 Ves. 273. for an elaborate opinion of *Lord Erskine* on this kind of literary compositions.

same general subject, they may newly arrange what has been said upon it, add new parts, and omit useless ones; and each of them will respectively acquire a copyright in his production. There must not however be any *copying* from a former work. The *subject* is open to all, but the copyright exists only *in the result* of each man's labour.

It will be convenient to divide works on general subjects into,

I. *Compilations.*
II. *Books of Calculations.*
III. *Abridgments.*
IV. *Translations.*
V. *Notes and Additions to an old Book.*

I. Compilations in general.

It would be a difficult task to enumerate all the kinds of literary works which would properly be comprised under the term *Compilations*.

They are,—

1. Road Books.
2. Series of Chronology.
3. Calendars of Names &c.
4. Dictionaries &c.
5. Encyclopædias, &c. &c.

1. Road books.

Road Books are compilations. Captain Paterson, after he had sold *all* his right in his Book of Roads to Carnan, at the expiration of fourteen years published it with the high roads engraved upon copper-plates; and it was ultimately considered that although he had made a new

work as to that part; yet as to the letter press, the injunction obtained against his assignee was founded in equity, and was therefore continued. (*b*)

Mr. Cary, at great expense, improved Patterson's work; and had several times to defend his additions from piracy. In his endeavour to obtain an injunction against Faden he failed. (*c*)

(*b*) Carnan *v.* Bowles, 1 Cox. 284. (and see 2 Bro. C.C.80. Ed.by Belt, ante 210.) *Lord Thurlow* observed that, as the roads of Great Britain were open to the inspection and observation of all mankind, every one was at liberty to publish the result of such observation: the subject matter of these books were, therefore, *in medio*. But the question will be, whether the author has exhibited any new and distinct idea in the exposition of them; and then whether the subsequent editor has, in substance, adopted the same. When globes were first invented, this was a new scheme of exhibiting the face of the earth, different in substance from the plain chart. Now, then, the addition of a few places on the globe will not make a new invention, the substratum being the same. So, in the case of Newton's Milton, the court thought that Milton's Works were *in medio*: but the notes and other additions were not so; and therefore, as to them, restrained the publication, though they left the text open to any body. Now, here, if the scheme of exhibiting this information to the public is substantially and fundamentally the same in the second work as in the first, and the former is merely reprinted with such differences as not to amount fundamentaily to a different project of exhibition, the law ought to interfere and protect the exhibition. His Lordship thought the report not sufficiently clear; and directed that it should be again referred to the Master whether the books were the same, or whether the latter differed from the former so as to render the same a new and original work in any, and what particulars.

(*c*) Cary *v.* Faden, 5 Ves. 24.

In an action against Longman, (*d*) it was clearly proved that *nine-tenths* of the alterations and additions had been copied *verbatim*, and he had a verdict. In that against Kearsley (*e*) it appeared that, although Kearsley had transcribed into his book a great quantity of Cary's new matter, yet he had done it with additions and observations of his own, and with corrections of misprintings, and that he had broken several routes into two parts, and that no entire particular paragraph had been transcribed; and thereupon Cary was nonsuited.

All human events being equally open to the observation of all men, every one is at liberty to add to or improve the materials respecting them, already collected.

2. Series of chronology.

A *Series of Chronology* is therefore another general subject; and, in considering whether a treatise is a piracy of another book on the same events, the question will be, whether in substance the one work is an imitation of the other; whether the one book is a copy of the other, by the author having availed himself of the arrangement, with alterations merely colourable, or whether it is as original as the nature of the matter will admit; for undoubtedly, in chronological works, the same facts must be related. When it appeared that Dr. Trusler's book (*f*) had been

(*d*) Cary *v.* Longman, 3 Esp. N. P. C. 273. 1 East. 359.

(*e*) Cary *v.* Kearsley, 4 Esp. N. P. C. 168.

(*f*) Dr. Trusler *v.* Murray, M. 1789. cor. Lord Kenyon. 1 East. 362. n. and ante 215. n. and see Jeffery *v.* Bowles, 1 Dick. Rep. 429. Trusler *v.* Comyns, *id.* and 12 Ves. 273.

copied literally from page 20 to 34, Lord Kenyon held that he must recover in an action at law, although other parts of the defendant's work were original.

3. List of names.—Calendars.

Another kind of compilations are Calendars. It is a very numerous species, and questions respecting them have frequently been brought before the courts. But it has uniformly been decided, that although no copyright can exist in a *list of names* as a general subject, yet it may in an individual work; and when it can be traced that another book with a similar title is not an original compilation, but a mere transcript, with colourable variations, the one first printed will *immediately* be protected by injunction, because it is of a transitory nature. Every body may make an India Calendar, (*g*) a Court Calendar, (*h*) a Directory, &c. but no one is permitted servilely to copy one already published.

4. Dictionaries, &c.

Histories and *Dictionaries* are general subjects. Two men may give a relation of the same facts in the same order of time, in different historical works: and in different dictionaries interpretations must necessarily be given of the

(*g*) Matthewson *v.* Stockdale, 12 Ves. 270.

(*h*) Longman *v.* Winchester, 16 Ves. 272. *Lord Chancellor.* To the extent therefore in which the defendant's publication has been supplied from the other work the injunction must go: but I have said nothing that has a tendency to prevent any person from giving to the public a work of this kind, if it is the fair fruit of original labour, the subject being open to all the world. But if it is a mere copy of an original work, this court will interpose against that invasion of copyright.

same words; and hence there must be great similarity between the performances; and yet if the one author has not copied from the other, which would easily appear upon examination, both books come within the meaning of the statutes on copyright. (*i*)

5. An Encyclopædia.

The largest compilation is an *Encyclopædia*, or Dictionary of Arts and Sciences. The authors of this kind of literary composition have generally taken from the works of others with unsparing hands. It was formerly thought that the essence of any work might be published in a scientific dictionary, because the latter could not diminish the sale of the original treatise; for no one would purchase a voluminous work as a substitute for a small book, and therefore that there could be *no intention* to pirate. It has been shewn to what extent quoting may be carried: and that, when large portions of a work are taken, intention to pirate is implied. (*k*) When it appeared that 75 out of 118 pages of a work on *Fencing* (*l*) had been transcribed into an *Encyclopædia*, the court held that a piracy had been committed. A compilation may be different from a treatise published by itself: but certain limits must be fixed to the transcripts. It must not be allowed to sweep up all modern works, or an Encyclopædia would completely destroy all literary property.

(*i*) Per Lord Mansfield in Sayre *v.* Moore, 1 East. 361. n.

(*k*) Ante 216, 7.

(*l*) Roworth *v.* Wilkes, 1 Camp. N. P. C. 98. and see Wilkins *v.* Aikin, 17 Ves. 422.

Maps, Charts, &c., were formerly considered as particular works on general subjects. Some doubts have been entertained whether they could properly be brought within the meaning of the copyright acts. They are now included among *Engravings*; and under that division the law respecting them will be found. (*m*)

II. Books of Calculations.

All books of Calculations, if correctly made, must necessarily be the same. Yet a copyright may exist in each book, because each work being the produce of the ingenuity and labour of its respective author, it is but fair that both of them should take their chances of success, and be protected against any infringement by a third person, who has not been instrumental towards promoting the public knowledge.

This kind of books consists of *Almanacks*, and those books which contain *Logarithms*, *Tables of Interest*, &c.

1. Almanacks. James the I., in the 13th year of his reign, granted to the Company of Stationers the right of printing such Almanacks as were allowed by the Archbishop of Canterbury and the Bishop of London, or either of them. A similar privilege was also granted to the Universities of Oxford and Cambridge. (*n*) The validity of these pa-

(*m*) Post, chap. VI. Sayre *v.* Moore, 1 East. 361. n. but see 12 Ves. 274.

(*n*) As to the equivalent given to the Universities, see post, Chap. VII.

tents, although many injunctions had been allowed in support of them, (*o*) was questioned in the fifteenth year of Geo. III. by *Carnan*, (*p*) a bookseller, in his answer to a Bill in Chancery, filed by the Company of Stationers, to obtain an injunction to restrain him from publishing Almanacks. The legal question was referred to the court of Common Pleas, who certified that the Crown had not a prerogative or power to make such a grant to them exclusive of others. The bill was accordingly dismissed. (*q*)

Any person may, therefore, make the calculations usually published in almanacks, and claim a

(*o*) Stationers' Company *v.* Lee, 2 Ch. Ca. 66. Same *v.* Wright, *id.* 76. Same *v.* Partridge, cited in Donaldson *v.* Beckett, 2 Bro. P. C. 137. Toml. ed.

(*p*) 2 Bla. Rep. 1004. and see post Chap. VII.

(*q*) The Almanack, divested of its prognostications, was first printed with the Common Prayer Book, for the purpose of regulating the feasts and fasts: but in strictness it is no part of it. 4 Burn. 2328. That is the one to which it is said the courts must refer. The judges have considered the calendar of sufficient authority for determining upon what day of the week a certain day of the month fell, and for other legal purposes. See Queen *v.* Dyer, 6 Mod. 41. Brough *v.* Parkins, id. 81. Page *v.* Faucet, Cro. Eliz. 227. 1 Leon. 328. 242. Hoyle *v.* Lord Cornwallis, 1 Stra. 387. Fortesc. 373. Harvey *v.* Road, Salk. 626. 6 Mod. 160. 6 Mod. 196. S. C. Fish *v.* Broket, Dyer 182, pl. 55. 1 Leon. 242.

The Calendar was reformed by act of parliament, 24 Geo. II. c. 23. whereby it was enacted that the day after the 2nd September 1752, should be considered as the 14th September. That act was afterwards amended by 25 Geo. II. c. 30. and 26 Geo. II. c. 34.

copyright in them. A stamp duty is paid on all almanacks. (*r*)

Nautical almanack.

Many acts of parliament (*s*) have been passed offering public rewards to such persons as should discover an exact method of ascertaining the Longitude. A power is given to the commissioners appointed to carry them into execution to publish a *nautical almanack*, or astronomical ephemeris. They are further empowered to give a *licence* to some one to print it. Any other person printing, publishing, or vending it, subjects himself to a penalty; of which one moiety is given to the king, and the other to the informer.

2. Tables of logarithms, &c.

Though books of *logarithms*, tables of *interest*, &c. must necessarily be the same, if correctly calulated; yet, inasmuch as great labour must be exerted, and much expense incurred in making the calculations, and publishing them, a

(*r*) It is one shilling and three pence for every almanack or calendar that will serve for one year: but if it is made for several years, then the duty is th. ount of that sum for each year. If the calendar be a perpetual one, the stamp is ten shillings, 55 Geo. III. c. 185. If a printer's apprentice print and sell an almanack unstamped, he may be imprisoned for three months, 55 Geo. III. c. 185.

(*s*) The statutes respecting the discovery of the longitude at sea, and the determining the longitude and latitude of the Port Towns, are 12 Ann. st. 2. c. 15. 14 Geo. II. c. 39. 18 Geo. II. c. 17. 26 Geo. II. c. 25. 2 Geo. III. c. 18. 3 Geo. III. c. 14. 5 Geo. III. c. 11. 5 Geo. III. c. 20. 10 Geo. III. c. 34. 13 Geo. III. c. 77. 14 Geo. III. c. 66. 16 Geo. III. c. 6. 17 Geo. III. c. 48. 20 Geo. III. c. 61. 21 Geo. III. c. 52. 30 Geo. III. c. 14. 36 Geo. III. c. 107. 43 Geo. III. c. 118. 46 Geo. III. c. 7[illegible] 55 Geo. III. c. 75. 58 Geo. III. c. 20. 1 & 2 Geo. IV. c. 2.

copyright exists in each work. And if any circumstance transpires by which it can be shewn that one book is merely a copy of another, an injunction will be granted: but, if that does not plainly appear, the bill will be dismissed. (*t*) It is, of course, competent to the defendant to shew that he made the calculations which he has published, and then both works are original.

Piracy of general subject.

The usual mode of proving *piracy* of compilations, and books of calculations, is by shewing that the mistakes and errors of the book first published have been copied into the one complained of. But that is not of itself sufficient. (*u*) Further proof is often given, as that parts of the first work were used at the press when the second was being printed; and that the alterations supplied in manuscript were merely colourable.

Some circumstance, which would shew that the works would not, in all probability, have been similar, but by the one being copied from the other, (as where in two calendars the persons of the name of Smith were arranged in the same but not alphabetical order of their *Christian* names,) (*x*) is good *presumptive* evidence of piracy.

In all these cases the *defendant* may prove in what the amendments and corrections consist; and that the alterations have been made by his labour, care, and expense.

(*t*) King *v.* Reed, 8 Ves. 223. n.
(*u*) 3 Esp. N. P. C. 273. 4 Esp. N. P. C. 168. 12 Ves. 275.
(*x*) 12 Ves. 271. 17 Ves. 425.

III. Abridgments, &c.

Nearly upon the same principles by which it is shewn that there cannot be a monopoly of a general subject, it appears that *books themselves* for certain purposes, besides the mere act of reading them, may be used by the public.

They are in fact general subjects—data—which may afford opportunities for other persons besides the authors to exercise their ingenuity. They may be taken as the ground work of other literary labours.

Thus a copyright may exist in *abridgments* or *translations* of works. Also in the *notes and additions* printed in a new edition of a book, over which the right of the author has expired. For one man may compose a work, for instance in the Latin language, another abridge it, a third translate it, and a fourth write annotations upon it; and every one of them will acquire a copyright in the product of his own ingenuity and labour.

Many valuable works are so voluminous that abridgments of them are extremely useful. To make them, some judgment must be exercised, and some labour employed; and therefore the authors of them ought certainlyto be encouraged.

In general, an abridgment tends to the advantage of the author, if the composition be good; and may serve the end of an *advertisement.*

The inquiry whether the work is *prejudiced* by the *manner* of making the abridgment cannot be entertained. An injunction was refused

to stop the publication in a magazine of an abridgment of Johnson's Tale of Rasselas; (*y*) when it appeared, that not one tenth part of the first volume had been abstracted, and that the injury, alleged to be sustained by the author, arose from the abridgment containing the narrative of the tale, and not the moral reflections. An abridgment of Dr. Hawkesworth's voyages(*z*) was protected in a Court of common law.

But then it must be a fair and real abridgment,

(*y*) Dodsley *v.* Kinnersley, Amb. 403.

(*z*) Lofft. Rep. 775. Injunction was prayed against an editor by Mr. Newberry, of an abridgment of Dr. Hawkesworth's voyages.

Apsley, C. was of opinion that, to constitute a true and proper abridgment of a work, the whole must be preserved in its sense; and then the act of abridgment is an act of the understanding employed in carrying a large work into a smaller compass, and rendering it less expensive, and more convenient, both to the time and use of the reader, which makes an abridgment in the nature of a new and meritorious work. That this had been done by Mr. Newberry, whose edition might be read in the fourth part of the time, and all the substance preserved, and convey in language as good or better than the original, and in a more agreeable and useful manner. That he had consulted *Mr. Justice Blackstone*, whose knowledge and skill in his profession was universally known; and who, as an author himself, had done honour to his country. That they had spent some hours together; and were agreed that an abridgment, where the understanding was employed in retrenching unnecessary and uninteresting circumstances, which rather deaden the narrative, is not an act of plagiarism upon the original work, nor against any property of the author, but an allowable and meritorious work. And that this abridgment of Mr. Newberry's falls within these reasons and descriptions. Bill dismissed.

the work must not be colourably shortened, (*a*) either by republishing only part of it, (*b*) or by omitting some parts, and merely transposing the remainder. (*c*) There must, at least, be invention, learning, and judgment shewn by the author of it. And an injunction will be granted, if the *terms* in which the facts are related be merely the same in both books. (*d*)

Lord Hardwicke (*e*) ruled, that the question of a supposed piracy, by making an abridgment, was a case more proper to be examined in equity than to be sent to law, upon account of the necessity of examining and comparing the two books.

Abridgments of works published in an Encyclopedia have been mentioned (*f*) and the law;

(*a*) Giles *v.* Wilcox, 2 Atk. 143. S. C. 3 Atk. 268. Barnard. 368. and see 17 Ves. 422.

(*b*) Read *v.* Hodges, mentioned in 2 Atk. 143.

(*c*) Butterworth *v.* Robinson, 5 Ves. 709 2 Evans. Col. St. p. 629.

(*d*) Bell *v.* Walker and another, 1 Bro. C. C. 451. An injunction was moved for to restrain the publication of a book entitled "Memoires of the life of Mrs. Bellamy." The bill stated that it was pirated from a book called "An Apology for the life of George Anne Bellamy." Affidavits were filed, in which it was sworn that Mrs. Bellamy was author of this latter work; and that she sold the property of the copy to the plaintiff, who had printed it in five volumes, which sold for fifteen shillings. The work against which the injunction was prayed was in one volume, and sold for two shillings and sixpence. Passages were read from each, to shew that the *facts*, and even the *terms* in which they were related in the latter work, were frequently taken *verbatim* from the original one. And an injunction was immediately granted.

(*e*) 2 Atk. 144. and see 4 Ves. 681. (*f*) Ante 233.

is the same in principle when they are inserted in reviews, &c. (*g*)

IV. TRANSLATIONS.

1. From ancient languages

That every person, who employs his time and abilities in making translations from the ancient classic authors, justly acquires a copyright in the productions, was never doubted.

2. When written by native in foreign language.

A translation of a book written in the Latin language by a British Subject, it has been held, is also a work to be protected. It was observed by the Court, that publishing a translation was not similar to reprinting the original, because the translator had bestowed his care and pains upon it. (*h*)

3. From modern authors.

This doctrine came under the consideration of the Court of Chancery in a late case, (*i*) when it was contended that there could not be an exclusive property in papers translated from the French and German languages, and published

(*g*) Post, 247.

(*h*) Burnett *v.* Chetwood, 2 Meriv. 441. n. The injunction was, however, granted, on the immorality of the original work; and that it was an improper book to be translated. See ante, 218.

(*i*) Wyatt *v.* Barnard, 3 Ves. & Beam. 77. This bill was filed at the instance of the proprietor of the REPERTORY OF ARTS to restrain the proprietor of the Tradesman's Magazine from copying the specifications of patents for inventions as well as the translations. But it was held that no *copyright could exist in the specifications*, although they were acquired from the patent office with some labour and expense. This case is also reported in the REPERTORY OF ARTS, Vol. XXV. p. 188.

in a periodical work, because all the booksellers had long considered such articles to be public property, and had been accustomed almost immemorially to copy them from the publications of each other.

The Lo.d Chancellor, however, granted an injunction, observing that translations, if original, whether written by the plaintiff, made at his expense, or *given* to him, could not be distinguished from other works, and were protected by the stat. of 8 Ann. c. 19.

V. Notes, Additions, &c. to an Old Book.

1. New edition with notes.

Great talents, ingenuity, and judgment, are in general required to compose good notes or additions to the established work of an author of reputation; and hence, when they are made to a book, which is already in the power of any one to print, for the purpose of presenting the public with a new edition of it, reason and justice say that they ought to confer a copyright as much as a separate and distinct work.

2. Additional pieces or parts.

It was said by Lord Kenyon, in the case of Cary *v.* Longman, (*k*) that the courts of justice had then been long labouring under an error,

(*k*) Cary *v.* Longman and Rees, 1 East. 358. (and see 3 Esp. N. P. C. 275. 1 B. & A. 396. 3 P. Wms. 255. and ante, 229.) This was an action on the case for pirating a book. The declaration stated that the plaintiff was the author of a certain book intituled Cary's New Itinerary, or accurate delineation of the great roads, both direct and cross, throughout England and Wales, &c. from an actual admeasurement made by command of his majesty's postmasters general, &c. and that, being the author of the said book within fourteen years last past, he had

that an author had no copyright in any part of a work, unless he had an exclusive right to the whole book.

published the same for sale, &c. that the defendants intending to deprive him of the profit thereof, and of the benefit of his copyright, injuriously published and exposed to sale divers copies of a certain book intituled "*A new* and accurate description of all the direct and principal roads, &c. from a late actual admeasurement made by command of his majesty's postmasters-general, &c. which said book had before that time been wrongfully and injuriously copied from the said work of the said plaintiff, without his consent, &c.

At the trial before *Lord Kenyon*, at Westminster, it appeared that the original foundation of both the plaintiff's and defendant's works was a book first published in 1771 by Mr. Patterson, the copyright of which in 1788, (the author being then living) became vested in Mr. Newberry. This work had gone through several editions, the eleventh of which was published in 1796. In 1797, the plaintiff was employed by the postmasters-general to make an actual survey of the principal roads; and the book published by him, with their permission, contained many material corrections of, and additions to, the last edition of the original work by Patterson. The principal of these consisted in some corrections of distances by actual surveys, in an admeasurement of the distances from inn to inn, in the several post towns, in addition to those from one town to another, in an index to the roads more copious than the former one, in an additional number of gentlemen's seats by the road side, the rejection of some routes and an addition of many others. On the other hand, the work published afterwards by the defendant *as the twelfth* edition of the original work by Patterson appeared to have been copied nine-tenths of it *verbatim* from the plaintiff's improvements, and many of the alterations merely colourable. Verdict for the plaintiff.

Kenyon, C. J.—Certainly, the plaintiff had no title on which he could found an action to that part of his book which he had taken from Mr. Patterson's: but it is clear that

It is now clearly settled that an action lies to recover damages for pirating the additions to an old work. Thus, when Gray's poems, (*l*) several years after they had been given to the public, were republished by Mason, with many *additional pieces*, an injunction was immediately granted to prevent an infringement of the copyright in the additional pieces.

Reprinting with notes, &c.

An injunction is always granted to restrain any one from printing the notes published with a new edition of an old book.

A person was enjoined not to print the *Paradise Lost* of Milton, with Dr. Newton's *notes*, although any one might have republished the Paradise Lost by itself. (*m*) This piracy was endeavoured to be concealed by mixing some new notes with the old ones: but the small number of the new ones (ten) shewed that it was colourably done.

On the other hand, notes or embellishments to a book, the copyright to which is not expired, confers no power to print the original. Although authors of works on the different branches of the law have often printed the statutes at large at the end of their books; (*n*) yet collusive notes to an

he had a right to his own additions and alterations, many of which were very material, and valuable; and the defendants are answerable at least for copying those parts in their books.

(*l*) Mason *v.* Murray, cited in 1 East. 360.

(*m*) Tonson *v.* Walker, cited in Amb. 405. and see Miller *v.* Taylor, 4 Burr. Rep. 2325. and in 2 Bla. Rep. 332. See 1 Cox. Rep. 283. Motte *v.* Falkner, 4 Burr. Rep. 2353. 1 Bla. Rep. 331.

(*n*) Post, Chap. VII. and see Cary *v.* Kearsly, 4 Esp.

edition of the statutes will not take the right of sole printing them out of the king's printer's patent.(o) But Lord Clare doubted whether the king's printer in Ireland could restrain any one who pleased from publishing the *Bible with notes*. (p)

Thus much it was necessary to say of additional pieces, and notes to old books. Corrections or additional parts which take place in works on general subjects have been before mentioned. (q) No doubt can be entertained but the critic has a copyright even in the verbal corrections and alterations which he makes; as, for instance, in those published by Dr. Bentley. 3. Corrections; verbal criticisms.

CHAP. IV.

Of Periodical Publications.

IT is not the *contents* of periodical publications, but the laws that regulate *the manner of giving them* to the public, which are now to be investigated. When the matter of which they are composed affects the proprietor's *legal right* to the work—when it may be of such a description as entirely to deprive him of all controul over it, and the courts of justice will not, on that account, protect him; it will then be necessary to

N. P. C. 169. for Lord Ellenborough's observations on publishing a part of Paley's philosophy with notes.

(o) Basket v. Cunningham, 1 Bla. Rep. 376. post, Chap. VII.

(p) Grierson v. Jackson, Irish T. R. 304. see 9 Ves. 341.

(q) Ante, Compilations 229.

notice and examine the substance of the work itself.

To render intelligible that part of the law which relates to such periodical publications as are distinct in their nature, it will be convenient to arrange the subjects for discussion in the following order.

I. *Of Reviews, Magazines, &c.*
II. *Of Newspapers.*
III. *Of Pamphlets.*
IV. *The Stamp-duties thereon.*
V. *The Property therein.*
VI. *The Legal Proceedings peculiar to Periodical publications.*

I. Reviews.

Reviews, Magazines, Literary Journals, and works of a similar description, consist of *Essays* and *criticisms.*

1. Original Essays.

The *Essays*, or original pieces, are to be viewed in the same light as though they had been published by themselves,—whether they are the composition of the proprietor himself, or are procured for him. (*r*)

The parts which contain the criticisms distinguish these productions from books in general. Those articles are compounded of matter taken from the works of other persons, and the observations of the reviewer. The law is therefore two-fold as it regards the extracts and the observations.

(*r*) Wyatt *v.* Barnard, 3 Ves. & Beam. 77. Hogg *v.* Kirby, 8 Ves. 215. See ante, 241.

2. Quotations.

The *extracts* must not be made too freely: sufficient may be taken to form a correct idea of the whole; but no one is allowed, under the pretence of quoting, to publish either the whole or principal part of another man's composition; (*a*) and therefore a review must not serve as a substitute for the book reviewed. If so much is extracted that it communicates the same knowledge with the original, it is an actionable violation of literary property. The *intention* to pirate is not (as has been shewn) *always* necessary to be proved in an action for violating this species of copyright; but is generally to be inferred from the *quantity* of matter copied. (*b*)

3. Observations of critics.

The *remarks* made by the critic must not be personal; they must not impugn the moral character of the author. It seems that when they are made upon the merits of the work, without any reference to the individual who composed it, they may be justified, however ridiculous he may be rendered, or how much soever the book may be depreciated in value. (*c*)

The *abridgments* and *translations* sometimes

(*a*) Roworth *v.* Wilkes, 1 Camp. 97. and see 4 Esp. N. P. C. 170. and Wilkins *v.* Aikin, 17 Ves. 422. Whittingham *v.* Wooler, Dec. 8th, 1817, Eden on Injunctions 281.

(*b*) Ante, 216. and 238.

(*c*) Carr *v.* Hood, 1 Camp. 355. (and see Nightingale *v.* Stockdale, Selw. Ab. 1013. 5th edit.) *Ellenborough*, C. J. Every man who publishes a book commits himself to the judgment of the public; and any one may comment upon his performance. If the commentator does not step aside from the work, or introduce fiction for the purpose of condemnation, he exercises a fair and legitimate right. In the present case had the party writing the criticism followed the plaintiff

published in this description of literary works, are judged of in the same manner as abridgments and translations in general. (*d*)

II. Newspapers.

No other class of writings makes so great an impression on the public mind as periodical publications. The most powerful is a *Newspaper*.

The governments of every country have *therefore* been very careful to make rules and regulations concerning Newspapers. Under de-

into domestic life, for the purpose of slander, that would have been libellous: but no passage of this sort has been produced; and even the caricature does not affect the plaintiff, except as the author of the book which is ridiculed. The works of this gentleman may be, for aught I know, very valuable: but, whatever their merits, others have a right to pass their judgment upon them, to censure them if they be censurable, and to turn them into ridicule if they be ridiculous. The critic does a great service to the public, who writes down any vapid or useless publication; such as ought never to have appeared. He checks the dissemination of bad taste, and prevents people from wasting both their time and money upon trash. I speak of fair and candid criticism: and this every one has a right to publish, although the author may suffer a loss from it. Such a loss the law does not consider as an injury, because it is a loss which the party ought to sustain. It is in short the loss of fame and profit to which he was never entitled. Nothing can be conceived more threatening to the liberty of the press than the species of action before the court. We ought to resist an attempt against free and liberal criticism at the threshold.

(*d*) Ante, 233. 238. 240. see Dodsley *v.* Kinnersley, Amb. 403. As to entry of them at Stationers' Hall, see 54 Geo. III. c. 156. s. 5. and for *property* in a review, see 8 Ves. 215. and post, 268.

spotic ones, they are subject to censors; but in England, where it is contrary to the spirit of the laws to anticipate the commission of evil, it is sufficient that the publishers are known, and may readily be called on to answer for the contents of their papers.

Of the laws respecting Newspapers it will be proper to notice,—

1. The rules that regulate the *publication*, so that the persons concerned in them may be easily known.
2. The *contents*, and what things are sometimes published in them, which give offence to the laws.
3. In what instances noticed by the law.

The Gazettes, &c.

Papers for circulating News were first used in England in the reign of Queen Elizabeth. It was not until the reign of Queen Anne, that any notice appears to have been taken of them by the legislature.

Definition of Newspaper.

A Newspaper may now be *defined* to be a paper containing public news, intelligence, or occurrences, printed in Great Britain, to be dispersed and made public; and may consist of a sheet, half a sheet, or other piece of paper. (*e*) It must not exceed *thirty-two* inches in length, and *twenty-two* inches in breadth. (*f*)

(*e*) 55 Geo. III. c. 185. The oldest newspaper extant is dated July 23, 1588. "*The English Mercurie published by authoritie for the prevention of false reports.*" It is among the state papers in the British Museum.

(*f*) 34 Geo. III. c. 72. s. 2. 39 and 40 Geo. III. c. 72. s. 19. 44 Geo. III. c. 98. s. 22.

1. Manner of publication.

The few regulations, that were made for the better conducting the public press in those statutes that impose the stamps on Newspapers, all appear actually or virtually to be repealed by the act passed in 38 Geo. III., by which it is required

The affidavit.

that an affidavit (*g*) shall be delivered into the Stamp Office, before a Newspaper is published, under a penalty of 100*l*. (*h*) The affidavit, (to be renewed upon every change of circumstances) (*i*) must make known the names and residences (*k*) of the printer and publishers. If there are no more than two proprietors, then it must also specify them: but if there be more than two proprietors, then the names of the two that possess shares, not less in value than the others, must be joined with those of the printers and publishers, (*l*) even if any of them reside out of Great Britain. (*m*)

The affidavit must also contain a description of the *printing house* and the *title of the paper*. Any misrepresentation in it, either by mentioning parties who are not concerned in the paper, or leaving out any who are, makes the deposers liable to the penalties for perjury. (*n*)

This affidavit must be signed by the parties; and the publication of a Newspaper, before it is properly made, will subject them to a penalty of 100*l*. If the printers, publishers, and proprietors, do not exceed four in number, they must all depose. But if they are more numerous, then four are sufficient, provided notice, within

(*g*) 38 Geo. III. c. 78. § 1. (*h*) *Id.* § 1.
(*i*) *Id.* § 7. (*k*) *Id.* § 2. (*l*) *Id.* § 3.
(*m*) *Id.* § 23. (*n*) *Id.* § 5.

seven days after the affidavit is made, be given to all other persons not swearing, that they are named in it. For neglecting to give such notice, a forfeiture of 50*l*. is incurred.

This affidavit, filed by the commissioners, (*o*) or a certified copy made and signed by them, to be delivered on payment of one shilling, (*p*) will, in all matters, be *evidence of itself* against the makers of it. (*q*) A false certificate renders its maker liable to a penalty of 100*l*. (*r*) The prosecutor for penalties, upon producing a Newspaper, need not prove the purchase of it. (*s*) All notices will be sufficiently served, which are left at the printing office named in the act. (*t*) But if another affidavit has been made and delivered to the commissioners prior to the publication of any objectionable matter, in which it is specified that the maker of it has ceased to be engaged in the Newspaper, he will be exonerated from all liability imposed by the first affidavit. (*u*)

Evidence of publication.

The *names* of the printers and publishers must also appear on the Newspaper itself; (*x*) and a copy of it, signed by the printer or publisher, must, within six days, be delivered to the commissioners of stamps, (who will pay for it), under a penalty of 100*l*. Such paper may, within two years after the publication, be produced

Names on the paper.

(*o*) 38 Geo. III. c. 78. § 9. (*p*) *Id.* § 13 § and 14.
(*q*) *Id.* § 9. and see post p. 275. (*r*) *Id.* § 15, 16.
(*s*) *Id.* § 11. (*t*) *Id.* § 12. (*u*) *Id.* § 12.
(*x*) *Id.* § 8 and § 10. And a printer whose name does not thus appear, cannot recover in an action for work and labour for printing it. Marchant v. Evans, 2 B. Moore, 14.

at the expense of the party applying for it, as evidence in any court of justice. (*y*)

Hawkers. No hawker of Newspapers, or other persons, is allowed to let out any Newspaper to any person or to different persons, or from house to house, on pain of forfeiting 5*l*., to be recovered and applied as other penalties relating to the stamp duties. (*z*)

2. Its contents. A Newspaper is generally made up of *paragraphs*, either *essays* or observations of the editor, and *advertisements*.

Paragraphs. In neither shape can any thing *blasphemous*, *seditious*, or *libellous*, be given to the world. For the proprietor of a Newspaper, although he does not interfere in conducting it, is answerable, *criminally*, as well as civilly, for the acts of his agents by an insertion of offensive matter in his Newspaper. (*a*) The whole publication is considered in law as written by him; for otherwise he might give the form of letters, advertisements, &c., to his observations, and thus elude his merited punishment. In the case of Rex *v.* Woodfall (*b*) (proprietor of the *News*), in which the jury found a verdict of guilty of printing and publishing *only*, Lord Mansfield observed that when the act is in itself unlawful, (as in that case, being a libel on the King, signed *Junius*) the proof of justification or excuse lies on the defendant; and in failure thereof, the law *im-*

(*y*) 38 Geo. III. c. 78. § 17. (*z*) 29 Geo. III. c. 50. § 9.

(*a*) Rex *v.* Walter, 3 Esp. N. P. C. 21. The King *v.* E. Topham, 4 T. R. 127.

(*b*) 5 Burr. 2667.

plies a criminal intent in the proprietor, although it clearly appear that the offensive paragraph was not written by him.

A Newspaper must not be conducted or made use of, to the advantage of the enemies of this country. If any one shall presume to send a Newspaper to a foreign country, not at amity with England, he subjects himself to a penalty of 500*l.* A person, on suspicion of having done so, may be taken before a justice of the peace; and if he does not answer all lawful questions, he will be liable to forfeit 500*l.* (c) Sending newspapers abroad.

Nor can any seditious matter be published in any Newspaper, *under colour* of its having been printed in a foreign paper. (*d*) The proof that it has been so previously printed lies on the defendant. When that circumstance has been established, the matter is left cognizable by the law, as though that clause had never been enacted. (*e*)

In the newspapers are given, by the sufferance of parliament, the speeches that are made in the House of Lords and in the Commons, and also all copies of documents printed at the command of either of them, although they may contain reflections on individuals. (g) But if a Reports.

(c) 55 Geo. III. c. 185. which repeals 38 Geo. III. c. 78. § 22.

(*d*) 38 Geo. III. c. 78. § 24.

(*e*) *Id.* § 25.

(g) Rex v. Wright, 8 T. R. 293. It was contended that, although the report of the House of Commons could not itself be considered as a libel, the editor not acting under the authority of the House might be indicted for publishing with a view to general circulation.

member publish his speech himself in a newspaper, and it contain slanderous charges, an information for a libel may be supported against him, (*h*) as well as against the editor.

A correct statement of what passes in a court of justice (*i*) may be published in a newspaper, unless the Court intimate that it is their desire that no report should, *as yet*, be sent forth to the world, (*k*) for fear of prejudicing some of the

(*h*) K. *v.* Lord Abingdon, 1 Esp. N. P. C. 226. and see R. *v.* Creevy, 1 M. and S. 273. Rex *v.* Bate, Dougl. 387.

(*i*) Curry *v.* Walter, 1 Esp. N. P. C. 457. and 1 Bos. and Pul. 525. S. C. and see 5 Esp. N. P. C. 123. 2 Campb. 563.

(*k*) Rex *v.* Wright, 8 T. R. 293. (and see R. *v.* Clement, 4 Barn. & Ald. 218. Post, Chap. VII.) *Lawrence*, J.—The proceedings of courts of justice are daily published, some of which highly reflect on individuals: but I do not know that an information was ever granted against the publishers of them. Many of these proceedings contain no point of law; and are not published under the authority of the sanction of the Courts, but they are printed for the information of the public. Not many years ago an action was brought in the Court of Common Pleas by Mr. Currie *v.* Walter, proprietor of "The Time" for publishing a libel in the paper of "The Times," which supposed libel consisted in merely stating a speech made by a counsel in this Court on a motion for leave to file a criminal information against Mr. Currie. *Lord Chief Justice Eyre*, who tried the cause, ruled that this was not a libel, nor the subject of an action, it being a true account of what had passed in this Court; and in this opinion the Court of Common Pleas afterwards, on a motion for a new trial, all concurred, though some of the judges doubted whether or not the defendant could avail himself of that defence on the general issue. Though the publication of such proceedings may be to the disadvantage of the particular individual concerned, yet it is of vast importance to the public that the proceedings of courts of justice should be universally

parties to the suit. And in an action for a libel it must be proved that the account given in the newspaper contains *in substance precisely* what was delivered by the Court.

An information will lie for publishing an injective statement, unconnected with argument, against a judge or jury, for any thing done in their respective capacities, under pretence of its being a report of legal proceedings. (*l*) And no person will be allowed to mix his own observations with what has passed in the Court. (*m*)

known. The general advantage to the country in having these proceedings made public more than counterbalances the inconveniences to the private persons whose conduct may be the subject of such proceedings. The same reasons also apply to the proceedings in parliament: it is of advantage to the public, and even to the legislative bodies, that true accounts of their proceedings should be generally circulated; and they would be deprived of that advantage, if no person could publish their proceedings without being punished as a libeller. Though, therefore, the defendant was not authorized by the House of Commons to publish the report in question; yet, as he only published a true copy of it, I am of opinion that the rule ought to be discharged. Rule discharged.

(*l*) Rex *v.* White, 1 Campb. N. P. C. 359. n. and see Rex *v.* Watson, 2 T. R. 199.

(*m*) Carr *v.* Jones, 3 Smith 491, 503. S. C. under the names of Styles *v.* Nokes, in 7 East. 493. 503. Lord *Ellenborough* and *Grose*, J. observed, that it must not be taken for granted that the publication of every matter which passes in a court of justice, however truly represented, is, under all circumstances, and with whatever motive published, justifiable: but that doctrine must be taken with grains of allowance. It often happens, *said Lord Ellenborough*, that circumstances necessary for the sake of public justice to be disclosed by a witness in a judicial inquiry, are very distressing to the feelings of individuals on whom they reflect. And

It seems that editors of newspapers may abuse each other with impunity. But it is actionable to declare that any newspaper is *low in circulation*, and to insinuate that advertisers should avoid it. (*n*)

Advertisements.

The editor of a newspaper cannot, in answer to an indictment, say that the objectionable part is the *advertisement of another person*, and that he has no interest in it; and, therefore, that he ought not to be accountable for it, if he give up the real author. (*o*)

Libellous ones.

But some *advertisements* which appear to reflect on individuals, may be inserted. Thus an advertisement in a newspaper, whereby a person requested to be informed whether another had been guilty of a transaction which amounted to a felony, was held not to be a libel, because the advertiser, or his employer, was *interested* in the discovery; and the enquiry was not made with any intention of wounding his feelings. (*p*)

if such circumstances were afterwards wantonly published, I should hesitate to say that such unnecessary publication was not libellous, merely because the matter had been given in evidence in a Court of justice.

(*n*) Heriot *v.* Stuart, 1 Esp. N. P. C. 437. and see Stuart *v.* Lovell, 1 Stark. 93.

(*o*) Lewis *v.* Walter, 4 Barn. & Ald. 605. Brown *v.* Croome, 2 Stark. 297. 301.

(*p*) Delany *v.* Jones, 4 Esp. N.P.C. 191. *Ellenborough*, C.J. This paper is relied upon as necessarily carrying with it the imputation that the plaintiff was guilty of bigamy. You must be of opinion that it does carry such imputation before you can find a verdict for the plaintiff, as that meaning is necessary to make the paper a libel at all. The plaintiff's counsel contend that you are to take into your consideration only, whether the advertisement conveys a libellous charge against the plaintiff or not? I am of a different

Illegal advertisements.

Many statutes have passed to restrain the publication of certain description of advertisements. Under stat. 9 Ann. c. 6. s. 5. and 10 Ann. c. 26. s. 109. a penalty of 100*l.* is imposed on all persons, (the latter particularly mentioning printers and publishers,) for advertising the keeping of any office for illegal *insurances on marriage*, or offices under pretence of *improving small sums*.

By several statutes the publishing proposals *for gaming in the lotteries* has been restrained. By 22 Geo. III. c. 47. (*q*) it was enacted "that, in order to prevent all adventuring with lottery tickets, other than such as arise from the real and actual sale of tickets, and of such shares as are thereby permitted, it is enacted that it shall not be lawful for any person to sell the chance of any ticket, &c. or insure for or against the drawing of any ticket, *or to publish any proposal for any of the purposes aforesaid*," under the penalty of 50*l.* for every offence. One Smith was held to have incurred the penalty, because he had *published* a proposal in the usual way in his newspaper. (*r*) Lord Kenyon wished it to be understood that the distributor of *hand bills* of a similar description would be equally criminal.

It appeared in 1793 that many printers had

opinion: I conceive the law to be, that though that which is spoken or written may be injurious to the character of the party; yet, if done *bona fide* as with a view of investigating a fact, in which the party making it is interested, it is not libellous.

(*q*) 8 Geo. I. c. 2. 9 Geo. I. c. 19. 6 Geo. II. c. 36. 19 Geo. III. c. 21. s. 7. and 22 Geo. III. c. 47. s. 13.

(*r*) King *v.* Smith, 4 T. R. 414.

incurred penalties under the *lottery acts* for publishing illegal schemes; and, therefore, an act of parliament(s) was passed *to indemnify* them against the consequences.

And any person publicly advertising a reward, holding out a promise that no question should be asked, for the *return of things stolen* or lost, &c. and any person printing or publishing such advertisement, will be liable respectively to forfeit the sum of 50*l.* (*t*)

For advertising, or printing an advertisement, for a public debate on any subject upon the Lord's day, a person subjects himself to a forfeiture of 50*l.* (*u*) The action to be brought within six months.

3. In what instances noticed by the law.

A common newspaper is made *legal evidence* by several acts of parliament, for particular purposes, as of meetings to petition parliament, of notice of moving for a private bill, &c. (*x*)

But the newspaper of which the law takes the most notice is one published by authority, the *London Gazette*; (*y*) in which it is necessary to insert all dissolutions of partnership; (*z*) for

(*s*) The 32 Geo. III. c. 61. indemnifies against the penalties incurred under 8 Geo. I. c. 2. 12 Geo. II. c. 28. 22 Geo. III. c. 47. 27 Geo. III. c. 1.

(*t*) 25 Geo. II. c. 36. (*u*) 21 Geo. III. c. 49. s. 5.

(*x*) 36 Geo. III. c. 8. s. 1. and see Boydell *v.* Drummond, 2 Campb. N. P. C. 157. and Lord Gallway *v.* Matthew, 10 East. 264. Jenkins *v.* Blizard, 1 Stark. 418.

(*y*) First published in 1642. There is also a Dublin Gazette published by authority.

(*z*) Graham and another *v.* Thompson and another, Peak. Rep. 42. Graham *v.* Hope, Peake Rep. 154. and see 1 Sid.

there is a strong presumption that every body reads the Gazette, though it is not always held to be sufficient, without notice to each customer, unless it can be shewn that it is probable that the defendant saw it. Although the instructions for the dissolution of a partnership cannot be read without an agreement stamp; (*a*) yet the Gazette may, for it is only a mere recital that the partnership has been dissolved. (*b*)

Notices in gazette.

By several acts of parliament a notice published in the London Gazette is deemed to be good and sufficient notice to all his majesty's subjects. Several instances are given in the note. (*c*)

Rep. 127. Godfrey *v.* Turnbull and another, 1 Esp. Rep. 371. Peak. Rep. 155. n. S. C. Leeson *v.* Holt, 1 Stark. N.P.C. 186. Newsome *v.* Coles, 2 Campb. 617.

(*a*) May *v.* Smith, 1 Esp. N. P. C. 283.

(*b*) Jenkins *v.* Blizard, 1 Stark. N. P. C. 418.

(*c*) An alehouse keeper is not liable to the penalty for entertaining persons against whom process has issued for offences against the laws of the customs or assize, after *notice* has been given in the *Gazette* of the offenders having absconded, 9 Geo. II. c. 35. s. 30. and s. 31. Annuities granted on the duty on plate are to cease on notice in the Gazette, and payment of principal, 6 Geo. I. c. 11. s. 28. s. 38. Notice in the London Gazette of certain transactions at the Bank of England, 7 Ann. c. 27. s. 72. 3 Geo. I. c. 8. s. 38. and also of the meetings of commissioners of bankrupt, 5 Geo. II. c. 30. s. 2. is in each case deemed good and sufficient notice. The same rule applies to the proclamations for smugglers, 19 Geo. II. c. 34. s. 2. or felons, 9 Geo. I. c. 22. s. 4. to surrender themselves. And when a party has been robbed, and intends to sue the hundred on 27 Eliz. c. 13. 8 Geo. II. c. 16., he must give notice to that effect in the Loudon Gazette, 38 Geo. III. c. 76. &c. &c.

III. Pamphlets.

Definition of a pamphlet.

A Pamphlet is defined to be a book consisting of one sheet, and not exceeding eight sheets in octavo, or any other lesser page; or not exceeding twelve sheets in quarto, or twenty sheets in folio. (*d*)

Pamphlets must now be distinguished into those that contain *more*, and those that contain *two sheets*, or *less* than *two sheets*. The former, for sake of distinction, may be denominated the *larger ones*; the latter, the *smaller ones*.

1. Larger pamphlets.

The larger pamphlets differ from other books only, by the mode of frequent or continuing publication; by the stamp duty; and by the necessity of an entry of them at the stamp office, to collect the duties on the advertisements which appear on the covers or wrappers.

2. Smaller pamphlets.

Of the smaller pamphlets the laws vary according as the matter or *contents* of them are of a *literary* or *political* character.

Literary ones.

Literary pamphlets of the smaller kind, like all the larger ones, are only distinguishable from other books by the stamp duty that is imposed on them, and the manner of publication.

Political ones.

But the smaller political pamphlets have of late been assimilated to newspapers: and are described in the statute 60 Geo. III. c. 9. to be, all pamphlets and papers containing public

(*d*) All the parts or numbers of any book or literary work, published in sizes answering to this description, are deemed pamphlets. 60 Geo. III. c. 9. s. 27.

news, intelligence, or occurrences, or remarks thereon, or in any matter in church or state, printed in the united kingdom for sale, and published periodically, or in parts, or numbers, at intervals not exceeding *twenty-six days*; where any of them respectively shall not exceed two sheets, (*e*) (being not less than twenty-one inches in length, and seventeen inches in breadth, (*f*) of which the cover forms no part,) (*g*) or shall be published for sale for less than *sixpence*, exclusive of the duty imposed by that act. Such papers are to be deemed to be within the 38 Geo. III. c. 78. (*h*) and 55 Geo. III. c. 30. 56 Geo. III. c. 56. and 55 Geo. III. c. 185. (*i*) and all other acts of parliament relating to newspapers.

It will be necessary to examine these political smaller pamphlets, as to

1. The mode of publication.
2. Their contents.

1. Mode of publication. The bond.

No person, (*k*) after thirty days from the 30th Dec. 1819, is to be allowed to publish a *newspaper* or any such *pamphlets* described above as the smaller ones, until he has entered into a recognizance before a Baron of the Exchequer; or has executed and delivered to some neighbouring justice of the peace, a bond to the King, with two or three sureties in three hundred pounds, if such newspaper, &c. is printed in

(*e*) 60 Geo. III. c. 9. § 1. (*f*) *Id.* § 2.
(*g*) *Id.* § 3. (*h*) Ante, p. 250, 1.
(*i*) Post, p. 265. (*k*) 60 Geo. III. c. 9. § 8.

London, or within twenty miles; and in two hundred pounds, if printed elsewhere, and his *sureties in a like sum* in the whole; *conditioned* for the payment of such penalty as may be imposed on publishing any *blasphemous or seditious libel*, under a penalty of twenty pounds.

The sureties.

If a surety (*n*) has paid the whole or part of the penalty in the recognizance or bond, or has become bankrupt, or has been discharged as an insolvent debtor, the person for whom he was bound must not publish any newspaper, &c. until he has (on being required so to do by the commissioners of stamps) entered into a new recognizance or bond, with sureties, in the same manner, and to the same amount as before, under a penalty of twenty pounds.

But a surety (*o*) may withdraw himself on giving twenty days' notice in writing to the commissioners of stamps, and to the persons for whom he is surety; and at the expiration of such notice he will only be liable for penalties previously incurred. The person for whom such surety was bound must not publish any newspaper, &c. until he has entered into a new recognizance or bond, under a penalty of twenty pounds. This bond is not subject to any stamp duty. (*p*)

A list of the recognizances is sent four times a year, and the bonds are transmitted by the justice within ten days from the time they receive them, to the commissioners of stamps. (*q*)

(*n*) 60 Geo. III. c. 9. s. 9.
(*o*) *Id.* s. 10.
(*p*) *Id.* s. 11.
(*q*) *Id.* s. 12.

A pamphlet, the day on which it is published, or within six days, must be delivered to the commissioners of stamps, (*r*) signed by the printer or publisher, with his name and place of abode, (which is to be kept and paid for by the commissioners) under a penalty of one hundred pounds. If commissioners, &c. (*s*) refuse to receive or pay for any copy of such pamphlet, &c. on account of the same not appearing to be within the meaning of the act, they must, if required, deliver to the printer or publisher *a certificate* that a copy of such pamphlet, &c. has been by him duly offered to be delivered, and the printer, &c. will thereupon be exempt from all penalties.

Delivery of pamphlet to commissioners.

Upon every such pamphlet, &c. must be printed *the price* at which it is published for sale, and the day on which it is first published, which must be on the *first day of every month*, or within two days before or after it, under a penalty of 20*l*. And the publisher, or any person who, within two months after the day of publication printed thereon, sells any such pamphlets, &c. on which the price printed shall be sixpence, or above that sum, *for a less price* than sixpence, he will forfeit 20*l*.: but this rule does not extend to the allowance made by the publisher to a distributor by retail. (*t*)

The day and price to be printed on it.

Retail dealers.

If the contents of the smaller pamphlets are of a literary nature, quite distinct from any thing political or blasphemous, then the authors are subject only to the laws that affect the contents

2. Contents of smaller pamphlets.

(*r*) 60 Geo. III. c. 9. s. 13.
(*s*) *Id.* s. 14.
(*t*) *Id.* s. 4. and s. 5.

of the larger pamphlets, or (except the stamp duty) to the law of periodical publications in general. (*u*) But the author of smaller pamphlets, which contain any seditious libels, or blasphemy, are punished in a peculiar manner, which will be explained. (*v*)

IV. Stamp Duties.

Stamp duties differing in amount are imposed on *advertisements* whether they are published on the wrappers of periodical publications, or in the gazette and newspapers, and also on the newspaper itself, and on pamphlets. The duty on the pamphlet varies according to its size, and the nature of its contents.

1. Duty on reviews and advertisements.

A review or magazine in general exceeding eight sheets, is exempt from the duties on pamphlets.

For every advertisement contained in or published on the wrapper of any periodical publication, or with any part or number of any book, or literary work published in parts or numbers, a duty of three shillings and sixpence is imposed; and no stamps are to be delivered out for pamphlets until security has first been given for payment of the duty of the advertisement. (*x*)

Hence it is required, whenever a work is published in parts, although it may be too large to be deemed a pamphlet, that *the first number* must be entered at the stamp office that the duties may be collected.

(*u*) Ante, 260. and post, 266. (*v*) Post, 271.

(*x*) 5 Geo. III. c. 46. s. 8. and 55 Geo. III. c. 185. sch. 3

2. Duty on Newspapers.

A stamp duty was first put on a newspaper in the reign of Queen Anne.(*y*) It has been increased at different times by many acts of parliament.(*z*)

Discount.

That duty is now four pence on every newspaper: (*a*) but a discount (*b*) of 20*l. per cent.* is allowed for prompt payment of any sum of 10*l.* or upwards, when the price of the paper does not exceed sevenpence; and 4*l. per cent.* to those who sell for a higher price than sevenpence. The newspaper must be marked to shew that the discount is allowed, and the price of it must be printed on it. A penalty of 20*l.* is inflicted on those who sell it for more than the printed price.

No persons but commissioners of stamps or their officer can *supply paper* stamped for printing newspapers, until the person so supplying has given security to deliver once in six weeks an account of the quantities and kind sold, under a penalty of 100*l.*(c) If the papers are not duly stamped, the publishers stand indebted to the king in the sum that would have accrued if they

Unstamped newspapers.

(*y*) 10 Ann. c. 19. s. 101.

(*z*) 11 Geo. I. c. 8. s. 14. 30 Geo. II. c. 19. s. 1. 13 Geo. III. c. 65. 16 Geo. III. c. 34. s. 7. The 55 Geo. III. c. 78. (sch. pt. 4.) and 55 Geo. III. c. 80. impose and regulate the duties on pamphlets, almanacks, and newspapers, in Ireland.

(*a*) 55 Geo. III. c. 185. repealing 37 Geo. III. c. 90. s. 22.

(*b*) *Id.* s. 9. This discount was first given by 29 Geo. III. c. 50. s. 8. instead of allowances on the cancelling of newspapers remaining unsold, which was extended by 37 Geo. III. c. 90. s. 22. and also by 41 Geo. III. c. 10. 42 Geo. III. c. 99. 44 Geo. III. c. 98 sch. C. and 49 Geo. III. c. 50.

(*c*) 38 Geo. III. c. 78. s. 26.

had been properly stamped. (*d*) There are several penalties respecting *unstamped* newspapers: 20*l*. for printing and publishing, (*e*) or for having possession of them, and 100*l*. for sending them out of the kingdom. (*f*) And whoever sells newspapers or pamphlets unstamped may be sent to the House of Correction for any time not exceeding three months, whilst the informer is entitled to a reward of 20*s*. (*g*)

On the advertisements in them.

A duty of 3*s*. 6*d*. is imposed on every advertisement in the London Gazette or other newspapers. (*h*)

These duties (*i*) are under the government of the commissioners of stamps.

The duties (*k*) are to be paid into the exchequer, and carried to the account of the consolidated fund; and the allowances and discounts thereon are to be made in the same manner as those on newspapers. It is felony, without benefit of clergy, to counterfeit the dye, or forge the stamp of newspapers, &c.

3. Duty on pamphlets. The larger ones.

On every sheet of any kind of paper contained *in one copy* of a pamphlet of the *larger* kind, and of the *literary smaller* ones, a duty of three shillings is imposed. (*l*)

One printed copy of every such pamphlet must be sent within six days after publication to the

(*d*) 38 Geo. III. c. 78. s. 27. (*e*) *Id.* s. 18, 19, 20.
(*f*) *Id.* s. 21, 22. (*g*) 16 Geo. II. c. 26. s. 5.
(*h*) 55 Geo. III. c. 185. sch. repealing 20 Geo. III. c. 28. s. 1. and 37 Geo. III. c. 90.
(*i*) 60 Geo. III. c. 9. s. 23.
(*k*) *Id.* s. 24.
(*l*) 55 Geo. III. c. 185. Ante, 260.

office of stamps, if it be published in London; if in the country, then it must be taken to a collector of stamps within fourteen days, (*m*) or all persons concerned with it will be liable to forfeit 20*l*., and all costs of each suit; (*n*) and a like penalty will be inflicted upon every person who sells it without the name and place of abode of the publisher being printed upon it. (*o*)

The *smaller political* pamphlets are subjected (*p*) to the same stamp duties as on newspapers, with the same allowances and discounts, and subject to all rules and regulations respecting newspapers. But they are to be free from the duties on the old or large pamphlets, (*q*) and any person selling such pamphlet *unstamped* is rendered liable to a penalty of 20*l*. (*r*)

4. Exemptions.

The works exempted from the duties on newspapers (*s*) and the pamphlets made newspapers (*t*) are,—acts of parliament, proclamations, orders of council, forms of prayer and thanksgiving, and acts of state, ordered to be printed by his Majesty; printed votes or other matters, by order of either House of Parliament; books commonly used in the schools of Great Britain; books containing only matters of devotion or piety; any paper containing a single advertisement printed and dispersed separately;

(*m*) 10 Ann. c. 19. s. 111. to which s. 4. of 55 Geo. III. c. 185. refers.

(*n*) 10 Ann. c. 19. s. 112.

(*o*) *Id.* s. 113.

(*p*) 60 Geo. III. c. 9. s. 1. and s. 24.

(*q*) *Id.* s. 7.

(*r*) *Id.* s. 15.

(*s*) 55 Geo. III. c. 185.

(*t*) 60 Geo. III. c. 9. s. 26.

daily accounts or bills of goods imported and exported, and the weekly bills of mortality, provided such bills or accounts do not contain any other matter than what hath been usually comprized therein. And also any work reprinted and republished in parts or numbers, whether wholly reprinted or abridged; provided the work was first printed and published two years before the reprinting and republication, and was not first published in parts or numbers.(*u*)

V. The Property in Periodical Publications.

The property in periodical publications is similar to that which has been shewn to exist generally in a book.(*v*) There are some peculiarities which must be here noticed, arising from their contents, and the manner in which they are sold. The matter of one number seldom having any reference to other parts of the work, it would be an easy task to obtrude a spurious publication of the same nature upon the public.

1. Property in review.

Hence, although generally two books may bear the same *title*, yet there is a property in the name given to a periodical publication. It has been decided that the title, form, and mode of publication of a *magazine* (*w*) cannot be imitated in such a

(*u*) 60 Geo. III. c. 9. s. 27.

(*v*) Ante, 219. Post Chap. VII.

(*w*) Hogg *v.* Kirby, 8 Ves. 215. And see Sedon *v.* Serrate, cited 2 Ves. and Beam. 220. Hogg published a work under the title of the *Wonderful Magazine*, by William Granger, Esq., a fictitious name. Kirby agreed to sell

manner as would necessarily mislead the public, and induce them to purchase the latter work instead of the continuing parts of the former one.

It is, however, lawful for any person to publish a magazine under a *similar* though not the it. After five numbers had appeared Kirby published a work under a similar title, described as the *new series improved.* In Kirby's first number was contained an index to the contents of the five numbers already published. One article, not finished in the fifth number, was continued in Kirby's, by commencing with the word at the bottom of the last page. *Eldon*, C. In this case, protesting against the argument that a man is not at liberty to do any thing which can affect the sale of another work of this kind, and that because the sale is affected, therefore there is an inquiry; (for if there is a fair competition by another original work really new, be the loss what it may, there is no damage or inquiry). I shall state the question to be, not whether this work is the same, but in a question between these parties whether the defendant has not represented it to be the same, and whether the injury to the plaintiff is not as great. And the loss accruing ought not to be regarded in equity upon the same principles between them, as it was in fact the same work. Upon the point whether the work was in fact meant to be represented to the public as the same, I do not say, that is not a question for a jury. But I must act upon the inference from the circumstances; and it is impossible not to say, till this is better explained, an intention does appear both upon the transaction as to the fifth number and the other circumstances; in some degree upon the appearance of the outside, in a great degree upon the first page, the index, and the promised contents, to state this as a continuation of the former work, in a new series indeed. I am not here to speculate upon the probable consequences of such conduct; for I have the actual consequences as far as fair reasoning can determine, that out of 2,000 purchasers 1,800 have bought this, a part of the old work. The point whether he,

same title, and of the like nature, if the latter be *distinctly different* from the former, and nothing has been done to injure the sale of the former work. (x)

Communications. The *communications from correspondents* to the editors or proprietors of periodical publications are of course the property of the person to whom they are directed; and cannot be published by any other person, who by chance may have obtained possession of them. (y)

2. Property in pamphlets. The property in a pamphlet is exactly the same as that in a common book.

3. Property in a newspaper. The property in a newspaper is personal, and may be dealt with like all other personalty. It may, however, be useful to collect the cases that relate particularly to them.

It may be devised. The printer of a newspaper

who carries his work into the world as that of another person shall not as between them be considered as publishing that work, if the consequences are the same, is new; and therefore fit to be discussed elsewhere as well as here. I must incur the hazard of occasioning finally some injurious consequence to one party or the other. The proper course will be to alter the terms of this injunction so as to make it clear, that is, to operate upon nothing but the publication handed out to the world as thecontinuation of the plaintiff's work, and to direct that as to these numbers that are handed out as such continuation the plaintiff shall bring an action, the defendant to plead without delay, that it may be tried with all due speed; then they who apply to dissolve the injunction shall imply, that reviews, magazines, and other works of this species may not be multiplied, and therefore shall alter the injunction myself.

(x) 8 Ves. 222, 3. (y) 8 Ves. 215.

(the Bath Chronicle), (x) bequeathed to his widow the benefit of that trade, subject to the trust of maintaining and educating her family. The foreman, by her assistance in giving him the use of the letter-press, &c. on the premises, set up a paper bearing the same name. An injunction was granted, at the request of the executors, to restrain him from carrying it on.

Bankruptcy of proprietor.

The interest in a newspaper, although of a fluctuating nature, comes within the meaning of "goods and chattels" in the bankrupt statutes; and therefore passes by the assignment of the commissioners, if the proprietor become a bankrupt. (*a*)

And if the printer and publisher of a newspaper assign his interest in it to a creditor as a security, but continues to print and publish as before, and *no affidavit of the change of interest has been delivered* to the commissioners of stamps, and he become bankrupt, the right to the paper will pass to his assignees. (*b*)

VI. Legal Proceedings peculiar to Periodical Publications.

The legal proceedings in respect of periodical publications, independent of those which may be taken to protect the copyright in them, take place

(x) Keene *v.* Harris, cited in 17 Ves. 338. and see Cruttwell *v.* Lye, 17 Ves. 335. and 8 Ves. 217.

(*a*) Longman *v.* Tripp and another, 2 New Rep. 67. See as to bankrupt patentee of an invention, ante, 166.

(*b*) 2 New Rep. 67.

by summons before *justices of the peace*, or by indictment or action in the courts of law. The manner in which the copyright *in general* to a book is protected will be investigated hereafter; but, inasmuch as the present Chapter is devoted to publications that appear periodically, this place seems most proper for introducing the practical part of the law peculiar to them.

1. Justices of the peace.

The power given to justices of the peace over *newspapers* is very great. Two of them may hear and determine offences against the 10 Ann. (*d*) in relation to pamphlets and newspapers, on complaint made within three months, and on conviction, either on view or information, they may issue warrants for levying the penalties on the goods of the offender, and cause sale to be made if they are not redeemed in six days; and, in default of goods, they may commit the offender to prison. *An appeal* is given to justices at sessions, who are finally to determine the same; and, in case of conviction, issue warrants. The justices may mitigate the penalty, so that they do not reduce it lower than one-fourth part above the costs.

It may be made (*e*) a part of the condition of the recognizance of a person, held to bail for publishing a libel, that he shall be of *good behaviour* during the continuance of the recognizance.

All penalties (*f*) imposed by 60 Geo. III. c. 9. are to be recovered before any two justices of the

(*d*) 10 Ann. c. 19. s. 120.
(*e*) 60 Geo. III. c. 9. s. 16.
(*f*) *Id.* s. 17.

peace of the county, &c. where the offence is committed: but no larger amount in the whole than one hundred pounds can be recovered before justices of peace, for penalties incurred in one day.

Two justices, (*g*) in all cases in which they are authorized to determine offences against that act, upon complaint made within *three months* after the offence, may summon the party accused, and the witnesses; and, upon appearance or contempt of the party in not appearing, they may examine the witnesses on oath, and give judgment for the penalties incurred; and, in case the penalties are not immediately paid, may commit the offender for a time not exceeding six months, unless such penalties are sooner paid. The party convicted may, on giving security, to the amount of the penalties adjudged together with such costs as may be awarded in case judgment is affirmed, *appeal to the next quarter or general sessions*, which court may summon witnesses, and hear and determine the same; and, on judgment being affirmed, they may award such costs against the appellant, as they may think proper. They may mitigate the penalties and at the same time allow the costs of the officers or informers above such mitigation, if it is done so as not to reduce the penalty below one fourth of its original amount over and above the costs.

Witnesses (*h*) summoned to attend before the justices, either for the prosecutor or the person accused, neglecting to attend, or appearing and refusing to give evidence, without a reasonable excuse, are liable to forfeit twenty pounds. Witnesses.

(*g*) 60 Geo. III. c. 9. s. 18. (*h*) *Id.* s. 19.

No removal of cause.

No order (*i*) or conviction, made under the acts respecting newspapers by any justices of peace, can be removed by any writ.

It is enacted that no person (*k*) shall commence any action or information in any of his majesty's courts, or before any justices of peace, for any penalty under those acts, unless in the name of the Attorney-General in England or Ireland, or the Lord Advocate in Scotland, or in the name of the solicitor or some other officers of the stamp duties in England, Scotland, or Ireland. All other actions, &c. are declared to be void.

2. The indictment.

Legal proceedings may be maintained against the authors and publishers of periodical works for misconduct, in the same manner as against other publishers, by indictment or information; (*l*) except as to the evidence of publication, which will be detailed in this chapter. (*m*)

3. Actions at law.

The penalties inflicted by the different statutes may also be recovered in any of the courts of common law.

All actions to recover penalties on the newspaper acts must be brought within six calendar months; and if the defendant should recover, he will be entitled to treble costs. (*n*)

Actions on newspapers. Declaration, variance.

If a party declare *in tort*, as the proprietor, *editor*, and publisher of a newspaper, and it ap-

(*i*) 38 Geo. III. c. 78. s. 20. and 60 Geo. III. c. 9. s. 20, 21.

(*k*) *Id.* s. 22.

(*l*) See post Chap. VIII.

(*m*) See post from p. 275. to p. 279.

(*n*) By 37 Geo. III. c. 90. s. 38., the provisions of which appear to be extended to 53 Geo. III. c. 185. by s. 4. and see 60 Geo. III. c. 9. s. 17.

pear in evidence that another person is the editor, but that it is conducted under the inspection of the plaintiff, the averment is entire; and he cannot recover as proprietor, (*o*) not even for distinct injuries committed against him in his separate rights of proprietor and publisher.

Evidence of newspaper.

The manner in which newspapers must be published, and also the mode, pointed out by the 38 Geo. III. c. 78., of producing them in evidence against the proprietors, has been stated. (*p*) The construction which has been put upon the clauses of that statute, now require attention.

It has been decided that the affidavit left at the stamp office, and a newspaper answering the *whole* description contained in that affidavit, produced by a person from the stamp office, is evidence, not only of the publication of the paper, but that it took place *in the county in which it is described as having been printed*; and that the provisions in the 11th section, which make it unnecessary to prove that the newspaper to which the trial relates was purchased at any house, apply to plaintiffs in *civil suits*, and prosecutors in *criminal ones*, as well as to persons seeking to recover *penalties*. (*q*)

(*o*) Heriot *v.* Stuart, 1 Esp. N. P. C. 438.

(*p*) 38 Geo. III. c. 78. s. 10. ante 251.

(*q*) The King *v.* Hart and another, 10 East. 91. *Bayley*. J. As to the evidence of publication, the statute was passed, as the title of it states, for the purpose of "preventing the mischiefs arising from printing and publishing newspapers by persons unknown;" and it was meant to facilitate the proceedings, either civilly or criminally, against the several persons concerned in such publications. For this purpose the

And the certified copy of the affidavit sworn to by the defendants at the stamp-office, and a newspaper corresponding with the title of the

act requires an affidavit to be made by the printers, publishers, and proprietors, specifying their names and places of abode, a true description of the house where the paper is to be printed, and the title of the paper. And such affidavit is made conclusive of the several facts stated in it, as against the persons signing it, unless they shew that they ceased to be the printers before the period of the particular publication complained of. Now, suppose the act had stopped there, and it had been proved, as in this case, that a paper, such as is described in the affidavit made and signed by these defendants, had been published, the affidavit is made conclusive evidence against them that one of the defendants was the printer, and the other the proprietor of a paper so entitled, and that it was printed at the place therein described, which is within the city of London, that would have been *prima facie* evidence that the paper produced, tallying with that description, was published by them there, and could have called upon them to prove that it was a fabrication; and, if it were, there could have been no difficulty in making that proof. But the act goes further; and by the 11th section expressly enacts, that after such affidavits shall be produced in evidence against the persons signing the same, &c. and after a newspaper shall be produced in evidence entitled in the same manner as the newspaper mentioned in such affidavit, and wherein the name of the printer and publisher, and place of printing, shall be the same, it *shall not be necessary* for the plaintiff, informant, or prosecutor, or person seeking to recover any of the penalties given by this act, to *prove that the newspaper to which such trial relates was purchased at any house*, &c. belonging to or occupied by the defendants, or their servants, &c. or where they usually carry on the business of printing or publishing such paper, or where the same is usually sold. And I cannot consider, as the objection supposes, that all these descriptions of persons, namely, plaintiff, informant, or *prosecutor*, or person seeking, &c. apply to the same person

newspaper described in the affidavit, were held to be sufficient evidence to support a count in an information charging the defendants with *composing*, printing, and publishing a libel. (*r*)

With respect to the certificate, (*s*) if it does not appear in the jurat, that the person, before whom it was made, had authority to take it, proof must be adduced that he had such power. (*t*)

Evidence at common law.

However, when the plaintiff is otherwise at a fault, he may have recourse to *common law*, at which it is sufficient evidence of publication, to give *the original affidavit* signed by the defendant, stating, that the party is the sole proprietor of the newspaper in question, and also naming the place where it is to be published, *accompanied by a newspaper* of a corresponding title, (containing the alleged libel,) which had been purchased at the place described in the affidavit. (*u*)

seeking to recover penalties given by the act: but I take these words to apply to a plaintiff seeking to recover damages in an action for the civil injury sustained by him from the publication of a libel; to the informant by an information granted by this Court, or exhibited by the Attorney-General for the same; to a *prosecutor* prosecuting by indictment for the libel; or, lastly, to any person seeking to recover penalties under the act. Therefore, independent of the 11th section, I should have thought that the evidence offered was *prima facie* evidence of the publication of the paper by the defendants in London. But, taking that section in aid, which is not confined to suits for recovering penalties, there can be no doubt that the necessity of further proof was superseded. Rule refused.

(*r*) Rex *v.* Hunt and another, 2 Campb. N. P. C. 583.

(*s*) Phil. on Evidence, p. 243.

(*t*) Rex *v.* White, 3 Campb. N. P. C. 99.

(*u*) *Id.* 100.

Evidence. Before the passing of 38 Geo. III. other modes had been resorted to in order to connect persons with the publication of newspapers. Thus it was considered sufficient evidence that a person was the publisher of a newspaper, when it was proved, that it was sold at his office, and that he, as proprietor of the paper, had given a bond to the stamp-office pursuant to the 29 Geo. III. c. 30. s. 10. for securing the duties on the advertisements, and that he had occasionally applied there respecting the duties on it. (*x*) And the publication of a newspaper was sufficiently proved by the evidence of the printer, who said that it was published in the usual way. (*y*)

Though a publisher is liable to a penalty for not having his newspaper stamped; yet, thus *unstamped*, it may be given in evidence; for this case is not like that of deeds and agreements, where the acts of parliament expressly declare that no such instrument shall be read in evidence until it is stamped. (*z*)

To explain the libel, and to mitigate the damages, the defendant has a right to have read in evidence extracts from a *different part* of the

(*x*) The King v. Topham, 4 T. R. 126.

(*y*) Peake N. P. C. 76. In the case of the King v. Weaver, Jan. 1821, K. B. MSS. it appeared that the place of publication, mentioned in the affidavit, and the one printed on the paper, were not the same. It was held not to be sufficient evidence of publication that the names on the paper were the same as those on the door of the house where the paper produced was bought.

(*z*) The King v. Pearce, Peake N. P. C. 75. and see 35 Geo. III. c. 78. s. 18, 19 and 20.

same newspaper, connected with the subject of the libellous passage. (*a*)

The publication of a weekly paper called Cobbett's Political Register, containing a libel on Mr. Plunkett, was substantiated by proof of a copy having been bought at his shop. (*b*) For the purpose of shewing that the first paper was circulated regularly and deliberately, the witness was asked, whether he had since purchased other papers of the same title at the same office.

Bill in Chancery to discover names.

But if a person has been libelled in a newspaper, and suspects the author to be a proprietor not named in the affidavit, he may file a bill in Chancery for a discovery of the names of any persons concerned in it. The defendants are not allowed to plead or demur, but must make the discovery required. Such information, when obtained, cannot however be used in any other proceeding, except in that for which the discovery is made. (*c*)

(*a*) R. v. Lambert, 2 Campb. N. P. C. 400. and see Tabart v. Tipper, 1 Campb. N. P. C. 350.

(*b*) Plunkett v. Cobbett, 5 Esp. N. P. C. 136.

(*c*) 38 Geo. III. c. 78. s. 28.

CHAP. V.

Of Musical and Dramatic Compositions.

The laws respecting the copyright in musical and dramatic works are very similar; and it therefore seems proper to place them together in the same chapter.

I. Musical Compositions.

The decisions on this branch of the law with regard to music will lead to the consideration of,

1. Whether a musical composition is protected by the copyright acts.
2. What property the composer has in it.
3. The manner of assigning it.
4. Piracy by taking it down at Theatre.

Musical compositions are books to be protected by the statute of 8 Anne, and those acts of parliament which have enlarged the benefits to be derived from it. (*a*)

(*a*) Bach v. Longman, Cowp. 623. This was a case sent from the Court of Chancery for the opinion of the Court of Law, whether a musical composition, a *Sonata* for the harpsichord, was within the statute of 8 Anne, c. 19.

We have seen what kind of publications are considered as books within the meaning of the words of that statute "books and *other writings*." Whence it appears that the protection is extended to a piece of music published on a *single sheet* of paper. (*b*) And that it is not material whether the matter pirated be a whole book of music, or some one tune of a particular name in a work bearing a different title. (*c*)

2. Property in.

The *property* in a piece of music is exactly the same as that in a book. And therefore upon

Lord Mansfield. The words of the act of parliament are very large:—"*Books and other writings.*" It is not confined to language or letters. Music is a science: it may be *written*; and the mode of conveying the ideas is by signs and marks. A person may use the copyright by playing it: but he has no right to rob the author of the profit, by multiplying copies, and disposing of them to his own use. If the narrow interpretation contended for in the argument were to hold, it would equally apply to algebra, mathematics, arithmetic, hieroglyphics. All these are conveyed by signs and figures. There is no colour for saying that music is not within the act.

(*b*) Clementi *v.* Golding (or Goulding) 11 East. 244. 2 Campb. N. P. C. 25. S. C.

(*c*) White *v.* Geroch, 1 Chit. Rep. 26. (S. C. in 2 Barn. and Ald. 298. ante p. 220.) *Abbott*, C. J. I am of opinion that the words of this act of parliament (54 Geo. III. c. 156) mean all original compositions, whether they are large or small; and are consequently entitled to the protection intended by the legislature. It has been held that a musical composition is a book; and that an action is maintainable for pirating a single sheet of music. The only distinction here is, that this piece of music is found in company with others instead of being printed by itself; and it seems to me that that does not make any difference in the principle of the question. Many different books or subjects may be

a person proving that he was the *composer* of a musical air, although the piracy was endeavoured to be justified, by shewing that the song was composed to be sung at the Italian Opera House, and that all songs brought out there belonged to the establishment, Lord Kenyon held, that such defence could not be supported; that the statute vests the property in the author; and that no such private regulation could be allowed to interfere with the public right. (*d*)

3. Assignment of.

The *assignment* of the copyright of music must be in writing. (*e*) Even where a composer had acquiesced for six years in the publication of a piece of music, and had given a receipt for the price of it, the court did not consider that he had transferred his interest in the copyright. (*f*) But if he has given leave to several persons to copy his book, or has not asserted his right, against violations by many persons, for several years, (*g*) the Lord Chancellor will not grant an injunction to restrain any one from pirating the work, until the author's right at common law is first established.

found in one: but that is no reason why each should not have the protection of the statute. Rule for a new trial refused.

(*d*) Storace *v.* Longman, 2 Camp. N. P. C. 27 n.: and see Wyatt *v.* Barnard, 3 V. & B. 77.

(*e*) See Power *v.* Walker, 4 Camp. N. P. C. 8. 3 M. & S. 7. S. C. and see Morris *v.* Kelly, 1 Jac. & Walk. 481. and post, Chap. VII. "*Author and his Assignee.*"

(*f*) Latour *v.* Bland, 2 Stark. N. P. C. 382. and see Moore *v.* Walker, 4 Camp. N P. C. 9. n.

(*g*) Platt *v.* Button, Coop. 303. S. C. 19 Ves. 447.

On the same principles by which persons are not allowed to take down a play in short hand at a Theatre, and publish it, they, who can write music as they hear it publicly rehearsed, may be prevented by injunction from violating the property of the composer by publishing it. (*h*)

4. Piracy of, by taking it down at theatre.

It may be observed that as the copyright in music is founded on the statute of 8 Anne, c. 19. all the reasoning respecting *books in general* applies to musical works. (*i*)

II. Dramatic Compositions.

The laws respecting dramatic compositions will perhaps be best explained by a consideration of plays,

1. Whenever they are printed.
2. Whilst they continue in manuscript.
3. Whenever they have been publicly represented.

Plays or dramatic pieces of every description, when printed and published, are books within the meaning of the statute of 8 Anne, c. 19.; and no one with impunity can multiply copies of them. (*k*)

1. Printed pieces.

The protection of the law is also extended to a dramatic composition, whilst it is yet in manu-

2. Manuscript plays.

(*h*) Post p. 284.

(*i*) See ante p. 218, and Rennet *v.* Thompson cited in 2 Bro. C. C. 80. as to the resulting term.

(*k*) See ante p. 214, as to piracy in general. *Observations* on performances at a theatre are not libellous, unless it appear that they are malevolent. Dibdin *v.* Swann, 1 Esp. N.P.C. 28. Ashley *v.* Harrison, Peake Rep. 194. and see Clifford *v.* Brandon, 2 Campb. 358. also ante 247.

script, and has not been publicly represented, in the same manner as to manuscripts in general. (*l*)

There is not any case in the courts of *common law*, in which it is determined whether the *representation* of a dramatic composition, that has *not been printed* but of which a copy has been obtained, is a piracy: but it would appear, from the decision in Coleman *v.* Walthen, (*m*) that it is not. However, *injunctions* are always granted to restrain persons from *acting* and also from *printing* plays which have not been published: thus, where a farce had not been published by its author, and a person was employed to take it down from the mouth of the performers, an injunction was granted, after some part of it had appeared in a magazine, to prevent the insertion of the remainder. (*n*)

3. Publication by acting them.

Much doubt formerly existed, whether the mere *acting* of a play, which had been *printed and published*, constituted a piracy, or an infringement of the copyright. In the *common law* courts it has been decided, that proof, that the defendant acted a piece on the stage of which the plaintiff had bought the copyright, was not evidence of a publication. (*o*)

(*l*) See ante p. 221.

(*m*) 5 T. R. 245.

(*n*) Macklin *v.* Richardson, Amb. 694.

(*o*) Coleman *v.* Walthen, 5 T. R. 245. This was an action on the statute of Anne for publishing an entertainment called *The Agreeable Surprize.* The plaintiff had purchased the copyright from O'Keeffe, the author; and the only evidence of the publication by the defendant was the representation of this piece upon his stage at Richmond.

And an action cannot be maintained against a person, who at his theatre publicly represents for profit an entertainment, which is *an abridgment* or alteration of a play printed and published by its author. (*p*)

But *in equity* injunctions have been and continue to be granted, to stop the performance of printed dramatic pieces at the instance or request of the author or proprietors of them. (*q*)

The transition from plays to players (*r*) is so easy and natural, that the wish to make this Treatise full and satisfactory to every class of Players.

Lord Kenyon, C. J.—The statute for the protection of copyright only extends to prohibit the publication of the book itself by any other than the author. It was so held in the great copyright case by the House of Lords. But here was no publication. *Buller*, J.—Reporting any thing from memory can never be a publication within the meaning of the statute. The mere act of repeating such a performance cannot be left as evidence to the jury that the defendant had pirated the work itself.

(*p*) Murray *v.* Elliston, 5 Barn. and Ald. 657. and S. C. 1 Dowl. and Ryl. 299. As to abridgments in general, see ante p. 238.

(*q*) Morris *v.* Harris, 1814, MSS. Morris *v.* Kelly, 1 Jac. and Walk. 481.

(*r*) A forfeiture of one hundred marks is incurred by representing a play derogatory of the book of *common prayer*, 3 Jac. I. c. 21.; and ten pounds for jesting of the holy name of God, or of Jesus Christ, or of the Holy Ghost or Trinity, 1 Car. I. c. 1. And also three shillings and sixpence for acting on a Sunday, 1 Eliz. c. 2. s. 9.

Unlicensed players are rogues and vagabonds, 10 Geo. II. c. 28. 25 Geo. II. c. 36. 28 Geo. II. c. 19. 3 Geo. IV. c. 40. And see Skinner. Rep. 625 to 630. King *v.* Bellerton, 5 Mod. 142. Skin. 625. S. C. Rex *v.* Handy, 6 T. R. 286. Jacob Hall's case, 1 Mod. Rep. 76. 1 Ventr. 169. S. C.

readers who may consult it, induces me briefly to state the law as it respects *players*. The principal part of it will be found in the note.

Ashley *v.* Harrison, Peak. 194. 1 Esp. 48. S. C. and Taylor *v.* Neri, 1 Esp. N. P. C. 386.

Respecting *country theatres*, see 10 Geo. II. c. 28. s. 6. and 16 Geo. III. c. 13.

For the authority of the *Lord Chamberlain*, see 10 Geo. II. c. 28. By the third section it is enacted, that no person shall, for hire, gain, or reward, act, or cause to be acted, any new play, or any part therein, or any new part added to an old play, or any new prologue or epilogue, unless a true copy thereof be sent to the Lord Chamberlain fourteen days before the acting, together with an account when and where it is intended to be acted, signed by one of the managers. The Lord Chamberlain may prohibit the same as he thinks fit; and if any such person shall for hire, &c. act or cause to be acted, without such copy being sent, or against such prohibition, he shall forfeit fifty pounds, and the licence of the playhouse shall be void.

For the power of the *Universities* over players see 10 Geo. II. c. 19. s. 1.

By 16 Geo. III. c. 31. and 28 Geo. III. c. 30. certain funds for *charitable purposes* are secured to Drury Lane and Covent Garden.

As to the interference of the *Court of Chancery* in the affairs of a theatre, see 7 Ves. 617.

A place kept for public *dancing*, music, or other public entertainment of the like kind, must be *licensed* by the magistrates, 25 Geo. II. c. 36. s. 2. made perpetual by 28 Geo. II. c. 19. A theatre without its licence, Gallini *v.* Laborie, 5 T. R. 242. 6 T. R. 286.; private houses in which persons are indiscriminately admitted to dance, whether money is paid for admission, Clarke *v.* Searle, 1 Esp. 25.; or not, Archer *v.* Willingrice, 4 Esp. 186.; are within the statutes: but neither a dancing master's room, Bellis *v.* Burghall, 2 Esp. 722., nor one used on a particular festival, Shutt *v.* Lewis, 5 Esp. 128., comes within its intention. A public room at a tea garden, with an organ in it, must be licensed, Bellis *v.* Beal, 2 Esp. 592.

CHAP. VI.

Of the Fine Arts.

UPON the same principles, and for the same reasons, that the legislature have protected the Scholar in the enjoyment of the fruits of his knowledge and industry; so it has provided that the Artist shall not exert his skill and ingenuity without a hope of reward from a limited monopoly in the result of his labours.

This Chapter, for convenience and distinctness, will be divided into three parts:—

I. *Engravings or prints.*

II. *Patterns for linen.*

III. *Sculptures, models, &c.*

I. Engravings or Prints.

It will be necessary to consider the law on engravings or prints in almost all the different ways in which the law respecting *a book* has been examined. By stating the statutes on which the right to a limited monopoly in them is founded, and the construction which they have received; by enumerating the different kinds of engravings, as prints in general, prints accompanying letter press, and charts or maps; by

shewing how far the subject of an engraving is an original compilation, or an abridgment or reduction; by investigating the nature of the subject, whether it be seditious or libellous, the property in prints, and the manner of making an assignment of them; and by examining, how far publications may be similar without a piracy having been committed, with the peculiar remedies which the statutes have provided for any injuries sustained by the artist.

The matter of this section will, therefore, be best elucidated by considering—

1. *The statutes* giving the right.
2. *The construction* as to the date, &c.
3. Prints accompanying letter press.
4. *Maps*, charts, &c.
5. The *subject* of an engraving.
6. Seditious or libellous prints.
7. The *property* in, and assignment of, prints.
8. What amounts to a *piracy*.
9. The *remedies* for an infringment.

1. The statutes. A property in prints is secured to the inventors and engravers by three acts of parliament. By the first (*a*) it is enacted, "That from and after the 24th day of June, 1735, every person who shall *invent and design*, engrave, etch, or work in mezzotinto or chiaro oscuro, or *from his own works and inventions* shall cause to be designed and engraved, etched, or worked in mezzotinto or chiaro oscuro, any *historical* or other print or prints; shall have the sole right and liberty of

(*a*) 8 Geo. II. c. 13.

printing and reprinting the same for the term of fourteen years, to commence from the *day of first publishing* thereof, which shall be truly engraved, with the *name of the proprietor*, on each plate, and printed on every such print or prints." (*b*)

Thus it appears that the property in historical and *other prints* was by the first act vested in the engravers, who took them from their *own designs*. This privilege was extended by the second statute; (*c*) and made to exist in the prints of any portrait, conversation, landscape, or architecture, *map, chart, or plan,* or any other prints whatsoever, whether they were taken from the artist's own original designs, or from *any* picture, drawing, model, or sculpture, either ancient or modern. (*d*)

The term for enjoying that right was enlarged from fourteen to *twenty-eight* years. (*e*)

2. The name and day of publication.

It has been shewn that by the 8 Geo. II. (*f*) the day of publication, and the name of the proprietor, must be truly engraved on each plate and print. No doubt can be entertained that the directions of the act must be strictly followed;

(*b*) The fifth clause of 8 Geo. II. c. 13. secures the property to John Pine in his prints of the Spanish invasion, although not taken from designs of his own invention, but from the tapestry in the House of Lords, &c.

(*c*) 7 Geo. III. c. 38. s. 1.

(*d*) *Id.* s. 2.

(*e*) *Id.* s. 7. By this act the sole right of publishing Hogarth's prints was vested in his widow for twenty years.

(*f*) c. 13. s. 1. The acts respecting printers do not extend to engravers, 39 Geo. III. c. 79. s. 31.

that the day and name must appear, to entitle the party to the *penalties* imposed by it. (g) But a question has arisen whether it be absolutely necessary to comply with the enactment to support an action at law, or a bill in equity for an injunction and an account. Lord Hardwicke (*h*) and Lord Ellenborough (*i*) have at different times held that the clause was only *directory*, and that the property was at once absolutely vested in the engraver: but Lord Alvanley, (*j*) and Lord Kenyon, and Buller, J., entertained the opposite opinion. (*k*) The latter judge, after observing that he differed from Lord Hardwicke, said that he believed the insertion of the name and date to be essential to the inventor's right.

This contrariety of opinions in such eminent and learned judges renders it necessary to investigate this point with attention; which task will be best accomplished by collecting the reasons that have *at different times* been urged in support of either side of the question.

The day and name ought, it is contended, both to be engraved on the plate, because the words of the act requiring it are in the same section with those which vest the right; and the liberty of printing and reprinting is given *of those prints which, &c.* are so marked, and therefore

(g) Sayer *v.* Dicey, 3 Wilson 60.

(*h*) Blackwell *v.* Harper, 2 Atk. 95. Barn. Chan. Rep. 210. S. C.

(*i*) Roworth *v.* Wilkes, 1 Campb. N. P. C. 97.

(*j*) Harrison *v.* Hogg, 2 Ves. jun. 323.

(*k*) Thompson *v.* Symonds, 5 T. R. 41.

only to them. And also because the date is of importance, that the public may know the period of the monopoly; and the name of the proprietor should appear in order that those persons, who wish to copy the print, may know to whom to apply for their consent.

The reasons given for maintaining the other side of this question are—that the interest being once vested by the statute, the common law gives the remedy;—that this clause is similar to the one in the stat. of 8 Ann. requiring an entry at Stationers' Hall, which is there in the same section with the words that give the property; and yet upon that act it has been decided, that an entry *is not* necessary in order to maintain an action for damages. (*l*) That the copyright in a work which has been sold in manuscript is protected by the stat. of 8 Ann. from the day of the first sale; and yet, when it is printed, that day does not appear. And moreover that the property in a book is not lost, because it has been published without the author's name being affixed to it.

And, lastly, it may be observed that in the stat. 17 Geo. III. c. 57., by which the special action on the case and double costs are given, not a word is mentioned about the date and name.

3. Prints that accompany letter press.

The prints that ornament and illustrate works are as fully protected by these statutes as those

(*l*) Beckford *v.* Hood, 7 T. R. 620. and see ante, p. 223. As to the implied warranty, in putting the name of an artist as the painter of any picture in a catalogue, that it is really the work of that artist: see Jendwine *v.* Slade, 2 Esp. N. P. C. 572.

which are published alone. They are not, as it has been contended, merely accessary to the letter press, like the diagrams of Euclid; and, therefore, to be copied and published by any one who purchases the work. (*m*) But if a person should *bona fide* make drawings from a perusal of the text, although there might, as of necessity there would be, a great similarity between them, yet he would acquire a copyright in the engraving which he had thus made. (*n*)

4. Maps, charts, &c.

It has been observed that Lord Mansfield held, that maps came within the spirit and meaning of the copyright acts. (*o*) To remove all doubt, maps, charts, and plans, are enumerated among the different kinds of prints; and the same protection is afforded to their proprietor as to other artists. (*p*)

5. The subject of an engraving.

Prints, like books, may be the offspring of the imagination of the artist, or may be taken from objects that have actual existence.

When an engraving is made of an object in nature, as of a particular flower or plant, the artist cannot restrain any one from executing a similar print of the same flower or plant: but no one is allowed to copy from the work of another

(*m*) Roworth *v.* Wilkes, 1 Camph. N. P. C. 97. and see Wilkins *v.* Aikin, 17 Ves. 422. In which case Lord Eldon decided whether a work on architecture was original, with the fair use of another work composed of plates and letter press, by quotation and compilation.

(*n*) By Lord Ellenborough, 1 Camph. N. P. C. 99.

(*o*) 1 East. 361. n.

(*p*) 7 Geo. III. c. 38. s. 1. and 17 Geo. III. c. 57.

person ; each must draw from nature. When it was contended before Lord Hardwicke (*q*) that some engravings of plants could not be protected, because every herbal-book had prints of those plants in them, he observed, "The defendant, to make out the case he aims at, must shew me that these prints of medicinal plants are in any book or herbal whatsoever, in the *same manner and form* as they are represented here ; for they are represented in all their several gradations, the flower, the flower cup, the seed vessel, and the seed."

The subjects of engravings are almost always *general* ones,and cannot be monopolized. Each particular print is protected by the statutes : but the subject is open to every artist. The prohibition extends only to the piracy of the particular prints ; no exclusive right is created over the picture or common design. (*r*)

The subject of a *map or chart* is also a general one, on which every person may exert his skill and ingenuity.

An artist had, with the assistance of many manuscript journals and printed books, made four maps of a particular district from all the charts and maps extant.

Another person, making a chart of the same place, actually employed an engraver to take a draft of some parts of those maps; yet, inasmuch as he had *combined* the four maps together upon a more correct and useful principle, it

(*q*) Blackwell v. Harper, 2 Atk. 94. Bunb. 490. S. C.

(*r*) See Compilations, ante, p. 225. and 2 Stark. N. P. C. 84.

was considered that no piracy had been committed. (s)

(s) Sayre and others v. Moore, 1 East. 361. n. (and see Wilkins v. Aikin, 17 Ves. 422. ante, p. 234.) *Lord Mansfield*, C. J.—The rule of decision in this case is a matter of great consequence to the country. In deciding it, we must take care to guard against two extremes equally prejudicial: the one that men of ability, who have employed their time for the service of the community, may not be deprived of their just merits, and the reward of their ingenuity and labour; the other, that the world may not be deprived of improvements, nor the progress of the arts be retarded. The act that secures copyright to authors guards against the piracy of the words and sentiments: but it does not prohibit writing on the same subject. As in the case of histories and dictionaries: In the first, a man may give a relation of the same facts, and in the same order of time; in the latter, an interpretation is given of the identical same words. In all these cases the question of fact to come before a jury is, *whether the alteration be colourable or not?* There must be such a similitude as to make it probable and reasonable to suppose that one is a transcript of the other, and nothing more than a transcript. So, in the *case of prints*, no doubt different men may take engravings from the same picture. The same principle holds with respect to *charts*: whoever has it in his intention to publish a chart may take advantage of all prior publications. There is no monopoly of the subject here, any more than in the other instances: but, upon any question of this nature, the jury will decide whether it is a servile imitation or not. If an erroneous chart be made, God forbid it should not be corrected, even in a small degree, if it thereby become more serviceable and useful for the purposes to which it is applied. But here you are told that there are various and very material alterations. This chart of the plaintiff is upon a wrong principle, inapplicable to navigation. The defendant has, therefore, been correcting errors, and not servilely copying. If you think so, you will find for the defendant: if you think it is a mere servile imitation, and pirated from

6. Seditious and libellous prints.

It has been shewn (*t*) that there cannot be any property in an immoral, obscene, or libellous book. That doctrine equally applies to pictures and prints. (*u*) An action of atssumpsit cannot be maintained for the value of them, even against a purchaser at the suit of the person who sold them. (*x*)

7. The property in prints.

The property in prints, by the several acts of parliament, is vested in him who *shall invent* and design, engrave, &c. or from his own works and inventions *shall cause* to be designed and engraved, &c. any print. (*y*)

What things may be the subjects of engravings have already been explained. (*z*)

But it was held by Lord Hardwicke, in a case before him, that a person *procuring a drawing* to be made was not entitled to any monopoly to be derived from the statutes protecting engravings. (*a*) From which decision and the words

the other, you will find for the plaintiffs. Verdict for the defendant.

(*t*) Ante, p. 212.

(*u*) Du Bost *v* Beresford, 2 Camph. N. P. C. 511.

(*x*) Fores *v.* Jonnes, 4 Esp. N. P. C. 97.

(*y*) 8 Geo. II. c. 13. s. 1.

(*z*) Ante, p. 292.

(*a*) Jefferys *v.* Baldwin, Ambl. 164. (see as to the *gift* of a translation, Wyatt *v.* Barnard, 3 Ves. & Beam. 77.) The bill set forth that the plaintiff *had procured* a drawing or design to be made of the busses of the society of British herring fishery; that defendant had printed same in the London Magazine. It was objected on demurrer, that it was not a work of ingenuity of plaintiff, and therefore not within the statute. *Lord Hardwicke*, C.—The plaintiff has not made

of the act, it may be inferred, that although a person might procure another to make an engraving from a design of his own inventing, and claim a copyright in it; yet he cannot monopolize a print which has been made for him, without any assistance having been given by him in its design or formation.

Assignment of prints.

The property in prints is vested in the artist: but no mention is made of his *assigns*. It is, however, enacted, "That any person, who shall thereafter purchase any plate for printing from the original proprietors thereof, may print and reprint from the same, without incurring the penalties." (*b*) And moreover it is necessary, before a print can be copied with impunity, to obtain "the *consent* of the proprietor thereof *in writing*, signed by him in the presence of two witnesses." (*c*)

And, therefore, it was decided, that on these statutes *the assignee* of a print may maintain an action against any person who has pirated it. (*d*)

8. Piracy of engravings, &c.

A *fac simile* of an engraving is of course a gross infringement. By the statutes it is en-

a case for relief; therefore, need not go into the question as to discovery. It is not within the statute, which was made for encouragement of genius and art: if it was, any person *who employs a printer or engraver* would be so too. This statute is in that respect like the statute of new inventions, from whence it was taken. If he cannot claim property, he is not entitled to relief, which would only enable him to sue at law. Bill is frivolous; allow demurrer.

(*b*) 8 Geo. II. c. 13. s. 2.

(*c*) *Id.* s. 1.

(*d*) Thompson *v.* Symonds, 5 T. R. 41. and see 3 Wils. 60.

acted that a piracy is committed, if any person "in any manner copy in the whole or in part by *varying*, *adding to*, or *diminishing from* the main design" of any print whatsoever. (*e*)

The subject of an engraving, it has been shewn, (*f*) is often a general one, which cannot be monopolized; and the question for the jury to consider will be, whether the particular works have been engraved by the two artists from the general subject, be it a picture or plant, or any object in nature, or whether the similitude, which is supposed to exist between them, arises from accident, or from the nature of the subject; (*g*) or whether, in the case of plates to a printed work, they are satisfied that the artist sketched the designs from the text: or whether the one print is merely a copy from the other. (*h*)

The seller of pirated prints.

Not only must no person whatever infringe the right of the artist by *copying* his work: but any one who *sells* or *imports* for sale any pirated copies of an engraving is liable to the penalties inflicted by the statutes.

In the first legislative provisions (*i*) respecting prints, the words "*knowing* the same to be so printed or reprinted without such consent,

(*e*) 8 Geo. II. c. 13. 7 Geo. III. c. 38. 17 Geo. III. 57. and see 5 Barn. & Ald. 737. 1 Dowl. & Ryl. 400. 3 Campb. N. P. C. 111. De Berenger v. Wheble, 2 Stark. N. P. C. 548. and 1 East. 361. n. As to an abridgment or reduction of an engraving, see 17 Ves. 422.

(*f*) Ante, p. 293.

(*g*) Ante, p. 292.

(*h*) 1 Campb. N. P. C. 99.

(*i*) 8 Geo. II. c. 13. s. 1. See post. p. 303.

shall publish, *sell*," &c. occur: but they are not to be found in the last act of parliament on this subject. (*k*) And in consequence, although an attempt was made in argument to shew that the vendor or seller of a print was only liable to an action for disposing of *exact* copies, it was decided that the vendor of a print, which, with some trifling variations, is a copy of the main design of another print, is liable to an action for damages at the suit of the proprietor, although *he did not know* that the print which he was selling was a piracy. (*l*)

(*k*) 17 Geo. III. c. 57.

(*l*) West *v.* Francis, 5 Barn. & Ald. 741. (and S. C. 1 Dowl. & Ryl. 400.) *Abbott*, C. J.—This act of parliament was intended to preserve to artists the property of their works. The question is, what is the meaning of the word "*copy*" of a print. Now, in common parlance, there may be a copy of a print where there exist small variations from the original; and the question is, whether the words are used in their popular sense in this act of parliament; that is to be collected from looking at the whole clause, by which it is provided that if any one shall engrave, &c. or in any other manner copy, in the whole or in part, by varying, adding to, or diminishing from, the main design, or shall print or reprint, or import for sale, or publish, sell, or otherwise dispose of any copy of any print, he shall be liable to an action. Now, if the selling of a copy with colourable variations is not within the act of parliament, the printing or importing for sale such copies will not be prohibited. The whole must be taken as one sentence; and the sale of any copy of a print, although there may be some colourable alteration, is within the act of parliament. The case of Gahagan *v.* Cooper proceeded upon a different act of parliament. In this case, I am satisfied, the verdict is right; and, therefore, this rule must be discharged.

Bailey, J.—I am of the same opinion. The provisions of

What amounts to a piracy has been stated. The penalty incurred by him, who has thus infringed the right of the artist, is to forfeit *the plates* on which the prints are copied, and *every sheet* on which the engraving has been printed, to the proprietor of the original print, who must forthwith damask or destroy them: and he must also forfeit *five shillings* for every print found in his custody. The same penalties attach to him who has published, exposed to

9. Remedies for an infringement. Penalties.

the 8 Geo. II. c. 13. are entitled to great weight in the construction of this latter act of parliament. That act imposes, first, a penalty upon any persons who shall engrave, copy, and sell, or cause to be copied and sold, in the whole or in part, by varying, adding to, or diminishing from the main design; and, secondly, upon persons selling the same, knowing them to be so printed or reprinted. The act of 17 Geo. III. c. 57. was passed to remedy the same mischief; and the words, "knowing the same to be so reprinted," are omitted. It may, therefore, be fairly inferred that the legislature meant to make a seller liable, who did not even know that they were copies. The former part of the 17 Geo. III. c. 57. s. 1. applies to persons who actually make the copy, and who, therefore, must know that it is a copy. But the latter branch applies to all persons who shall import for sale, or sell a copy of a print. Every person, therefore, who sells a copy which comes so near the original as this, is thereby made liable to an action. There can be no reason why a person should not be liable where he sells a copy with a mere collusive variation; and, I think, we should put a narrow construction on the statute, if we held such a collusive variation from the original not to be a copy. A copy is that which comes so near to the original as to give to every person seeing it the idea created by the original. For these reasons, I think, the plaintiff is entitled to recover; and, consequently, that the rule must be discharged.

sale, or disposed of any pirated engravings: one moiety passes to the king, the other is given to the informer. (*m*)

Special action on the case.

Further, it is enacted by the 17 Geo. III. c. 57. "that a *special action on the case* may be brought against the person offending, to recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry, may give."

Limitation of action.

All actions for any thing done in pursuance of the acts 8 Geo. II. c. 13. and 7 Geo. III. c. 38. must be brought within *six* calendar months after the fact committed: but no time of limitation is mentioned in 17 Geo. III. c. 57. which gives the special action on the case.

The parties.

Not only the original proprietor, but also the assignee of a print, may maintain an action on 7 Geo. III. against any person who pirates it. (*n*)

Declaration.

As pirated copies are made very much to resemble the original in particular parts, and to be totally distinct in other parts, care must be taken to draw the declaration, for *copying part*, as well as for copying the whole. (*o*)

Plea.

The defendant is permitted to plead the general issue, and to give any special matter in evidence under it. (*p*)

(*m*) 8 Geo. II. c. 13. s. 1., and see 7 T. R. 620., and 1 Campb. N. P. C. 98. where it is held, that statute having given a right, the common law gives the remedy by action without the conditions of the statute being complied with.

(*n*) 5 T. R. 41.

(*o*) 5 Barn. and Ald. 737. and 1 Dowl. & Ryl. 400. S. C.

(*p*) 8 Geo. II. c. 13. s. 3. and 7 Geo. III. c. 38. s. 8.

In this action it is not necessary to produce the plate itself, for one of the prints taken from the original plate is sufficient evidence. (*q*) Evidence.

It seems the best way to continue the name of the first proprietor on the print; for it is doubtful whether a plate with the name of the assignee (although the date be correct) is good evidence. (*r*)

Although no mention is made of proceedings to be taken in equity; yet it follows as a matter of course that the Court of Chancery will in aid of the statutes interpose with an injunction to prevent or stop the injury sustained by the artist from a piracy of his work. (*s*) Equity.

If the plaintiff is successful in suing for penalties, he is entitled to his *full costs*: (*t*) if he succeed in the special action on the case, then he is to have *double* costs of suits. (*u*) And to the defendant, when the plaintiff is nonsuited or discontinues, full costs are to be allowed. (*x*) Costs.

(*q*) Thompson *v.* Symonds, 5 T. R. 41.

(*r*) In Bonner *v.* Field, cited in 5 T. R. 44. Lord Mansfield nonsuited a plaintiff under similar circumstances.

(*s*) Ante, p. 183. and see post. Chap. VIII.

(*t*) 7 Geo. III. c. 38. s. 5.

(*u*) 17 Geo. III. c. 57.

(*x*) 7 Geo. III. c. 38. s. 8.

II. Patterns for Linen.

The pattern of a piece of printed linen often increases the value of the commodity, from its novelty and beauty. Some ingenuity and skill is necessarily exerted in its formation. The Legislature has by three Acts of Parliament given a limited monopoly to him who designed it.—We shall consider the subject as it relates to,

1. The statutes giving the right.
2. The construction of them as to the date, &c.
3. The property in, and assignment of, the pattern.
4. A piracy and remedy at law.

1. The statutes.

This monopoly limited at first to two months, but afterwards extended to *three months*, (*y*) is given "to the proprietor of any new and original pattern for printing linens, cottons, calicos, or muslins, to commence from the day of first publishing thereof, which must be truly printed with the name of the printer or proprietor at each end of every such piece of linen."

2. The name and day of publication.

The much agitated question, (*z*) whether it is necessary to comply with the directions of the statute, as to the date and name, in order to sup-

(*y*) 27 Geo. III. c. 38. made for one year, and afterwards enlarged by 29 Geo. III. c. 19., and made perpetual by 34 Geo. III. c. 23.

(*z*) Ante, p. 289, 290, 291.

port an action at law, was here raised. It came before the Court in arrest of judgment (*a*) on an alleged defect in the declaration, which stated, that the defendant pirated the pattern "within the term of three months from the day of the first publishing thereof, and whilst the said plaintiffs were such proprietors of the said pattern as aforesaid, and were entitled to have the sole right and liberty of printing and reprinting the same."

It was contended that the day of publication ought to have been averred. The Court held that as the plaintiff must necessarily have proved that the date was on the linen to entitle him to a verdict, they must after verdict infer that he had adduced such proof; and, therefore, that the declaration was aided after verdict.

3. The property in, and assignment.

The property in the patterns is given to the inventors or proprietors. No mention is made of assigns. But it is enacted (*b*) that "no one shall print work copy or cause to be printed, &c. such original pattern, or shall publish, *sell*, or expose to sale, or *cause* to be published, &c. any linen, &c. so printed without the consent of the proprietor first obtained *in writing* signed by him, in the presence of two or more credible witnesses, *knowing* the same to be so printed."

From which a power *to assign* may be in-

(*a*) Macmurdo *v.* Smith, 7 T. R. 518. This case strengthens the argument in the affirmative of the question as stated at p. 290.

(*b*) 34 Geo. III. c. 23. s. 1.

ferred. (c) It is worthy of remark, that it is probable, that a *sale* of a copied pattern would be no offence if the vendor did *not know* that it was a pirated one, although we have seen that the law respecting the sale of pirated engravings is quite different. (*d*)

4. Piracy, and remedy for it.

The remedy for an infringement is a *special action* in the case, to recover such damages as a jury, on the trial of the action or at the execution of a writ of inquiry, may assess.

Limitation of action.

The *time limited* for bringing actions in pursuance of these acts is *six* months.

Plea.

The defendant may plead the general issue, and give the special matter in evidence. (*e*)

Equity.

And to render the remedy at law more effectual, proceedings may be taken in equity. (*f*)

Costs.

Full costs are given to the plaintiff, if he succeed: (*g*) but if he discontinues, or is nonsuited, or the verdict is against him, then the defendant has full costs allowed him. (*h*)

(*c*) Ante, p. 269.

(*d*) Ante, p. 297.

(*e*) 34 Geo. III. c. 23. s. 2.

(*f*) Ante, p. 183, 4. and see post. Chap. VIII.

(*g*) 34 Geo. III. c. 23. s. 1.

(*h*) *Id.* s. 2.

III. Sculptures, Models, &c.

There is yet another limited monopoly, creating a property in the productions of the inventive faculties of genius; but which can scarcely be called Literary Property. It is given to the first maker of all original sculptures, models, copies, and casts.

The same order of investigation will be pursued as in the last section, as to,

1. The statutes giving the right.
2. The construction of them.
3. The property in, and assignment of, a model, &c.
4. A piracy, and the remedy at Law.

1. The statutes.

The first act (*i*) on this subject was found on trial to be so defective, that it was held to be no offence under it *to make* a cast of a bust, provided it were a *perfect* fac-simile of the original. And on the other hand, although it was evident that a piracy had been committed, yet, if there was some addition to or diminution from the original, a person was not liable to an action for *selling* a cast thus pirated.

To remedy these defects another Act of Par-

(*i*) 38 Geo. III. c. 71. Gahagan *v.* Cooper, 3 Camp. 111. and see West *v.* Francis, 5 Barn. & Ald. 737. and S. C. 1 Dowl. & Ryl. 400.

liament (*k*) was obtained, by which the property, in all sorts of sculptures, models, copies and casts, particularized and enumerated at great length, so as to include every species of them, is vested in the inventor for fourteen years; provided the proprietor causes his name, with the date, to be put on them before they are published; with the same term in addition if he should be living at the end of the first period, unless he had parted with his invention before the time at which that act passed.

The provisions of the second statute extended as well to those sculptures, &c. which *had been* put forth under the protection of the first, as to those *thereafter* to be made.

2. The construction of the acts.

No case has been decided on the new act, as to the insertion of the name, and day of publication: but from analogy it is clear, that the reasoning on the statutes giving monopolies in prints and in patterns for linen will apply to that Act of Parliament. (*l*)

3. The property in, and assignment of, model.

The property in the models is given to inventors. And it is enacted that the purchaser, if by a deed in writing, of any original sculpture or model, shall be exempted from an action for copying, or casting, or vending the same (*m*)

4. Piracy and remedy at law.

The enactment against piracy—against making, selling, or importing, any thing mentioned in the statute, is very general; and gives to the proprietor or his assignee *an action on the case*

(*k*) 54 Geo. III. c. 56.

(*l*) Ante, p. 295, and p. 302.

(*m*) 54 Geo. III. c. 56. s. 4.

for damages (with double costs) to be brought within six months against all persons who shall *in any way* imitate the sculpture, &c. (*n*)

The limitation for all actions either for things done *in pursuance* of, or *against* this statute must be brought within six months.

In the former case the defendant, if successful, is entitled to full *costs*. (*o*)

CHAP. VII.

Of the Persons and Corporations interested in the Publication of Books.

HAVING in the first Chapter of this Book, explained the nature of copyright in general—by stating the enactments of the several acts of parliament respecting it, and the construction which has been put upon them—and by shewing the effect of obscenity, libels, or immorality, upon the copyright in a work, and what in general amounts to a piracy—an attempt was made to investigate the law, as it relates to the different kinds of literary property. That task being accomplished,

(*n*) 54 Geo. III. c. 56. s. 3.

(*o*) *Id.* s. 5.

it is proper in the next place to lay before the Reader an account of the *Persons and Corporate Bodies* that are peculiarly interested in the publications of books: which will be done in the following order,—

I. *The Author and his Assignee.*
II. *The King and his Printers.*
III. *The Company of Stationers.*
IV. *The Universities.*
V. *The Courts of Justice.*
VI. *Printers.*
VII. *Booksellers.*

I. The Author and his Assignee.

To explain the nature of the property acquired by any one in a literary work, of whatever description it may be, it will be necessary to examine the *right* originally vested in the author or composer—the *extent* to which a book may be affected by its contents,—and the modes by which it may be *disposed of* by the author.

The right of authors and men of science over the productions of their minds has been shortly stated in the several chapters in which each kind of literary property has been investigated. It may be useful to collect the whole matter into one place, and to add to it such rules and observations as could not, without destroying the

nnity of the descriptions, be before introduced. Thus:—

1. The property in manuscripts.
2. In all kinds of literary works.
3. In the productions of the fine arts.
4. How affected by their subject matter.
5. The assignment of literary property.
6. Devise of it.
7. When taken under an execution, &c.
8. Abandonment of it by the author.

1. Property in MS.

An author has an absolute property independent of statute law over his work whilst it continues in manuscript (*a*). Nor will the mere delivery of the manuscript copy to the printer divest the author of his right; for the consent to be allowed to print must be in writing (*b*).

And a bookseller was restrained from publishing certain manuscripts of which he had gained possession, but which had been left by Dr. Paley for the use only of his own parishioners (*c*).

Neither is a person, to whom a manuscript has been lent, with liberty to take a copy of it, and to make what use of it he thinks fit, at liberty to print and publish the work (*d*).

Authors engaging to write.

On the other hand if an author engage to furnish a bookseller with a manuscript, he must answer in damages for not fulfilling his contract (*e*).

(*a*) 4 Burr. 2340. 2379. 2 Meriv. 435. See ante p. 221.

(*b*) Knapcock *v.* Curl, 4 Vin. Abr. 278.

(*c*) Cited in 2 Ves. & Beam. 23.

(*d*) Duke of Queensberry *v.* Shebbeare, 2 Eden Rep. 329. See 4 Burr. 2397.

(*e*) Gale *v.* Lechie, 2 Stark. N. P. C. 107.

And Lord Eldon held that a covenant in articles of agreement, by which Mr. Colman undertook not to write dramatic pieces for any other than the Haymarket Theatre, was a legal covenant (*f*).

But where a gentleman had contracted to supply a bookseller with Reports of the Cases argued in the Court of Exchequer (g) upon certain terms, and afterwards sold them to another bookseller; the Lord Chancellor would not grant an injunction to restrain the publication, and force him to report and give his manuscript to the bookseller; observing that he could not grant an injunction whereby *the person* of the defendant would not be at liberty.

2. Property in a book.

We have seen that if an author, at common law, had the sole right of publishing a *printed work* in perpetuity, it was taken away by the stat 8 Ann. c. 19. (*h*) by which act the time limited for an author enjoying the copyright in his work was confined to fourteen years, with a second term of fourteen years, if he was alive at the end of the first period (*i*).

And also that the time was afterwards altered, and that now the copyright in all

(*f*) Morris v. Colman, 18 Ves. 437.

(g) Clarke v. Price, 2 Wils. Ch. Rep. 157.

(*h*) 2 Bro. P. C. 145. and 4 Burr. 2408. ante p. 205, 6. By 7 Geo. II. c. 21. the sole liberty of printing and reprinting the *Histories of Thuanus*, with additions and improvements during the time therein limited, is granted to Samuel Buckley.

(*i*) 8 Ann. c. 19. s. 1. and s. 11. Ante, p. 208.

books published since the 29th July, 1814, is to continue for twenty-eight years, and to the end of the author's life, if he should survive that period (*k*).

But that the resulting term for life could not be enjoyed by one whose work had been published twenty-eight years before the 29th July, 1814 (*l*).

And, moreover, if a person who had published a work *before* the 29th July, 1814, was alive on that day; but died before the fourteen years, from the day of publishing his book, had transpired; then a further term of fourteen years was given to his *personal representatives*, but without prejudice to the assignees of all or any part of the former term (*m*).

Name of author.

Copyright is a property which depends for its continuance on the life of the author, and all controul over a work should be derived from him: and yet he is not bound to put his name in the title page in order to preserve it (*n*).

(*k*) 54 Geo. III. c. 156. s. 1. s. 4. and s. 9. ante, p. 208, 9. In the case of a *joint authorship*, would the copyright continue to the end of the life of the survivor, supposing both of them outlived the twenty-eight years from the day of publication? And would there be any resulting term, supposing one of the authors died within the twenty-eight years?

(*l*) 1 Barn. and Ald. 396. ante, p. 210.

(*m*) 54 Geo. III. c. 156. s. 8. ante, p. 209. Supposing the two authors of one joint work to be alive on the 29th July, 1814, and both to die (one before the other) before the first fourteen years had transpired, to whom would the work pass?

(*n*) 4 Burr. 2367.

Lord Eldon doubted how far he would relieve the publisher of a work with a fictitious name (*o*): but he granted an injunction, until answer or further order, to restrain the publication of a work in the name of Lord Byron, who was abroad, upon an affidavit of his lordship's agent, of circumstances making it highly probable that it was not a work by his lordship, and on the refusal of the defendant to swear as to his belief that it was written by him (*p*).

But the publisher of a work, however he has gained the materials, has sufficient property in it to maintain an action against any other person for pirating it (*q*).

3. Property in the fine arts.

In engravings.

In patterns.

The proprietory right over engravings or prints (*r*) continues for twenty-eight years without any resulting term for the life of the artist; and that over patterns for linen expires at the end of three months (*s*).

In models.

But in sculptures or models a property is vested for fourteen years, with a further term of fourteen years, if the artist be living at the end of the first period (*t*).

The property in a work of art, whether it be

(*o*) 8 Ves. 226.

(*p*) Lord Byron *v.* Johnson, 2 Merir. 29.

(*q*) 4 Esp. N. P. C. 169. Hence a questi[illegible]ses whether a person who first publishes a work written by a foreigner and transmitted to him, for a contemporaneous publication of it, can maintain an action against any other person who prints it.

(*r*) Ante, p. 289.

(*s*) Ante, p. 302.

(*t*) Ante, p. 306.

a book (*u*), an engraving (*x*), or a piece of sculpture, is necessarily destroyed by its subject being blasphemous, seditious, or libellous; or by its being obscene or immoral: and an author may desist from supplying a publisher with the manuscript of a work, if he is justly apprehensive that the contents of it will subject him to punishment (*y*). 4. How affected by the subject matter.

The assignment of a copyright (*z*), and of engravings (*a*) and models, (*b*) must be in writing, to enable the assignee to protect his interest either at law (*c*) or in equity (*d*). 5. Assignment.

And it has been shewn that, by the general assignment of *all his right* in a work, the assignee has the benefit of the resulting term for the life of the author, when he survives the twenty-eight years from the day of publication (*e*).

And it was held, that a publication for six years, by a person not the composer of some music, was not sufficient in itself to prove that the interest in the copyright had been transferred. And the production of the receipt given by the

(*u*) Ante, p. 212, 3.

(*x*) Ante, p. 294.

(*y*) 2 Stark. N. P. C. 107. ante, p. 214.

(*z*) 8 Ann. c. 19. s. 1. 54 Geo. III. c. 156. s. 4. and see Powell v. Walker, 3 Maule & Selw. 7. and 4 Campb. N. P. C. 8. S. C.

(*a*) 7 Geo. III. c. 38. s. 1.

(*b*) 54 Geo. III. c. 56. s. 1.

(*c*) Latour v. Bland, 2 Stark. N. P. C. 382.

(*d*) Post, Chap. VIII.

(*e*) 2 Bro. C. C. 80. ante, p. 210.

proprietor for the price of the copyright was held not to be a bar to the action (*f*). But a plaintiff was immediately nonsuited, when one of his witnesses stated that he had heard him declare, that he had parted with all his interest in the copyright, although he did not mention in what manner the transfer had been made (*g*).

The title necessary to support an injunction.

However, on the contrary, an instance has occurred in which the assignee of a copyright, to whom the assignment was made *by parol*, obtained an injunction. The distinguishing feature of that case was this, that some of the defendants had actually received the purchase money, and had permitted the plaintiffs to print and publish the work (*h*).

But an affidavit, in which it was stated that the plaintiff had purchased or legally acquired the copy, was considered to be bad, for not stating that he had purchased it from the author (*i*).

But it was considered to be sufficient for an *assignee of an assignee* to shew that the assignment to himself was in writing without deducing a title from the author (*k*).

And, moreover, a book will pass to the assignees under a commission of bankrupt, although a manuscript will not (*l*).

(*f*) Latour *v.* Bland, 2 Stark. N. P. C. 384.

(*g*) Moore *v.* Walker, 4 Camp. N. P. C. 8. n.

(*h*) Longman *v.* Oxberry, November 1820. MSS.

(*i*) Gulliver *v.* Snaggs, 4 Vin. Abr. 278.

(*k*) Morris *v.* Kelly, Eden on Injunctions. 288.

(*l*) See ante, p. 271. as to the bankruptcy of the proprietor of a Newspaper.

Devise of a copyright.

We have seen that under some circumstances a copyright becomes vested in the personal representatives of the author, when at his decease that right would otherwise have expired (*m*).

The copyright in a work is a personal chattel, and may be devised (*n*); and a manuscript will pass to the author's executors (*o*).

7. Taken under execution.

It is doubtful whether an unpublished manuscript can be taken in execution by creditors (*p*): but the better opinion seems to incline against such rule of law; because, until the act of publication is accomplished, an author has an undoubted right to have full controul over it (*q*).

8. Abandonment.

It is said that an author may by his conduct *abandon* his work, and give to the public a power to publish his book before the usual time of copyright has transpired (*r*).

There is no authority on the point; and it is very difficult to say, what circumstances would induce a court, either of law or equity, to consider a work as given up to the public by its author. But still it may be capable of proof; as where an author, upon delivering a manuscript to a bookseller, says, "I will make a present of this

(*m*) 54 Geo. III. c. 156. s. 8. ante, p. 209.

(*n*) See ante, p. 270. as to the devise of a newspaper.

(*o*) See ante, p. 226, 7.

(*p*) 4 Burr. 2311.

(*q*) See ante, p. 222, 3.

(*r*) 4 Burr. 2346. 2367. 2466. and see 2 Stark. N. P. C. 382. 4 Camp. N. P. C. S. n.

work to you to publish: I wish to give it to the public," &c. (*s*).

II. The King and his Printers.

Hitherto the questions on copyright in books have been discussed with relation to the several acts of parliament vesting that property, on the ground of the original right of first publication, arising from the mental labour bestowed on the works by their authors.

But there is a power exercised over some books which is said to be founded on different principles. It is said, that the King by a prerogative right *vested in the crown* has the exclusive privilege of printing, (*t*) 1st. Acts of Parliament, Proclamations, Orders of Council, &c. 2nd. The Liturgies and Books of Divine Service, &c. and, 3rd. The Bible.

These works are called *prerogative copies;* and in consequence patents have been granted, by successive kings from the time of Henry the Eighth, to different persons, giving them full power to print and re-print them in exclusion of all other persons. The king's printer in England (*u*) enjoys the benefit to be derived from printing the

(*s*) Murray *v.* Rundall, 5 Nov. and 7 Nov. 1822. In Chancery, MSS.

(*t*) 2 Bla. Com. 410. Chit. Jun. Prerog. of Crown, 239. But see the observations of Sir W. D. Evans, Vol. II. Collection of Statutes, Pt. III. Class I.

(*u*) There are also King's printers for Scotland and Ireland to whom similar patents have been granted.

acts of parliaments, &c. The universities of Oxford and Cambridge, in common with the king's printer (*v*), claim a right to print all bibles to be circulated in England. The Company of Stationers formerly exercised an exclusive power of printing almanacks: but their patent was afterwards declared to be void (*x*).

Whether such a prerogative really exists in the crown, *to the extent claimed* by the patentees, has, of late years, been much questioned; (*y*) which doubt receives strength from the circumstance, that the only patent amongst them, which has ever been fully investigated in a Court of Common Law, was adjudged to be invalid. It becomes a duty, therefore, to give the subject a full investigation.

The question is surrounded with many difficulties: and it would be presumptuous to state in what manner it would probably be decided in a Court of Common Law. The better way of disposing of it seems to be, to contrast all the authorities and reasoning that are to be found in our law books; and to add to them the arguments that have an appearance of reason in them, which have been advanced on either side of the question.

1. A prerogative generally.

First. It is said that, for the sake of public peace, and to keep all the laws of the land pure and correct, the King has a prerogative right *generally* to print all ordinances of the state, as

(*v*) 6 Ves. 689.

(*x*) Stationers' Company *v.* Carnan. See Vol. I. of Lord Erskine's Speeches.

(*y*) See 5 Bac. Abr. tit. Prerogative, p. 594. Carter Rep. 89.

acts of parliament, proclamations, orders of the privy council, &c. and all papers which relate to the good government of the land (≈).

Which position is answered by saying, that all prerogatives must have existed from time immemorial—that the art of printing was introduced into England in the reign of Henry VI. within the time of legal memory.

The length of time enjoyed.

An argument in favour of the prerogative is then derived from the length of time that it has been exercised, which commenced with the *first introduction* of the art of printing into England.

On the other hand it is contended, that length of time warrants no wrong; and that the prerogative, as at first assumed, has been continually diminished. Thus, the king at first exercised a power over the *art of printing* itself; and when that was in some degree lessened, he still controuled the publication of books with respect to their *contents*: a right which is not now attempted to be claimed. And farther that, when these patents were first granted, the prerogatives of the crown were maintained on principles, which the most servile courtiers would at this day blush to name.

(≈) 2 Ves. & Beam. 21. See the observations of Mr. Justice Yates, in 4 Burr. 2381. But Lord Mansfield said, crown copies are, as in the case of an author, *civil property*: which is deduced, as in the case of an author, from the King's right of original publication. The *kind* of property, in the crown, or patentee from the crown, is just the same: incorporeal; incapable of violation but by a civil injury; and only to be vindicated by the same remedy, an action on the case, or a bill in equity.

That they were all granted before the expiration of the licensing acts; (*a*) and that one of them—for almanacks—as *ancient in its date* as the others, has been declared to be invalid and cancelled.

On the other hand, on the same principle—length of time—an inference *against* prerogative copyrights is drawn from the old method of promulgating the laws, before the art of printing was discovered, by which the sheriff read them in the public market place in every town: at which time every person who pleased might have taken a copy of them. And it is added that no trace of an authority, for supposing that any one was ever prevented from making transcripts for sale, can be found.

2. As executive magistrate.

Secondly, It is said, that if there is not such a general common law prerogative, yet, for political and *public convenience*, the King, *as supreme executive Magistrate*, ought to promulgate to the people all acts of the state and government; and, consequently, that he has the exclusive privilege of printing, at his own press or that of his grantees, all acts of parliament, proclamations, and orders of council. (*b*)

On the other hand it is contended, that the King has not any power to grant to his patentees the privilege of printing the acts of the state, *in exclusion of all other persons*, even on the ground of "*political and public convenience*;" but that the principle, in its farthest extent,

(*a*) First enacted in 1662, 13 & 14 Car. II.; and finally done away with in 1694.

(*b*) 2 Bla. Com. 110. 2 Ves. & Beam. 21.

only warrants a prerogative right to print a sufficient number for *the use of the officers of state*, as for the judges, magistrates, &c.; and that every person is afterwards at liberty to multiply copies for his own convenience or profit. For, it is added, when the reason ceases the law ceases, and although an act of parliament not printed by the king's patentee could not be used as authentic in the courts of justice, yet it would certainly answer the private purposes of the subjects.

3. As head of the church.

Thirdly, It is said that the King, as *supreme Head of the Church*, has a right to the publication of all liturgies and books of divine service, and in consequence his patentee has the exclusive privilege of printing the forms of prayers for a particular occasion. (*c*)

This argument, it is contended, destroys the proposition which it is adduced to support; for if the king, *as head of the church*, has the exclusive right of printing *all books* of divine service, why not, as head of the church, have a right to print the principal book used in the divine service—*the Bible*,—and all kinds of Bibles, in whatever language they might be written? And yet the principle of *property* is resorted to, for the right of printing the present edition of the Bible: and Lord Mansfield has declared, that there is no prerogative right to the Bible in the original languages. (*d*)

(*c*) Eyre and Strahan *v.* Carnan, cited 6 Ves. 697. and reported at length in 5 Bac. Abr. tit. Prerogative, p. 597.

(*d*) 4 Burr. 2405. *Lord Mansfield.* The copy of the Hebrew bible, the Greek testament, or the Septuagint, does

It is therefore insisted, that the prerogative claimed as head of the church must be taken with a limitation, similar to that claimed as executive magistrate: That the King's patentee may provide all the clergy and members of the church with copies of the liturgies, books of divine service, &c.; but that every one of his majesty's subjects is then entitled to make a copy for himself, and to print others for those persons who may please to buy them.

And, farther, it is contended that, when the *reason* for the law ceases, the *law* itself ceases; and therefore, when all the persons concerned in the administration of justice have been provided with authentic copies of the laws, and all the ministers of the gospel have been furnished with the books of divine service, it is not for the good of the public that only one set of men should print other editions of the statutes and Bible, for general circulation in the kingdom, or for exportation into foreign parts, for not belong to the king: it is common. But the English translation he bought: therefore, it has been concluded to be his property. If any man should turn the Psalms, or the writings of Solomon, or Job, into verse, the king could not stop the printing or sale of such a work: it is the author's work. The king has no power or controul over the subject matter: his power rests in property. His whole right rests upon the foundation of property in the copy by the common law. What other ground can there be for the king's having a property in the Latin grammar, (which is one of his ancientest copies,) than that it was originally composed at his expense? Whatever the Common Law says of property in the king's case, from analogy to the case of authors, must hold conclusively, in my apprehension, with regard to authors.

their own private profit. And it is added that, so far from the King's printer's situation being a place of emolument, it appears that in ancient times it was merely *an office*, and that it was formerly granted by that name, with a fee annexed to it; and, when appointed the Printer he was *sworn into the office* (*e*).

4. The King's right from purchase.

Fourthly. It was formerly maintained that the King had a right *by purchase* to such works as were compiled at the expense of the crown. By which rule was meant, not a book written and composed by the King himself, in which the common law might have given him a copyright; that was not taken away by the stat. 8 Ann. c. 19.: but a work compiled by the order of government, and made, in other words, at the expense of the people. And also inasmuch as the King appointed the judges, who made the decisions in the courts of law, that therefore he had a prerogative to print all law books (*f*).

And, upon the principle of *purchase*, he had a prerogative copy in the old Latin Grammar, which had been written and composed at his expense (*g*).

The position that the King has a prerogative copy in law publications, or in the Latin grammar, is now considered to be perfectly ridi-

(*e*) 4 Burr. 2384. 3 Mod. 77. and see Eyre *v.* Carnan, 5 Bac. Ab. 597. As to the King's Printer's right being merely an authority, see 6 Ves. 713.

(*f*) Ante, Roper *v.* Streater, cited in Skin. 234. 1 Mod. 257. and see 4 Burr. 2316. 2 Show. 260. 10 Mod. 106. Vern. 120.

(*g*) 4 Burr. 2329, 2401.

culous (*h*). And yet upon the very *same principles of purchase*, combined with the principle of the King being the *head of the church*, the prerogative over Bibles is said to be founded (*i*).

The answers, given to the reasons urged in The Bible. support of the prerogative in the crown copies, arising from the King's being the chief executive magistrate and head of the church, having been stated, it will be proper to collect the arguments that may be advanced against the position, that the King has, *by purchase*, (*j*) a prerogative copy in the present edition of the Bible.

It might be taken for granted (inasmuch as in the great case of Donaldson *v.* Becket in the House of Lords, seven judges were of opinion that there was a common law copyright, and only four judges were of a different one,) that it may fairly be inferred that an author at common law had a right to print and publish his work in perpetuity. And, therefore, supposing the King

(*h*) 4 Burr. 2315. Gibbs v. Cole, 3 Pere Williams, 255. which was on a patent for the sole printing a book of Architectural Designs.

(*i*) 2 Bla. Com. 410.

(*j*) See 4 Burr. 2381. *Yates*, J.—It is mentioned as one ground of the King's right to print them, "that some of these prerogative books were composed at his expense." But in fact it is no private disbursement of the king; but done at the public charge, and part of the expenses of government. It can hardly be contended that the produce of expenses of a public sort are the private property of the king, when purchased with public money. He cannot dispose or sell one of those compositions. How, then, can they be his private property, like the private property claimed by an author in his own compositions?

were to write a book himself, with his own hand, he (not being mentioned in the stat. of 8 Ann. c. 19.) might have a perpetual copyright in it.

But the King *did not himself* write the present translation of the Bible; it was done by many learned men from each of the Universities, who were employed and paid by the government.

And it has never yet been contended that the mere act of purchasing a work, conferred on him by whom the manuscript was bought, a copyright dependent on the purchaser;(*k*) for such a proposition would establish a rule that, under the present acts of parliament, the copyright in a book ought to continue for *the life of the purchaser* of the manuscript, and not for the lifetime of the author: a proposition evidently absurd.

It is true that a person, by a *mere gift*, may have such a power over a publication as to maintain an action, or obtain an injunction, against any one who pirates it. And so he might, even if he *came wrongfully* by the manuscript from which it was printed; but those decisions proceed upon the principle, that title arising from possession is sufficient evidence of property, against the pretensions of a third person: and not on the ground of copyright.

To which reasoning it is, on the other part of the crown, *replied*, that the translators of the Bible had, *at the time* the King *purchased* the copy, a common law copyright in the production. That the king took such interest; and, therefore, inasmuch as he is not bound by the statute

(*k*) 4 Burr. 2346. 2401. Amb. 164. sed vide 3 Ves. and Beam. 77.

of Anne, taking away the common law copy-right of authors in general, that his power to print and reprint the Bible is a perpetual right, or a prerogative in the crown.

It is further contended, that the acts of parliament, &c., books of divine service, &c., and Bibles, are works in which *no one* can claim property by *authorship*; and, therefore, inasmuch as the King has not a right to books and publications abandoned to the public, he can have no property in the books called crown copies.(*l*)

Statutes and Bibles published with notes.

And it is added that, both with respect to acts of parliament and the Bible, any one is at liberty to print them *with notes*. (*m*) And yet if the principles upon which the prerogative right is maintained be correct—that it is on purpose to keep the acts of parliament from mutilation, and the Bible from being incorrectly printed,—that the power over them is vested in the crown; why does it not extend to the editions with notes? for both evils may arise in the editions with notes, as well as in the copies without them.

No attempt has ever been made to prevent any person from publishing a translation of one book, or *of a part* of the Bible, from the original text, and enjoying a copyright in his production.

And it was admitted by Lord Mansfield, that any person making *an abstract* of the records of the courts of law might publish it. (*n*)

(*l*) Mod. 256. 3 Mod. 75. 4 Burr. 2347. 2402.

(*m*) Ante, p. 244. 2 Evans Collect. Stat. Part III. Class I.

(*n*) 4 Burr. 2104. Lucas 105. 2 Ch. Ca. 76.

5. This prerogative is supported by decisions in equity and law.

Fifthly, It is said, that the validity of the crown copies is supported by the injunctions that have continually been granted in the Court of Chancery, on the supposition of the legality of the patents, and by a decision in the Court of King's Bench.

To which it is answered, that many reasons may be assigned for granting of an injunction besides the legality of the patent; and that injunctions were often obtained for infringements of the patent granted to the Stationers' Company, conferring on them the sole right of printing Almanacks; and yet, the first time the legality of that patent was discussed in a court of common law, the validity of it was questioned, and it ultimately was declared to be void.

It is therefore contended, by those persons who think that the patents of the University and King's printer are not founded in law, that injunctions are not authority in a common law question, particularly in the present subject, because very few of them ever came on to be heard; and that the circumstance of an injunction being granted and continued until the hearing does not furnish an argument in favour of the validity of the patent, because injunctions are now granted until the hearing, although the right may be doubtful, if there has been a long possession under it (*o*)

But formerly an injunction was refused to a complainant, unless he had a plain right: (*p*)

(*o*) 8 Ves. 215. and see 12 Ves. 270. 17 Ves. 424.

(*p*) 1 Vern. 129. 1 Atk. 284. Hills v. The University of

and in one instance an injunction was actually dènied on the motion of the King's patentees to stop the sale of English Bibles printed beyond sea, until the validity of the patent had been tried at law. (*q*) The difference arises from the change of practice in the Courts of Chancery.

Respecting the authority of the opinion of a judge sitting in a court of Equity upon a

Oxford, 1 Vern. 275. In the year 1684 the King's printer filed a bill to restrain the University of Oxford from printing Bibles, &c.; and although the Lord Keeper was of opinion that it was never meant by the patent to the university that they should print more than for their own use, or at leas. some small number more to compensate their charge, yet he thought the validity of the patent was a matter proper to be determined at law, and would grant an injunction until the trial had settled the right.

(*q*) Anon. 1 Vera. 120. Hil. Term, 1682. In which case it is said that the patent for law books had been adjudged good in the House of Lords. *And see* Baskett *v.* Cunningham, 1 Bla. Rep. 370. 2 Eden, 137. S. C. Cunningham and other booksellers were publishing a Digest of the Statutes with notes. They had engaged the proprietors of the patent for printing law books to print the work; and it was being printed at their press. Baskett the king's printer moved against the proprietors, and the law printers for an injunction. It was contended that the book was not within the meaning of the letters patent, being a work of labour and industry, and in a method entirely new; and that it was printed at a privileged press. *The Lord Chancellor* was of opinion that the work was entirely within the patent of the king's printer, and that the notes were *merely collusive*; and he accordingly granted an injunction. But he would not interfere between the two contending patents in the summary method of injunction: but left them to adjust their respective rights in due course of law.

question of common law, Mr. Justice Yates observed (*r*) that "great attention and respect were undoubtedly due to the decisions of the Lord Chancellor: but they were not conclusive upon a court of common law. Had these injunctions (which were only temporary) been perpetual they could have no effect on a court of common law, in a common law question."

On the other hand Lord Chancellor Eldon has said, (*s*) "the court takes upon itself that which may involve it in a mistake—to determine the legal question—and the observations of Mr. Justice Yates are very material on this point; particularly if he was accurate in saying he did not consider these cases upon injunction as determining the legal question; which, if he meant as in no case determining it, is not accurate; as it is, if he meant only that it is a decision by a Judge sitting in Equity upon a legal question, and therefore not having all the authority of a decision by a court of law; but giving an opinion and pledging to maintain it, unless there should be occasion to alter it. The principle of granting injunction in those cases is, that damages do not give adequate relief."

It is further contended, that even the decision which took place in the court of common law (*t*)

(*r*) 4 Burr. 2353.

(*s*) 8 Ves. 224.

(*t*) Baskett *v.* The University of Cambridge, 2 Burr. 661. (and see 1 Bla. Rep. 105). The plaintiffs were the King's printers, and brought a bill in the Court of Chancery to restrain the defendants from printing or selling a book intituled "An exact Abridgment of all the Acts of Par-

cannot be considered as an authority in the point; for that was a question between two rival

liament relating to the excise on Beer, &c." It was sent unto the King's Bench for the opinion of the court upon the acts of parliaments and patents.

Several letters patent were insisted on by the plaintiffs: the last bore date in the 12th year of Queen Anne, by which the *sole* power of printing all and all sorts of abridgments of all and singular statutes and acts of parliament was given to the grantees, with a *prohibition* against all others.

The defendants contended, that by a patent granted in the 26th. year of Hen. VIII. they might lawfully print within the university all manner of books approved by the chancellor and vice-chancellor, and three doctors; and might put them to sale wherever they pleased; and that by a patent dated 3 Car. I. the King confirmed that right to the university, *notwithstanding* any grant or prohibition contained in the subsequent letters patent, or any of them.

The case was argued four times during the space of six years; and the *following certificate* was made by Lord Mansfield and the other judges.

"Having heard counsel on both sides, and considered of this case, we are of opinion that during the term granted by the letters patent dated the 13th of *October*, in the twelfth year of the reign of Queen *Anne*, the plaintiffs are entitled to the right of printing Acts of Parliament, exclusive of all other persons not authorized to print the same by prior grants from the crown."

"But we think that by virtue of the letters patent bearing date the 20th day of *July*, in the 26th year of the reign of King *Henry* the Eighth, and the letters patent bearing date the 6th of February, in the third year of the reign of King *Charles* the First, the chancellor, masters and scholars of the university of *Cambridge*, are intrusted with a *concurrent authority* to print Acts of Parliament and abridgments of Acts of Parliament within the said *university*, upon the terms in the said letters patent." Baskett *v.* University of Cambridge, 1 Bla. Rep. 105. 2 Burr. 660.

patentees, (the King's Printer and the Univer. sity of Cambridge) in the discussion of which the legality of the patents could not be mentioned. It was taken for granted that each of the patents was good; and then the certificate of the Judges shewed how far the respective patentees had a right to print the same books—Acts of Parliament. So much so that, upon the question being carried into the House of Lords, when one of the counsel was about to impugn the patent of the King's Printer, he was reminded that by that means he would destroy the grant to his clients. (*u*)

A similar reason may be given for the strong expressions made use of by Lord Erskine, when counsel at the bar of the House of Commons for Carnan the opposer of the Patent for Almanacks, *in favour* of the prerogative copies, in the Statutes, the Bible, &c. He was an advocate much too shrewd to contend before such an assembly as the House of Commons, on a bill brought in by the minister, that they ought not to revest a monopoly in the Stationers' Company, (the patent formerly granted having been declared to be invalid) *because none* of the patents of prerogative copies were founded in law or justice.

On the authority of Basket *v.* The University of Cambridge, although a case between two rival patentees, Lord Mansfield, and the Court of King's Bench, considered the patents of the King's Printers and the Universities to be valid; and

(*u*) 2 Evans Collec. Stat. Pt. III. Cl. I. (9), and see Bruce *v.* Bruce, 13 Ves. 505. Baskett *v.* Parsons, *ibid.*

thence *inferred* that there was a common law copyright in authors over their publications. (*v*) It is contended as, by the decision in Donaldson *v.* Beckett, it is *doubtful* whether there ever was such a common law copyright, that the *premises* of his lordship—the legality of the patents—being the converse of the proposition then to be proved, has at least been rendered *doubtful.*

The King's printer.

It follows as a matter of course, that if the King has the prerogative of the exclusive right to printing the books called Crown Copies, that his grantees may enjoy the same privileges (*w*).

III. The Company of Stationers.

To trace the rise and progress of the Company of Stationers, and to give a full account of their grants and charters, would be as tedious and irksome as it would be useless and unnecessary. It is sufficient to observe, that they were first incorporated by very important charters granted to them in the years 1556 and 1558, and that, whilst the Star Chamber was in existence, in the hands of that oppressive and tyrannical court they were the monopolists of books and the destroyers of literature. By a charter granted to them by James the First they, for a long time, in concurrence with the universities of Oxford and Cambridge, claimed an exclusive right to print alma-

(*v*) 4 Burr. 2332. 2346.

(*w*) The first appointment of a King's Printer extant, was that of Grafton by Edward VI.

nacks (x), and frequently obtained injunctions in the Court of Chancery in support of that grant: (y) which, upon its being referred to a Court of Common Law, was declared to be invalid (z).

At present the Company of Stationers have little more to do with literary productions than to make an entry of each work in their books, in order to secure to the authors the penalties for any infringements; and to take in and deliver to the learned bodies those copies of works to which, by act of parliament, they are entitled.

1. The entry of Stationers Hall.

That every person may know in what works a copyright is claimed, it is provided by the stat. 8 Anne (a), that no person shall be subjected to the penalties for printing or reprinting any book, unless the title to the copy of such book be entered in the register book of the Company of Stationers; nor be answerable to the assignee, unless the consent of the proprietor, by which he parted with the copyright, is in a like manner entered.

But now, without any express repeal of the first

(x) See title "*Almanacks*" ante, p. 234, 5.; and 2 Bla. Rep. 1004.

(y) Stationers' Company v. Lee, 2 Ch. Ca. 66. 93. 2 Show. 258. S. C. Same v. Wright, *Id.* 76.

(z) Stationers' Company v. Partridge, 10 Mod. 105., and cited in 2 Bro. P. C. Toml. Ed. 137. See Same v. Marlow, 2 Show. 261. Lelly Entr. 63. 1 Mod. 256. 2 Bla. Rep. 1009. 4 Burr. 2329. 2370. 2372. 2382. Company of Stationers v. Parker, Skin. 233. Same v. Seymour, Mod. 256. 3 Keb. 279. S. C.

(a) 8 Ann. c. 19. s. 2.

parts of 8 Ann. c. 19. and 41 Geo. III. c. 107. which relate to the entry of the title of the book at Stationers' Hall in order to ascertain what books may from time to time be published, it is directed (*a*) that the title to every book which is published shall be entered within one calendar month from the day of publication, if published in London; and within three calendar months for those books which are published in any other part of the British dominions, under a penalty of five pounds, and the price of eleven copies; to be recovered in an action at law by the managers of the public libraries.

It was held, though with some hesitation, that an injunction might be obtained in Chancery,(*b*) or an action maintained at law (*c*), although the book had not been entered at Stationers' Hall: but, to remove all doubt, it was enacted that a failure in making the entry should not affect the copyright, but only subject the publisher to the penalty for not causing it to be made. (*d*)

For every entry two shillings is to be paid. (*e*) The register book may always be consulted upon payment of one shilling, and for the like sum a certificate of an entry must be granted. If the clerk refuse or neglect to make the entry, or to give a certificate of it, an advertisement in the Gazette will have the same benefits at-

(*a*) 54 Geo. III. c. 156. s. 2.

(*b*) Baller *v.* Walker, cited in 2 Atk. 94.

(*c*) Beckford *v.* Hood, 7 T. R. 620. and see ante, p. 291.

(*d*) 54 Geo. III. c. 156. s. 5.

(*e*) *Id.* s. 5.

tached to it, and the clerk will forfeit twenty pounds to the proprietor of the work.

2. The copies for the public libraries.

In making entries at Stationers' Hall of magazines, reviews, or other periodical publications, it is sufficient to make the entry within one month next after the publication of the first number or volume. (*g*)

It was also provided by the stat. of 8 Ann. (*h*) that nine copies of each book, upon the best paper, should be delivered by the printer to the warehouse keeper of the Company of Stationers at their Hall before publication made, for the use of certain public libraries in England; to which were added two more copies for libraries in Ireland. This arrangement was afterwards altered when it was enacted (*i*) that *eleven copies* of every book of the largest impression, with all its maps and prints, should, on demand being made thereof, in writing, within one twelve months of the publication, on the publisher, under the hand of the warehouse-keeper, or a person properly authorized by the manager of the library at the British Museum, Sion College, the Bodleian at Oxford, the public one at Cambridge, of that belonging to the faculty of Advocates at Edinburgh, of the four Universities in Scotland, Trinity College Dublin, and King's Inn Library Dublin; to be delivered by the publisher to the warehouse-keeper for the use of each of the libraries that should request it within one month after the demand.

(*g*) 54 Geo. III. c. 156. s. 5.
(*h*) 8 Ann. c. 19. s. 5.
(*i*) 41 Geo. III. c. 107. s. 6.

. The warehouse-keeper (*k*) is directed to deliver the said books within one month afterwards to the keeper of the respective libraries, or any person by them properly authorized. For neglect of duty the publishers and warehouseman are liable to a penalty of five pounds, besides the value of it, for every copy not so delivered, received, and handed over.

In the event of a *second edition* being published (*l*), it is not to be delivered to the libraries unless it contains additions and alterations; nor even then, if the additions are delivered over by themselves.

And the warehouse-keeper of the Company of Stationers is directed every three months to transmit correct lists of the books entered to the librarians of the eleven public libraries, and also to call on the publishers for as many copies as are demanded (*m*). But the publisher of a book is at liberty to deliver it himself to the librarians, who are authorized to give a receipt for the same; and such delivery is equivalent to one to the warehouseman (*n*).

It was at one time imagined that, unless the title of the book was entered at Stationers' Hall, a publisher was not bound to deliver up copies for the use of the public libraries: but it was held (*o*) that the copies of each book, upon the

(*k*) 54 Geo. III. c. 156. s. 2.
(*l*) *Id.* s. 3.
(*m*) *Id.* s. 6.
(*n*) *Id.* s. 7.
(*o*) The University of Cambridge *v.* Bryer, 16 East. 317.

best paper, must be delivered to the warehouse-keeper of the Company of Stationers for the use of the library of the University of Cambridge, notwithstanding the title to the copy of the book, and the consent of the proprietor to the publication, were not entered in the register-book of the Company.

IV. The Universities.

The Universities of Great Britain are deeply interested in the laws repecting the publication of books. But the regulations that more particularly relate to those learned bodies are few in number. They will be explained in the following order:

1. The right to print Bibles.
2. The right to print the Statutes.
3. The patent respecting Almanacks.
4. The general copyright of the Universities.

Upon the introduction of the art of printing into England by Hen. VI. a press was set up at Oxford: and a great power over the publication of books was for many years very naturally assumed by that learned body. It was increased by charters and grants made to the Univeseities of Oxford and Cambridge by several kings, in which were given to them powers to print and reprint Bibles, Statutes, Almanacks, &c. How far the Crown really pos-

sesses a prerogative copyright in those works has been a subject of discussion in a former section. Supposing that those patents are valid which have not been declared to be void, it will be proper to set forth the interest in them that is claimed by the Universities.

1. The right to print the Bible,

The right of the Universities to print Bibles is claimed under charters from several of our kings (*p*).

The grants to the Universities are made in general words;—all manner of books and works of whatever description, not prohibited by public authority, which shall be approved of by the authorities in the Universities. It is under letters patent granted in the 13th year of Elizabeth that they claim to print Bibles. (*q*)

The same power is vested in the King's printers for England, and in those for Scotland and Ireland (*r*).

2. The right to print the Statutes.

By similar grants full power is delegated to them to print the statutes. A question arose as to the right of the University of Cambridge to print an Abridgment of the Statutes; and it was decided (*s*) that by virtue of letters patent, bearing date the 28th day of July, in the twenty-sixth year of the reign of King Henry the Eighth, and

(*p*) 2 Bla. Rep. 1004.

(*q*) *Id.*

(*r*) See the Universities of Oxford and Cambridge *v.* Richardson, 6 Ves. 689. and 9 Ves. 341. Irish T. R. 304.

(*s*) Bla. Rep. 304. 2 Burr. 661. Burn Ecc. L. 347. 4 Burr. 2401. 6 Ves. 697. See Skinn. 234.

the letters patent bearing date the 6th of February in the third year of the reign of King Charles the first, the Chancellor, Masters, and Scholars, of the University of Cambridge *are intrusted* with an authority concurrent with the King's printer to publish acts of parliament, and abridgments of them within the University upon the terms in the letters patent mentioned.

3. The right to print Almanacks.

We have seen that the crown has not the privilege of a prerogative copy in Almanacks; and that the grants of it by the King, to the King's Printer, and the Universities, were declared to be void. (*t*) Upon a petition presented to Parliament by the Universities, stating that they had demised their supposed privilege to the Company of Stationers for 1000*l.* *per annum*, an Act of Parliament was passed by which 500*l.* *per annum* of the duties arising from the stamps on Sheet Almanacks were given to each University. (*u*)

4. The Copyright of the Universities generally.

Alarmed lest the seats of learning should suffer by the judgment of the House of Lords, by which the supposed common right of authors to their works was declared to be restrained by the statute of 8 Ann. the Legislature passed an act (*x*) that

(*t*) Ante p. 234. 2 Bla. Rep. 1004.

(*u*) 21 Geo. III. c. 56. s. 10.

(*x*) 15 Geo. III. c. 53. The Syndics of the press in the university of Cambridge are the vice-chancellor, the heads of colleges, and doctors of each faculty, the orator and all public professors, with the proctors, taxors and scrutators. To these, or the major part, not less than five, of whom the vice-chancellor must be always one, full powers must be committed for the better regulating and management of the same.

the Universities in England and Scotland, and the Colleges of Eton, Westminster and Winchester, should at their *respective presses* have for ever the sole liberty of printing such books as had been given or bequeathed to them, or which should thereafter, not being then published, be given to them, or in trust, for the purpose of appropriating out of the profits arising from them a fund for the advancement of useful learning, and other beneficial purposes of education; unless the books are given or bequeathed only for a limited time.

The penalties to be inflicted on persons offending against these provisions are the same as if the books were the property of an individual. (*x*)

This exception in the favour of the Universities is to extend only to their own books, so long as they are printed at the College press, and for their sole benefit; and any delegation of the right works a forfeiture, and the privilege becomes of no effect.

A power is given to the Universities of selling or disposing of the copyrights bequeathed to them. (*a*) And the books must be registered at Stationers' Hall within two months after any such gift shall come to the knowledge of the officers of the Universities. (*b*)

The duties imposed on the Company of Sta-

(*x*) 41 Geo. III. c. 107.
(*a*) 15 Geo. III. c. 53. s. 3.
(*b*) *Id.* s. 4.

tioners to take care that the two Universities are provided with copies of all new books have been mentioned. (c)

V. The Courts of Justice.

The Courts of Justice have a controul over the publication of their own proceedings. It is claimed and exercised, not on the grounds of copyright and property, but on the principle that it is necessary for the due and *impartial administration of the laws.*

Some doubt has been thrown upon the subject. (d) If the right is possessed by any of the courts, it is a privilege belonging to all of them. The present enquiry will, therefore, be confined to those courts in which the right has been exercised and afterwards questioned, as where Reports have been given from,

1. The House of Lords.
2. The Privy Council.
3. The Courts of Law.
4. The Mayor's Court.
5. A Coroner's Inquest.

(c) Ante p. 334. Provision is made for the preservation of *Parish Libraries*, by 7 Ann. c. 14. s. 10. which empowers a justice of the peace to grant his warrant to search for a book that is lost. The Acts of Parliament respecting the *British Museum* are, 26 Geo. II. c. 22. 27 Geo. II. c. 16.

(d) In a "legal and constitutional argument against the alleged judicial right of restraining the publication of reports of judicial proceedings," by J. P. Thomas, Esq. 1822.

Both Houses of Parliament treat a publication of their proceedings as a *breach of privilege*; and it is only by an indulgence in not punishing for the contempt that the Reports of the debates are allowed to appear in the newspapers. (*e*)

Different reasons have been assigned in the several courts, for the exercise of this power over the publication of judicial proceedings, but all of them have for their ground work the impartial Administration of Justice.

The House of Lords, the highest judicial court in the kingdom, has, ever since the trial of Dr. Sacheverell, considered that it was the exclusive *privilege* of the house to publish its own judicial proceedings. This is usually done by ordering the Lord Chancellor to cause the trial to be published; at the same time prohibiting all other persons from doing the like.

An order had been made by the House of Lords for the printing the trial of the Duchess of Kingston; and an injunction was granted to restrain one Kearsley who had without such permission dared to print it. (*f*)

Lord Erskine also granted an injunction until the hearing to restrain the publication of the trial of Lord Melville, which had been directed to be printed by an order of the House of Lords,

(*e*) See ante p. 253, 4. and 6 T. R. 293. 1 Bos. and Pul. 525.

(*f*) Bathurst *v.* Kearsley, Easter Term, 1776, cited 13 Ves. 504.

and the privilege of doing it conferred on Mr. Gurney. (g)

His Lordship observed that he desired it to be understood that he had not delivered any judgment in the case, further than by granting the injunction until the hearing upon the precedent of Bathurst *v.* Kearsley, and that he should therefore consider *the question open* in any future stage.

Neither of these cases came to a hearing: but it may be safely inferred that the House of Lords possesses the power, as a privilege of the House, to make an order restraining all persons excepting the one appointed by the Lord Chancellor, from publishing their judicial proceedings.

2. The Privy Council.

On the ground of *public policy*, an injunction was once granted to restrain the publication of matters of the Privy Council. (*h*)

3. The Courts of Law.

A similar privilege is claimed and exercised by the Courts of Law at Westminster. Formerly no reports of their proceedings were allowed to be published until they had received the imprimatur of the Judges. (*i*) Although decent and correct accounts of what passes in Courts of Justice may, it has been shewn, (*k*) be given to the public; yet it must be by the consent of the Judges

(g) Gurney *v.* Longman, 13 Ves. 493. But yet reports of legal arguments in the House of Lords are regularly given, unnoticed by their lordships.

(*h*) Mentioned in argument in Percival *v.* Phipps, 2 Ves. and Beam. 23.

(*i*) See the Preface to Douglas's Reports.

(*k*) Ante, p. 254, 5.

implied by their not interfering to stop it. If an intimation is given from the Bench that the matter of any particular case must not be reported, it is a *contempt* of Court to publish it. In a late case (*l*) the Proprietor of the Observer newspaper was fined 500*l*. for reporting part of the trial of Thistlewood for High Treason, after the Court had stated that it was their wish that the whole of the proceedings might be published together, and that no part of them should be printed until the trials of several other prisoners were over. The reasons for this power thus exercised, by courts of justice, are too obvious to need any mention being made of them.

This privilege is not claimed by the court as a right *wholly to prevent* the publication of a trial; but merely for the sake of justice, to restrain all ex-parte statements which must necessarily conduce to the detriment of one party; and in criminal cases more particularly to the injury of persons under trial. The publication is not an infringement of any copyright: but a *contempt* of the court.

4. The Lord Mayor's Court.

Not only have the higher courts of justice this power over the publication of their own proceedings: but it is also possessed by the *Mayor of London.*

A bill was filed by some printers, who had bought from the Lord Mayor the copies of the

(*l*) The King v. Clement, 4 Barn. and Ald. 218. As to advertizing for evidence in a cause, see Poole v. Sacheverel, 1 Pere Williams, 675, and see 4 Burr. 2329. Bac. Ab. Courts and their Jurisdiction, 3 Inst. 182.

Sessions Paper; and Lord Hardwicke, upon the ground that it had always been usual for the Lord Mayor to order a printer of the trials, and to take a consideration for it, granted an injunction until the hearing. At the hearing the injunction was made perpetual by Lord Northington. (*m*)

5. Coroner's Inquest.

A criminal information will lie for publishing an *ex parte* statement of the proceedings upon a coroner's inquest. Mr. Justice Bayley (*n*) observed "this is a matter of great criminality; for the inquest before the coroner leads to a second inquiry, in which the conduct of the accused is to be considered by persons who ought to have formed no previous judgment of their case. It is a statement of evidence taken wholly *ex parte*; and where there is no opportunity for cross-examination. A jury, who are afterwards to sit upon the trial, ought not to have *ex parte* accounts previously laid before them: they ought to decide solely upon the evidence which they hear upon the trial."

VI. Printers.

Among the persons peculiarly interested in literary property, and the publication of books, *Printers* may be classed. The enactments and rules of law respecting them, will therefore very properly find a place in a Treatise on Copy-

(*m*) Manby v. Owen, cited in Millar v. Taylor, 4 Burr. 2330. 2404, 5.

(*n*) The King v. Fleet, 1 Barn. and Ald. 384.

right; and may be investigated in the following order, by stating,

1. The statutes respecting printing in general.
2. How far printers are affected by the matter of the books.
3. The rules respecting printing newspapers.
4. Their legal liabilities.
5. The proceedings to punish offenders.

1. Printing in general.

Every person having a printing press or types for printing must give a notice thereof, signed in the presence of and attested by one witness, to the clerk of the peace, of the place in which it is intended to be used, who will grant a certificate; and, after filing such notice, he will transmit an attested copy of it to the Secretary of State. An omission in giving such notice, or a using the press in any other place, subjects the printer to a forfeiture of 20*l.* (*o*)

The name of the printer.

Upon the front of every paper, which is printed on one side only, and upon the first and last leaves of every paper or book which consists of more than one leaf, the printer, whether it be done gratis or for money, must in legible characters print his name, and that of the city, town, parish, or place, with the name of the square,

(*o*) 39 Geo. III. c. 79. s. 23. Not to extend to his Majesty's printers or the universities in England, *id.* s. 24. ante, p. 316. and p. 338, 9. But *letter-founders* must give a similar notice, *id.* s. 25. and keep an account of types and printing presses sold by them, which must be produced, when required by a justice, under a penalty of 20*l.* *id.* s. 26.

street, lane, court or place in which his usual place of abode is situated, under a penalty of 20*l.* for every copy. (*p*) But the offender is not liable to more than twenty-five penalties for the omission, with respect to any number of copies of *one* paper or book. (*q*)

The name of the employer.

Upon a copy of every paper that is printed the printer must *write* the name and place of abode of his employer, and keep it for six calendar months; and must produce it to any justice who, within that term, may require to see it, under a penalty of twenty pounds for each omission. (*r*)

These regulations, however, do not extend to impressions of engravings; (*s*) or to printing by letter-press, names, address, business or profession of any person, and the articles in which he deals, or to any papers for sale of estate or goods by auction or otherwise; (*t*) nor to alter the regulations respecting newspapers. (*u*)

And no regulation made by 39 Geo. III. c. 79. nor by the 51 Geo. III. c. 65. (*x*) is to extend so

(*p*) 39 Geo. III. c. 79. s. 27. Not to extend to papers printed by the authority of Parliament, *id.* s. 28.—Sometimes an indemnity is granted for omission of the names, &c. See 49 Geo. III. c. 69.

(*q*) 51 Geo. III. c. 65. s. 1.

(*r*) 39 Geo. III. c. 79. s. 29.

(*s*) See ante p. 289.

(*t*) 39 Geo. III. c. 79. s. 31.

(*u*) See ante p. 250.

(*x*) 51 Geo. III. c. 65. s. 3. Before which time, indemnity acts were passed on that account. 39 and 40 Geo. III. c. 95. and 41 Geo. III. (U. K.) c. 50.

far as to require the printer's name or residence to be printed on any note or post bill of the Bank of England, bill of exchange, or promissory note, or any bond or other security for payment of money, or on any bill of lading, policy of insurance, letter of attorney, deed, or agreement, or on any transfer or assignment of any public funds or securities, or of the stocks of any public corporation or company authorized by statute, or on any dividend, warrant of or for the same, or on any receipt for money or goods, or on any proceeding in law or equity, or in any inferior court, warrant, order, or other papers printed by authority of any public board, or officer, in execution of their respective offices, notwithstanding the whole or any part of such securities, &c. shall be printed.

2. Printers affected by the matter of the books.

There are many subjects offensive to morality and the government, upon which no papers whatever must be printed.

A printer is liable to a penalty of 100*l.* for printing any thing relating to insurances on marriages, births, christenings, or services; or any office under the denomination of sales of gloves, of funs, of cards, of numbers, of her majesty's picture, for the improvement of small sums, or the like offices under that pretence: (*y*) and to a penalty of 50*l.* for printing any proposal for gambling in the lottery. (*z*)

(*y*) 10 Ann. c. 26. s. 109. and see 9 Ann. c. 6. s. 56.

(*z*) 22 Geo. III. c. 47. s. 13. and see the King *v.* Smith, 4 T. R. 414. For an account of other penalties to which printers are liable, see ante, p. 256, 7, 8.

And a prosecution may be instituted against the printer as well as against the author and publisher of a libel, whether it be on an individual; (*a*) or be of a blasphemous or seditious nature. (*b*)

3. Printers of Newspapers.

The method by which a newspaper is to be printed has been stated; (*c*) and the responsibility of every person engaged in its publication has been examined. (*d*)

4. Their legal liabilities.

It is doubtful whether a printer can recover in an action for work and labour for printing a work, on the first and last leaves of which his name and place of abode are not printed, according to the direction of the statute. (*e*)

A printer is not, by the custom of his trade, entitled *to be paid* any thing until he has completed the book: but he is not by custom bound to *insure* for the Bookseller the paper of the work (*f*). And he has a *lien* on the latter

(*a*) Holt on Libel.

(*b*) 60 Geo. III. c. 9. see ante, p. 252.

(*c*) Ante, p. 250.

(*d*) Ante, p. 252 to p. 258.

(*e*) Bensley *v.* Bignold, 5 B. & A. 335. Marchant *v.* Evans, 2 B. Moor, 14. 8 Taunt. 142. S. C. In which case it was held that an action for work and labour cannot be maintained by a printer for printing and publishing a weekly periodical work, parts of which were *printed on stamped paper*, and distributed as newspapers, and parts on unstamped paper, which were half-yearly bound into volumes, unless such printer lodge an affidavit at the stamp office, or have his name or place of abode printed in some part of the publication, as required by the statute 38 Geo. III. c. 78.

(*f*) Gillet *v.* Mawman, 1 Taunt. 136. and Mawman *v.* Gillett, 2 Taunt. 325. n.

parts of a work published at different times for the printing of the first parts. (*g*)

5. Proceedings to punish offenders.

It is enacted that *any person*, to whom or in whose presence any paper, not printed according to the statute, is offered for sale or exposed to public view, may take the offender before a magistrate, who may determine upon his guilt; (*h*) and may, if he see cause, mitigate the penalty to any sum not less than 5*l.* above all reasonable costs. (*i*)

A justice of the peace, who, from information upon oath, may have reason to suspect, that some presses are being used without the requisite notice having been given, or not in the place named in it, may empower an officer, to search the premises and to secure and carry away the press, and types, and the printed papers found with them. (*j*)

Justices of the peace may proceed in a summary way to enforce the payment of a penalty not exceeding the sum of 20*l.*; and, if it is not forthwith paid, may levy the same by distress and sale of the offender's goods; and if there is not sufficient under the distress, they may commit the offender to the House of Correction, for a term not exceeding six, nor less than three, calendar months. (*k*)

Limitation.

All prosecutions for penalties are to be com-

(*g*) Blake *v.* Nicholson, 3 M. and S. 167.

(*h*) 39 Geo. III. c. 79. s. 30.

(*i*) 51 Geo. III. c. 65. s. 2.

(*j*) 39 Geo. III. c. 79. s. 33.

(*k*) *Id.* s. 35.

menced within three months after the penalty is incurred; (*l*) one moiety of which is forfeited to the king, whilst the other is given to the informer. (*m*)

Appeal to sessions.

Any person, aggrieved by a determination of a justice of the peace, may appeal to the Quarter Sessions next after the expiration of twenty days from the making thereof, first giving six days' notice of appeal to the person prosecuting for such penalty, and the court may dispose of the matter with the *costs*, in any manner they may think reasonable. (*n*)

But any penalty mentioned in 39 Geo. III. c. 79., an act of the legislature to suppress unlawful assemblies, as well as to regulate the manner of printing, *exceeding* 20*l*., may be recovered by action of debt, in any court of record at Westminster: and the plaintiff, if he recovers, will be entitled to full costs. Not one of the penalties imposed by that statute, as far as it relates to *printing*, exceeds 20*l*.; and consequently all offences under it, of that description, must be determined by justices of the peace. An attempt was made to sue in the King's Bench, for 60*l*., or three penalties: but, after verdict for the plaintiff, the judgment was arrested (*o*).

(*l*) 39 Geo. III. c. 79. s. 34.

(*m*) *Id.* s. 36.

(*n*) 51 Geo. III. c. 65. s. 4.

(*o*) Fleming qui tam *v.* Bailey, 5 East. 313. *Lord Ellenborough.*—A common informer can have no right to sue for any penalty, but where power is given to him for that

VII. Booksellers.

All booksellers are much interested in the laws that protect literary property; and yet the laws respecting them, merely as sellers of books, are very few in number. When they assume the characters of publishers, they are in fact assignees of the authors, of whom much has already been said (*p*). It will be proper to examine,

1. The statutes respecting buying and selling and importing books.
2. How far booksellers are affected by the matter of a work.
3. Their legal liabilities.

1. Buying and selling and importing books.

The vendor of a pirated work destroys literary property as much as a publisher; and, therefore, not only are penalties inflicted on those who print and import books protected by the statutes

purpose by the statute. Now the statute in question only says that a common informer may sue in any court of record for any pecuniary penalty imposed by the act exceeding 20*l.* The penalty given for this offence, each of which must be taken by itself, and cannot be reckoned accumulatively, does not exceed 20*l.*; and therefore it is not within the provisions of the 35th clause, which give an action. And the sense of that clause requires that the form of the declaration there afterwards given should be read the same as if the sum to be recovered were left in blank;—for how otherwise can the penalty of 100*l.* given by the 15th section be recovered?

(*p*) Ante p. 315.

of copyright; but they, who, knowing them to be so printed without the consent of the proprietor, will venture to sell them, are made liable to the same penalties mentioned in 8 Ann. c. 19. (*q*).

But it was further provided that nothing in that act should extend to prohibit the importing, vending or selling of any books in the *Greek, Latin,* or any other *foreign language,* printed beyond the seas (*r*).

By the 12 Geo II. c. 36. the importation of books reprinted abroad, and first composed or written and printed in Great Britain, is prohibited under a forfeiture, of the books to be destroyed, with a penalty of five pounds, and double the value of the books: but it does not prevent the importation of any book *inserted among other books* or tracts, to be sold therewith, in any collection where the greatest part of such collection shall have been first composed or written and printed abroad. (*s*)

To the same purpose is the 57th section of the statute 34 Geo. III. c. 20., which increases the penalty from five to ten pounds, and allows the

(*q*) The price of books was formerly regulated, see 25 Hen. VIII. c. 15. s. 5. 8 Ann. c. 19. s. 4. and 12 Geo. II. c. 36. s. 3.

(*r*) Sect. 7. The acts of Parliament respecting the selling and importing books that have become obsolete are numerous. 1 Rich. III. c. 9. s. 12. 25 Hen. VIII. c. 15. 7 Ann. c. 14. s. 10. 12 Ann. st. 2. c. 5. Duties are imposed on pictures imported, 8 Geo. I. c. 20. 11 Geo. I. c. 7. and on the canvass used to paint on. The Attorney-general v. Brandon, 3 Price, 360.

(*s*) See 41 Geo. III. c. 107. s. 7. and 54 Geo. III. c. 156.

commissioners of customs and excise to reward officers for seizing such books; in it is another exception on the restraint of importation, that it shall not extend to any books that shall not have been printed in this kingdom, within twenty years before the same shall have been so printed abroad.

By the wording of these statutes it seems immaterial whether the author's copyright is extinct or not, if the book has not been reprinted in England within twenty years. (*t*)

Printers and booksellers may however, with the exceptions above mentioned, export books upon condition that all the duties upon the paper and bindings have been paid, (*u*) provided that if books are written in the Latin, Greek, oriental or northern languages, then that they have not been printed at the press of either of the Universities in Great Britain. A drawback is allowed of the duty on the paper.

On the stat. 12 Geo. II. c. 36., it has been decided that two penalties might be incurred in the same day. A sale by the defendant in the morning, and another by his wife in the afternoon of the same day, were considered by the court to be two distinct acts of sale, for which two penalties might be recovered (*v*).

(*t*) 2 Bla. Com. 407. n. Ed. Christian.

(*u*) The Acts of Parliament respecting the duties on paper are very numerous.

(*v*) Brooke *v.* Milliken, 3 T. R. 509.

2. How far Booksellers are affected by the contents of a book.

Booksellers have always been made answerable for the contents of the works which they may sell. It was formerly a grievous offence to sell, or import for sale, any work which was considered heretical. (*w*)

The laws respecting libels very materially affect Booksellers; for it has been decided that the circumstance of buying a libel in the shop of a known Bookseller is sufficient *prima facie* evidence to convict him of the publication. (*x*)

There is a duty payable on the importation of books. It varies according as the works are in sheets or bound up; and its amount has been altered by many acts of parliament.

3. Their legal liabilities.

The liabilities to which Booksellers are peculiarly subjected are not very numerous.

Not only can a Bookseller in general be made a bankrupt, but it was adjudged that a person who was daily accustomed to buy the whole impression of a newspaper from the proprietor,

(*w*) See 3 and 4 Edw. VI. c. 10. 1 Mar. s. 2. c. 2 1 Jac. I. c. 25. 3 Jac. I. c. 5, &c.

(*x*) Rex *v.* Almon, 5 Burr. 2686.

(*y*) The trade of a *bookbinder* was known in England previous to 5 Eliz. c. 4., and was within that statute; and consequently before the repeal of that statute, to employ a journeyman who had not served an apprenticeship in any substantive part of that business was a violation of it. Pratt *v.* Fraser, 3 Campb. N.P.C. 14. and see Martins *v.* Galloway, 3 Campb. N.P.C. 121.

and to resell it at a profit bearing the loss arising from the copies unsold might become a bankrupt.

CHAP. VIII.

Of the Remedies for an Infringement of a Copyright.

Having described the different kinds of literary and scientific works, stated the nature of the property which exists in them, and given an account of the several persons peculiarly interested in publications, it becomes necessary to proceed, lastly, to point out the several *remedies* that may be pursued for injuries done to literary property.

As the property in the productions of the Fine Arts, is not vested in the inventors by the statutes which relate to the copyright in books, I have for the sake of perspicuity, and in order to make each Chapter as complete in itself as the nature of the subject would admit, already given statements of the penalties by which the property in engravings or prints is guarded; (*a*) and described the actions that may be maintained for piracies

(*z*) Gillingham *v.* Lang, 6 Taunt. 532. 2 Marsh. 236.

(*a*) Ante, p. 299.

of patterns for linen (*b*), and of sculptures (c) or models.

It is now therefore proper to investigate the remedies for an infringement of the copyright of a *book*, which may be

I. *By a suit for penalties.*
II. *By an action on the case for damages.*
III. *By proceedings in equity.*

I. The Suit for Penalties.

A piracy.

What conduct amounts to a piracy of a book either generally, (*d*) or of the different kinds of literary works in particular, as of books on general subjects, (*e*) abridgments, (*f*) musical compositions, (*g*) and dramatic pieces, (*h*) has been fully described.

The Penalties.

The penalties given by the stat. of Anne against piracy are, that every offender shall forfeit the book, and every sheet, being part of it, to the proprietor of the copy of it, who shall forthwith damask, and make waste paper of them; (*i*) and further that every such offender shall forfeit one

(*b*) Ante, p. 304.
(*c*) Ante, p. 306.
(*d*) Ante, p. 214 to 217.
(*e*) Ante, p. 237.
(*f*) Ante, p. 239.
(*g*) Ante, p. 283.
(*h*) Ante, p. 284.
(*i*) To be done on motion to the court. 41 Geo. III. c. 107. s. 1.

penny (now three pence) (*k*) for every sheet which shall be found in his possession, either printed or priuting, published or exposed to sale; one moiety to the Queen, the other to the informer. (*l*)

That no person however may through ignorance offend against that act, none of its penalties can be imposed on any one, unless the title of the book before its publication be entered in the register book of the Company of Stationers. The consent to publish,—that is, every assignment of the copyright,—must also be entered.

If, on the other hand, any person be prosecuted for violating the statute of 8 Anne, he may plead the general issue, and under it give any special matter in evidence. If he obtain a verdict, or the plaintiff be nonsuited, or discontinue his action, then he is to have his full costs.

Any proprietor, bookseller, or printer, or the warehouse-keeper of the Stationers' company, not observing the directions of the act respecting delivering the copies to the libraries, and making default therein, is liable to forfeit *five pounds* for every copy not delivered, besides the value of the printed copies not so delivered, to be recovered with full costs.

Independent of the remedies at law necessary

(*k*) 40 Geo. III. c. 107. s. 1, and repealed in 54 Geo. III. c. 156. s. 4.

(*l*) 8 Anu. c. 19. s. 1.

to recover a compensation for an injury done to the copyright in a book, there are some works, periodical publications, as newspapers and pamphlets, which may be the subjects of legal proceedings peculiar to themselves, that have been before investigated. (*m*)

The action for them.

These penalties are recoverable in actions to be maintained in the courts at Westminster. The time limited for bringing them has in the several statutes been continually altered. It is now twelve months. (*n*)

II. The Action on the Case for Damages.

Literary property is not only protected by penalties for which few persons would sue, but the proprietor may maintain a special action on the case for any injury he may have received by a piracy of his book. (*o*)

It was for some time doubted whether an author whose work had not been entered at Stationers' Hall could maintain an action on the case for damages (independent of the statute) against the person who had pirated his work. It was first decided in equity that no objection could be taken to a bill for an injunction and

(*m*) Ante, p. 271.

(*n*) 8 Ann. c. 19. s. 10. 41 Geo. III. c. 107. s. 8. 54 Geo. III. c. 156. s. 10.

(*o*) 54 Geo. III. c. 156. s. 4.

an account, because the book had not been registered at Stationers' Hall. (*p*)

And afterwards at common law it was decided, that the stat. 8 Anne, by creating a right in authors, also gave to them the concomitant remedy, (an action on the case for damages) for any injury done to it, although it were not entered at Stationers' Hall, or had not the author's name affixed to it. The penalties, it was observed, were given to the informer; and the author, who might be anticipated in suing for them, ought to be otherwise reasonably defended. (*q*)

(*p*) Baller v. Walker, see Blackwell v. Harper, 2 Atk. 94.

(*q*) Beckford v. Hood, 7 T. R. 620. see 2 Wils. 145. This was an action on the case for publishing without the consent of the plaintiff, his book called "Thoughts upon Hunting." Neither of its editions had been entered at Stationers' Hall.

By the Court.—The question is "Whether the right of property being vested in authors for certain periods, the common law remedy for a violation of it does not attach within the times limited by the Act of Parliament. Within those periods the act says, that the author shall have the sole right and liberty of printing, &c.; that the statute having vested this right in the author, the common law gives the remedy by action on the case, for the violation of it. Of this no doubt could have been made, had the statute stopped there: but it has been argued, that as the statute in the same clause that creates the right, has prescribed a particular remedy, that remedy and no other can be resorted to. But the meaning of the legislature in creating the penalties in the latter part of the clause was to give an accumulative remedy. Nothing could be more incomplete as a remedy than penalties alone; for without dwelling upon the incompetency of the sum, the right of action is not given to the party aggrieved, but to any common informer. Now the action for the penalties given to a common informer can only be considered

But now by the 54 Geo. III. c. 156. the doubt as to the necessity of an entry to vest the copyright is removed; and it is provided that a special action on the case may be maintained as an additional protection: but not intended to oust the common law right to prosecute by action any one who injures this species of property, which would otherwise necessarily attach upon the right of property so conferred. Where an Act of Parliament vests property in a party, the other consequently follows of course, unless the legislature make a special provision. The penalties to be recovered may, indeed operate as a punishment upon the offenders: but they afford no redress to the injured party. The action is not given to him, but to any person who may get the start of him. It is no redress for the civil injury sustained by the author in the loss of his just profits. It is also to be observed that the penalties to be given by the act attach only during the first fourteen years of the copyright; and during that time only is the offender liable to such penalties if he invade the author's right: but he is liable during the whole period prescribed by the act to make good in an action for damages any civil injury to the author. If this construction were not to prevail, during the last fourteen years of the term the author would be without remedy from any invasion of his property. Although six or five of the judges who delivered their opinions in Donaldson *v.* Becket were of opinion that the common law right on action was taken away by the statute of Anne, it appears that the amount of their opinions went only to establish that the common law right of action could not be exercised beyond the time limited by the statute."

"In respect to the entry at Stationers' Hall, it has always been holden that such entry was only necessary to enable the party to bring his action for the penalty. The entry serves as a notice and warning to the public, that they may not ignorantly incur the forfeitures or penalties before enacted against such as pirate the works of others."

tained by the proprietor of a book against any person for printing, reprinting, or importing or publishing, or exposing it to sale, by which he may recover such damages as the jury may think proper to assess.

The pleadings.

In the pleadings in an action for damages for infringing a copyright, there is nothing to distinguish it from actions on the case in general. (*u*)

Plea.

The plea allowed by the statutes is the general issue, Not Guilty, with liberty to give the special matter in evidence under it.

The time limited for bringing an action has been altered in the several statutes. It is now twelve months. (*v*)

Evidence.

The books are usually adduced in evidence, that by comparison it may appear to the court and jury that the one is an infringement of the copyright of the other work. How far the circumstance of the same errors being found in two publications on the same subject is evidence of a piracy has been considered. (*w*)

Judgment, costs, &c.

There is nothing particular in the judgment. Double costs are given to the plaintiff when successful in maintaining a special action on the case: but if he discontinue, or is nonsuited, then costs are to be allowed to the defendant.

(*u*) For the precedents of the declaration, see 8 Went. 420, 434. 2 Chit. Pl. 351. 7 T. R. 618, 620.

(*v*) Ante, p. 358.

(*w*) Ante, p. 257. 4 Esp. N. P. C. 168.

III. The Proceedings in Equity.

The jurisdiction of the courts of equity over literary property is similar to that exercised over patents for inventions; and arises from an anxiety to give effect to the legal right, and to restrain, by means of the short process of an *injunction*, any violation which might become an injury irremediable by the slow proceedings of the common law. (x)

Motion for an injunction.

Clear title.

At first the courts of Chancery would not give assistance, unless the complainant had a clear *legal right*.(y) It was considered that injunctions to restrain an infringement of a copyright were of the same nature as those for staying waste; and never to be granted but upon a clear legal title. If moved for upon filing the bill, the right must have appeared clearly by affidavit; if moved for upon answer, it must have been clearly admitted by the answer, or at least not denied. (z)

Lord Northington in one case refused to interpose between two contending patents: (a) and in another, where the great question of the common law right of an author to his own productions after the expiration of the term allowed

(x) Ante, p. 183. and see 6 Ves. 705. 3 Bac. Ab. Injunctions.

(y) See Eden on Injunctions, 284. Anon. 1 Vern. 120. Hills v. University of Oxford, *ib.* 275.

(z) Millar v. Taylor, 4 Burr. 2303, 2325, 2328, 2400, 2407.

(a) Basket v. Cunningham, 2 Eden 137. 1 Bla. Rep. 370.

by the statute of Anne (upon which there was at that time no decision at law) came before him, he refused to interpose before a trial had at law, on the ground of the right being so extremely doubtful. (*b*)

And though we shall presently see that the law has been altered; yet still, where there is no possession, and the title depends upon the effect of an agreement, an injunction has been refused until the recovery in an action. (*c*)

Possession under colour of title.

Although afterwards the severity of that rule was a little relaxed, yet aid was not afforded to a plaintiff unless he could shew *possession under colour of title.* Thus when the University of Cambridge in the year 1743, claimed the right of printing acts of parliament, although they never had exercised such a privilege, Lord Hardwicke said that whilst the question was so doubtful, he would not grant an injunction in favour of persons who never had possession. (*d*)

What time shall be considered as sufficient length of possession appears to be uncertain: for Lord Clare refused to grant an injunction at the instance of the king's printer in Ireland until his right to the sole publication of Bibles had been established at law, although for forty

(*b*) Osborne *v.* Donaldson. Miller *v.* Donaldson, 2 Eden 327.

(*c*) Walcot *v.* Walker, 7 Ves. 1.

(*d*) Baskett *v.* University of Cambridge, 1 Bl. Rep. 105. 2 Bur. 661. and cited in 6 Ves. 710. and see 6 Ves. 607. and 2 Evans' Collec. Stat. p. 610.

years there had been *possession under colour of title.* (*i*)

Possession without title.

The practice in the Courts of Equity received a third modification; and it appears that now injunctions are granted and continued until the hearing upon possession alone, although the title to the book or patent may be very doubtful (*k*).

It has been shewn that if the right should be clear, and there has not been any possession, that an injunction will be refused. Nor will the Court interfere when there *has been possession;* if the colour of title, by the imprudence of the real proprietor, is with another person; as when several individuals have been permitted to publish and sell the subject of the copyright without any interposition on the part of the proprietor: Although that circumstance cannot be alleged as a justification of the infringement of another man's right; yet it is a sufficient ground to induce a Court of Equity not to interpose an injunction until the copyright has been established at law. (*l*)

The cause next comes on to be argued, when an order that meets the justice and equity of the case is made. If the injunction is continued, the cause is seldom ever heard of again; for it is almost as impossible as it is useless to obtain an account of the profits.

(*i*) Grierson *v.* Jackson, Irish T. R. 304.

(*k*) 6 Ves. 689. Id. 707. 8 Ves. 505.

(*l*) Walcot *v.* Walker, 7 Ves. 1. Platt *v.* Button, 19 Ves. 447. Cooper Rep. 303.

We have seen that equity loathes all impurity, and that it will never protect such a publication as that on which an action at law could not be maintained. In such a case it will not decree an account even on submission in the answer. (*n*)

The bill.

In an elementary work on Copyright, it would be useless to go very particularly into the *practice* of the Courts of Equity respecting Injunctions in general. On that head reference must be made to the books in Chancery practice. (*o*) It will be sufficient to describe those parts which more immediately relate to injunctions for copyright.

Affidavit of title.

Having shewn that some sort of title either clear or colourable with possession is necessary to obtain an injunction; the affidavit, which is considered strong enough to claim a title, must next be investigated.

We have seen that the assignment must be in writing, and under what circumstances relief will be given; and, therefore, to support the bill of an assignee of a copyright, there must be an affidavit that the assignment was made in writing. (*p*)

An affidavit, in which it was stated generally that the copy had been purchased or legally ac-

(*n*) 7 Ves. 1. Southey *v.* Sherwood, 2 Meriv. 435. and see ante, p. 212, 3.

(*o*) Ante, p. 185. Eden on Injunctions, Chap. 15. 2 Maddox Chan. chap. 7. Cooper's Pleadings in Chancery. Mitford's Pleadings 111, and 119. 2 Ves, Jun. 486.

(*p*) See ante, p. 313, 4.

quired by a person, was held insufficient, as it did not mention that he had purchased it of the author. (*q*)

An instance has occurred in which the *agent of a writer* of great reputation who was abroad made an affidavit that a work of which he had strong reasons to believe that the Poet was not the author, was advertised to be published in his name: and an injunction was granted and ordered to be continued until, upon notice thereof, the defendant would swear (as to his belief) that the work was not the compilation of the agent's employer. (*r*)

It is also the practice, that an affidavit as to facts, filed *after* the answer, may be read at the hearing; but that an affidavit as to title cannot be received. (*s*)

It very seldom happens that an answer is put in to a bill alleging a piracy; for the question in dispute is generally settled on the motion for an injunction.

The Hearing of the cause

The practice with respect to the hearing of the motion for an injunction to protect a right, whether in a patent or a book, has been mentioned. (*t*)

The defendant is at liberty immediately to move that the injunction may be dissolved; and, in case of an imitation or piracy, the Lord Chancellor will read the works; or a reference

(*q*) Gilliver *v.* Snaggs, 4 Vin. Ab. 278.
(*r*) Lord Byron *v.* Johnston, 2 Meriv. 29.
(*s*) Platt *v.* Button, 19 Ves. 447. Cooper 303.
(*t*) Ante, p. 186.

to one of the masters will be made, for him to examine if the books are the same, or whether they differ in any and what respect. (*u*) But the Lord Chancellor in general prefers, if it be convenient, to compare the works, and then immediately to dissolve or to continue the injunction; or he will make any other order which in his judgment and discretion he thinks will meet the justice of the case.

(*u*) Jeffery *v.* Bowles, 1 Dick. 429. Trusler *v.* Comyns, cit. id. —— *v.* Leadbetter, 4 Ves. 681.

APPENDIX.

No. I.

A Form of the Petition for Patent.

[Page 138.]

TO THE KING'S MOST EXCELLENT MAJESTY,

The humble petition of , of, &c.

Sheweth,

That your petitioner, after considerable application and expense, hath invented or found out, [*here comes in the title of the invention*] which invention, he believes, will be of general benefit and advantage.

That he is the true and first inventor thereof; and that the same hath not been made or used by any other person or persons whomsoever, to his knowledge or belief.

Your petitioner, therefore, humbly prays that your Majesty will be graciously pleased to grant unto him, his executors, administrators, and assigns, your royal letters patent, under the great seal of Great Britain, for the sole working, constructing, making, selling, using, and exercising, of his said invention, and all other benefit and advantage thereof, within that part of your Majesty's United Kingdom of Great Britain and Ireland called England, your dominion of Wales, and town of Berwick-upon-Tweed, [and also in all your Majesty's colonies and plantations abroad] for the term of fourteen years, according to the statute in that case made and provided. And your petitioner shall ever pray, &c.

The Affidavit to support the Petition.

of [&c.] maketh oath and saith that, after considerable application and expense, he hath invented, or found out [*here comes in the title of the invention as described in the petition*] which invention, he believes, will be of general benefit and advantage; and this deponent further saith that he is the true and first inventor thereof, and that the same hath not been made or used by any other person or persons whomsoever, to his knowledge or belief.

Sworn at the Public Office in Southampton-buildings, London, the day of before me,

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No. II.

The Form of a Patent.

[Page 48, and page 141.]

George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to all to whom these presents shall come, greeting. Whereas A. B. of hath, by his petition, humbly represented unto us, that (*a*)
The petitioner, therefore, most humbly prayed we would be graciously pleased to grant (*b*)
And we, being willing to give encouragement to all arts and inventions which may be for the public good, are graciously pleased to condescend to the petitioner's request. Know ye, therefore, that we, of our special grace, certain knowledge, and mere motion, have given and granted, and by these presents, for us, our heirs, and successors, do give and grant, unto the said A. B., his executors, administrators, and assigns, our special licence, full power, sole privilege, and authority, that he, the said A. B., his executors, administrators, and assigns, and every of them, by himself and themselves, or by his and their deputy and deputies, servants or agents, or such others as he, the said A. B., his executors, administrators, or assigns, shall at any time agree with, and no others, from time to time, and at all times hereafter, during the term of years herein expressed, shall and lawfully may make, use, exer-

(*a*) For the allegations of the petition.
(*b*) For the prayer of the petition.

cise, and vend his said invention, within that part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed, (*c*) in such manner as to him, the said A. B., his executors, administrators, and assigns, or any of them, shall, in his or their discretions seem meet. And that he the said A. B., his executors, administrators, and assigns, shall and lawfully may have and enjoy, the whole profit, benefit, commodity, and advantage, from time to time, coming, growing, accruing, and arising, by reason of the said invention, for and during the term of years herein-mentioned, to have, hold, receive, and enjoy, the said licence, powers, privileges, and advantages, hereinbefore granted, or mentioned to be granted, unto the said A. B, his executors, administrators, and assigns, for and during, and unto the full end and term of fourteen years, from the date of these presents next and immediately ensuing, and fully to be complete and ended, according to the statute in that case made and provided. And to the end that the said A. B., his executors, administrators, and assigns, and every of them, may have and enjoy the full benefit, and the sole use and exercise of the said invention, according to our gracious intention hereinbefore declared, we do, by these presents, for us, our heirs, and successors, require and strictly command all and every person and persons, bodies politic and corporate, and all our subjects whatsoever, of what estate, quality, degree, name, or condition soever they be, within that said part of the United Kingdom of Great Britain and Ireland, called England, our dominion of Wales, and town of Berwick-upon-Tweed, (*c*) aforesaid, that neither they, nor any of them, at any time, during the continuance of the said term of fourteen years hereby granted, either directly or indirectly, do make, use, or put in practice the said invention, or any part of the same, so attained unto, by the said A. B. as aforesaid, nor in any wise counterfeit, imitate, or resemble the same, nor shall make, or cause to be made, any addition thereunto, or subtraction from the same, whereby to pretend himself or themselves the inventor or inventors, devisor or devisors thereof, without the licence, consent, or agreement of the said A. B., his executors, administrators, or assigns, in writing, under his or their hands and seals, first had and obtained in that behalf,

(*c*) For the words—"and also within all our colonies and plantations abroad."

upon such pains and penalties, as can or may be justly inflicted on such offenders for their contempt of this our royal command, and further to be answerable to the said A. B., his executors, administrators, and assigns, according to law, for his and their damages thereby occasioned. And moreover we do by these presents for us, our heirs and successors, will and command all and singular the justices of the peace, mayors, sheriffs, bailiffs, constables, headboroughs, and all other officers and ministers whatsoever of us, our heirs, and successors, for the time being, that they or any of them do not nor shall at any time hereafter, during the said term hereby granted, in any wise molest, trouble, or hinder the said A. B., his executors, administrators, or assigns, or any of them, or his or their deputies, servants, or agents, in or about the due and lawful use or exercise of the aforesaid invention, or any thing relating thereto.

Provided always, and these our letters patent are and shall be upon this condition, that if at any time during the said term hereby granted it shall be made appear to us, our heirs or successors, or any six or more of our or their privy council, that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention, as to the public use and exercise thereof, in that said part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed,
aforesaid, or not invented or found out by the said A. B. as aforesaid; then upon signification thereof, to be made by us, our heirs or successors, under our or their signet or privy seal, or by the lords of our or their privy council, or any six or more of them, under their hands, these our letters patent shall forthwith cease, determine, and be utterly void, to all intents and purposes.

Provided also that these our letters patent and any thing hereinbefore contained, shall not extend, or be construed to extend, to give privilege unto the said A. B, his executors, administrators, or assigns, or any of them, to use or imitate any invention or work whatsoever which hath heretofore been invented or found out by any other of our subjects whatsoever, and publicly used and exercised in that said part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick upon Tweed , unto whom our like letters patent or privileges have been already granted, for the

sole use, exercise, and benefit thereof; it being our will and pleasure that the said A. B., his executors, administrators, and assigns, and all and every other person and persons to whom like letters patent or privileges have been already granted as aforesaid, shall distinctly use and practise their several inventions, by them invented or found out, according to the true intent and meaning of the said respective letters patent, and of these presents.

Provided likewise nevertheless, and these our letters patent are upon this express condition, that if the said A. B., his executors, and administrators, or any person or persons which shall or may, at any time or times hereafter, during the continuance of this grant, have or claim any right, title, or interest in law or equity of, in, or to the power, privilege, and authority, of the sole use and benefit of the said invention hereby granted, shall make any transfer or assignment, or any pretended transfer or assignment of the said liberty and privilege, or any share or shares of the benefit or profit thereof, or shall declare any trust thereof, to or for any number of persons, exceeding the number of five, or shall open or cause to be opened any book or books for public subscriptions to be made by any number of persons exceeding the number of five, in order to the raising any sum or sums of money, under pretence of carrying on the said liberty or privilege hereby granted; or shall by him or themselves, or his or their agents or servants, receive any sum or sums of money whatsoever, of any number of persons exceeding in the whole the number of five, for such or the like intents and purposes, or shall presume to act as a corporate body, or shall divide the benefit of these our letters patent, or the liberty and privileges hereby by us granted, into any number of shares exceeding the number of five, or shall commit or do, or procure to be committed or done any act, matter, or thing whatsoever, during such time as such person or persons shall have any right of title either in law or equity in or to the said premises, which will be contrary to the true intent and meaning of a certain act of parliament, intituled "An Act for the better securing certain powers and privileges intended to be granted by his Majesty by two charters, for assurance of ships and merchandizes at sea, and for lending money upon bottomry, and for restraining several extravagant and unwarrantable practices therein mentioned:" or in case the said power, privilege, or authority shall at any time hereafter become vested in, or in trust for more than

the number of persons or their representatives at any one time (reckoning executors or administrators, as and for the single person whom they represent, as to such interest as they are or shall be entitled to, in right of such their testator or intestate), that then, and in any of the said cases, these our letters patent, and all liberties and advantages whatsoever hereby granted, shall utterly cease, determine, and become void, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding.

Provided also, that if the said A. B. shall not particulary describe and ascertain the nature of his said invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and cause the same to be enrolled in our High Court of Chancery, within next and immediately after the date of these our letters patent, that then these our letters patent and all liberties and advantages whatsoever hereby granted, shall utterly cease, determine, and become void, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding.

And, lastly, we do by these presents for us, our heirs and successors, grant unto the said A. B., his executors, administrators, and assigns, that these our letters patent, or the enrolment or exemplification thereof, shall be in and by all things good, firm, valid, sufficient, and effectual in the law, according to the true effect and meaning thereof, and shall be taken, construed, and adjudged in the most favourable and beneficial sense, for the best advantage of the said A. B., his executors, administrators, and assigns, as well in all our courts of record as elsewhere, and by all and singular the officers and ministers whatsoever of us, our heirs and successors, in that part of our said United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick-upon-Tweed aforesaid, and amongst all and every the subjects of us, our heirs and successors whatsoever and wheresoever, notwithstanding the not full and certain describing the nature or quality of the said invention, or of the materials thereto conducing and belonging.

In witness whereof, we have caused our letters to be made patent. Witness ourself at Westminster, this of , in the year of our reign.

By writ of Privy Seal.

No. III.

A form for the specification.

[Page 141.]

TO all to whom these presents shall come, I, A. B., of [*&c.*] send greeting. Whereas his most excellent Majesty King George the Fourth, by his letters patent, under the great seal of Great Britain, bearing date at Westminster the day of , in the year of his reign, did for himself, his heirs and successors, give and grant unto me the said A. B. his especial licence, that I, the said A. B., my executors, administrators, and assigns, or such others as I, the said A. B. my executors, administrators, and assigns, should at any time agree with, and no others, from time to time, and at all times during the term of years therein expressed, should and lawfully might make, use, exercise, and vend, within England, Wales, and the town of Berwick upon Tweed, [*and also within all his Majesty's colonies and plantations abroad*] my invention of [*Here describe the invention in the words of the patent*] In which said letters patent there is contained a proviso, obliging me, the said A. B., by an instrument in writing, under my hand and seal, particularly to describe and ascertain the nature of my said invention, and in what manner the same is to be performed; and to cause the same to be enrolled in his Majesty's High Court of Chancery, within next, and immediately after the date of the said recited letters patent, as in and by the same, reference being thereunto had, will more fully and at large appear. Now know ye that, *in compliance with* the said proviso, I, the said A. B., do hereby declare that the nature of my said invention, and the manner in which the same is to be performed, is described and ascertained as follows; that is to say, [*Here are stated the particulars*]. In witness whereof I, the said A. B, have hereunto set my hand and seal, the day of in the year of our Lord One thousand eight hundred and

A. B. (L. S.)

Taken and acknowledged by the above-named A. B. at the Public Office, Southampton

Buildings, Chancery-lane, this day of
One thousand eight hundred and
before me,

No. IV.

Notice of applying to Parliament.

[Page 148.]

London, 18

Invention of for

NOTICE is hereby given that application is intended to be made to Parliament in the next session, for an act for vesting in the above-named together with their executors, administrators, and assigns, for a term of years to be limited by such act, the sole privilege, right and authority, of making, using, and vending, a certain machine, for [*as in the patent*] for the exclusive right to make, use, exercise, and vend which machine, within that part of the United Kingdom of Great Britain and Ireland, called England, the dominion of Wales, and town of Berwick-upon-Tweed, the said obtained his Majesty's letters patent, bearing date the day of in the year of his reign for the term of fourteen years, from the date of the said letters patent; and for the exclusive right to practise, exercise, and make use of which said machine within Ireland, the said obtained his Majesty's letters patent, bearing date the day of in the year of his reign, for the term of fourteen years from the date of the said last-mentioned letters patent; and for the exclusive right to make, use, and vend, which said machine, within that part of the United Kingdom of Great Britain and Ireland, called Scotland, the said likewise obtained his Majesty's letters patent, bearing date the day of in the year of his reign, for the term of fourteen years, from the date of the said last-mentioned letters patent: and also for vesting in them the said and

their executors, administrators, and assigns, for a term of years to be limited by such act, the sole privilege, right, and authority, of making, using, and vending, certain improvements on, and additions to, his the said said machine; for the exclusive right to make, use, exercise, and vend which improvement and additions, within that part of the United Kingdom of Great Britain and Ireland called England, the dominion of Wales, and town of Berwick upon Tweed, and also in all his Majesty's colonies and plantations abroad he, the said obtained his Majesty's letters patent, bearing date the day of in the year of his reign, for the term of fourteen years from the date of the said last-mentioned letters patent, and for the exclusive right to use, exercise, and vend which improvements and additions, within Ireland, he the said also obtained his Majesty's letters patent, bearing date the day of in the year of his reign, for the term of fourteen years from the date of the said last-mentioned letters patent: and for the exclusive right to make, use, and vend which improvements and additions, within that part of the United Kingdom of Great Britain and Ireland, called Scotland, he the said likewise obtained his Majesty's letters patent bearing date the day of in the year of his reign, for the term of fourteen years, from the date of the said last-mentioned letters patent.

Signed by the agent for the above-named,
and

No. V.

A Form of Petition to Parliament.

[Page 148.]

To the honourable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled,

The humble petition and

Sheweth,

THAT your petitioner, after considerable application and expense, invented or found

out a machine, for [*describing the invention, as in the patent*] That his Majesty, by letters patent, dated the day of in the year of his reign, granted to your petitioner his executors, administrators, and assigns, the sole use and exercise of his said invention, within that part of the United Kingdom of Great Britain and Ireland, called England, the dominion of Wales, and Town of Berwick-upon-Tweed, for the term of fourteen years from the date of the said letters patent: That his Majesty, by letters patent, dated the day of in the year of his reign, also granted to your petitioner, his executors, administrators, and assigns, the sole use and exercise of his said invention, within Ireland, for the term of fourteen years from the date of the said last-mentioned letters patent: That his Majesty, by letters patent, dated the day of in the year of his reign, likewise granted to your petitioner, his executors, administrators, and assigns, the sole use and exercise of his said invention, within that part of the United Kingdom of Great Britain and Ireland called Scotland, for the term of fourteen years from the date of the said last-mentioned letter patent: That his Majesty, by letters patent, dated the day of in the year of his reign, granted to your petitioner his executors, administrators, and assigns, the sole use and exercise of certain improvements on, and additions to, his said machine, within that part of the United Kingdom of Great Britain and Ireland called England, the dominion of Wales, and town of Berwick-upon-Tweed, and also in all his Majesty's colonies and plantations abroad, for the term of fourteen years, from the date of the said last mentioned letters patent. That his Majesty, by letters patent dated the day of in the year of his reign, also granted to your petitioner, his executors, administrators, and assigns, the sole use and exercise of his said improvements and additions, within Ireland, for the term of fourteen years, from the date of the said last mentioned letters patent. That his Majesty by letters patent, dated the day of , in the year of his reign, likewise granted to your petitioner, his executors, administrators, and assigns, the sole use and exercise of his said improvements and additions, within that part of the United Kingdom of Great Britain and Ireland called Scotland, for the

term of fourteen years from the date of the said last mentioned letters patent.

That [*here comes in the special circumstances;*]

Your petitioners, therefore, humbly pray that leave may be given to bring in a bill, to prolong the several terms granted by the aforesaid letters patent, to your petitioner, and by him assigned to your petitioner, , and to vest in your petitioners, their executors, administrators, and assigns, the sole privilege, right, and authority, of making, using, and vending, the aforesaid machine, with the said improvements and additions, for such term of years, in such manner, and under such regulations, as to this honourable house shall seem meet.

No. VI.

21 James I. c. 3. — *An Act concerning Monopolies and Dispensations with Penal Laws, and the Forfeitures thereof.*

All monopolies, &c. shall be void.

'Forasmuch as your most excellent Majesty, in your royal judgment, and of your blessed disposition to the weal and quiet of your subjects, did in the year of our Lord God One thousand six hundred and ten, publish in print to the whole realm, and to all posterity, that all grants and monopolies, and of the benefit of any penal laws, or of power to dispense with the law, or to compound for the forfeiture, are contrary to your Majesty's laws, which your Majesty's declaration is truly consonant and agreeable to the ancient and fundamental laws of this your realm: And whereas your Majesty was further graciously pleased expressly to command, that no suitor should presume to move your Majesty for matters of that nature; yet nevertheless upon misinformations, and untrue pretences of public good, many such grants have been unduly obtained, and unlawfully put in execution, to the great grievance and inconvenience of your Majesty's subjects, contrary to the laws of this your realm, and contrary to your Majesty's most royal and blessed intention, so published as aforesaid:' For

avoiding whereof, and preventing of the like in time to come, may it please your excellent Majesty, at the humble suit of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, That it may be declared and enacted; and be it declared and enacted by authority of this present Parliament, That all monopolies, and all commissions, grants, licences, charters, and letters patent heretofore made or granted, or hereafter to be made or granted, to any person or persons, bodies politic or corporate whatsoever, of or for the sole buying, selling, making, working, or using of any thing within this realm, or the dominion of *Wales*, or of any other monopolies, or of power, liberty, or faculty, to dispense with any others, or to give licence or toleration to do, use, or exercise any thing against the tenor or purport of any law or statute; or to give or make any warrant for any such dispensation, licence, or toleration to be had or made; or to agree or compound with any others for any penalty or forfeitures limited by any statute; or of any grant or promise of the benefit, profit, or commodity of any forfeiture, penalty, or sum of money, that is or shall be due by any statute, before judgment thereupon had; and all proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things whatsoever, any way tending to the instituting, erecting, strengthening, furthering, or countenancing of the same or any of them; are altogether contrary to the laws of this realm, and so are and shall be utterly void and of none effect, and in no wise to be put in ure or execution.

Monopolies, &c. shall be tried by the common laws of this realm.

II. And be it further declared and enacted by the authority aforesaid, That all monopolies, and all such commissions, grants, licences, charters, letters patents, proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things tending as aforesaid, and the force and validity of them, and of every of them, ought to be and shall be for ever hereafter examined, heard, tried, and determined, by and according to the common laws of this realm, and not otherwise.

All persons disabled to use monopolies, &c.

III. And be it further enacted by the authority aforesaid, That all person and persons, bodies politic and corporate whatsoever, which now are or hereafter shall be, shall stand and be disabled and uncapable to have, use, exercise, or put in ure any monopoly, or any such commission, grant, licence, charter, letters patents, proclamation, inhibition, restraint, warrant of assist-

ance, or other matter or thing tending as aforesaid, or any liberty, power, or faculty, grounded or pretended to be grounded upon them, or any of them.

The party grieved by pretext of a monopoly, &c. shall recover trebledamages and double costs.

IV. And be it further enacted by the authority aforesaid, That if any person or persons at any time after the end of forty days next after the end of this present session of Parliament, shall be hindered, grieved, disturbed, or disquieted, or his or their goods or chattels any way seized, attached, distrained, taken, carried away or detained, by occasion or pretext of any monopoly, or of any such commission, grant, licence, power, liberty, faculty, letters patents, proclamation, inhibition, restraint, warrant of assistance, or other matter or thing tending as aforesaid, and will sue to be relieved in or for any of the premises; that then and in every such case, the same person and persons shall and may have his and their remedy for the same at the common law, by any action or actions to be grounded upon this statute; the same action and actions to be heard and determined in the courts of King's Bench, Common Pleas, and Exchequer, or in any of them, against him or them by whom he or they shall be so hindered, grieved, disturbed, or disquieted, or against him or them by whom his or their goods or chattels shall be so seized, attached, distrained, taken, carried away, or detained; wherein all and every such person and persons which shall be so hindered, grieved, disturbed, or disquieted, or whose goods or chattels shall be so seized, attached, distrained, taken, carried away, or detained, shall recover three times so much as the damages which he or they sustained by means or occasion of being so hindered, grieved, disturbed, or disquieted, or by means of having his or their goods or chattels seized, attached, distrained, taken, carried away, or detained, and double costs; and in such suits, or for the staying or delaying thereof, no essoin, protection, wager of law, aid, prayer, privilege, injunction, or order of restraint, shall be in any wise prayed, granted, admitted, or allowed, nor any more than one imparlance: And if any person or persons shall, after notice given, that the action depending is grounded upon this statute, cause or procure any action at the common law, grounded upon this statute, to be stayed or delayed before judgment, by colour or means of any order, warrant, power, or authority, save only of the court wherein such action as aforesaid shall be brought and depending, or after judgment had upon such action, shall cause or procure the execution of or upon

He that delayeth an action grounded upon this statute incurs a præmunire.

any such judgment to be stayed or delayed by colour or means of any order, warrant, power, or authority, save only by writ of error or attaint; that then the said person and persons so offending shall incur and sustain the pains, penalties and forfeitures, ordained and provided by the statute of provision and *præmunire* made in the sixteenth year of the reign of King RICHARD the Second.

16 R. 2. c. 5.

Letters patents to use new manufactures, saved.

V. Provided nevertheless, and be it declared and enacted, That any declaration before mentioned shall not extend to any letters patents and grants of privilege for the term of one and twenty years or under, heretofore made, of the sole working or making of any manner of new manufacture within this realm, to the first and true inventor or inventors of such manufactures, which others at the time of the making of such letters patents and grants did not use, so they be not contrary to the law, nor mischievous to the state, by raising of the prices of commodities at home, or hurt of trade, or generally inconvenient, but that the same shall be of such force as they were or should be, if this Act had not been made, and of none other: and if the same were made for more than one and twenty years, that then the same for the term of one and twenty years only, to be accounted from the date of the first letters patents and grants thereof made, shall be of such force as they were or should have been, if the same had been made but for term of one and twenty years only, and as if this Act had never been had or made, and of none other.

VI. Provided also, and be it declared and enacted, That any declaration before-mentioned shall not extend to any letters patents and grants of privilege for the term of fourteen years or under, hereafter to be made, of the sole working or making of any manner of new manufactures within this realm, to the true and first inventor and inventors of such manufactures, which others at the time of making such letters patents and grants shall not use, so as also they be not contrary to the law, nor mischievous to the state, by raising prices of commodities at home, or hurt of trade, or generally inconvenient: the said fourteen years to be accounted from the date of the first letters patents, or grant of such privilege hereafter to be made, but that the same shall be of such force as they should be, if this Act had never been made, and of none other.

VII. Provided also, and it is hereby further in-

tended, declared, and enacted by authority aforesaid, That this Act or any thing therein contained shall not in any wise extend, or be prejudicial to any grant or privilege, power, or authority whatsoever heretofore made, granted, allowed, or confirmed by any Act of Parliament now in force, so long as the same shall so continue in force.

Warrants granted to justices saved.

VIII. Provided also, That this Act shall not extend to any warrant or privy seal, made or directed, or to be made or directed by his Majesty, his heirs or successors, to the justices of the courts of the King's Bench or Common Pleas, and barons of the Exchequer, justices of assize, justices of *oyer and terminer* and gaol-delivery, justices of the peace, and other justices for the time being, having power to hear and determine offences done against any penal statute, to compound for the forfeitures of any penal statute, depending in suit and question before them, or any of them respectively, after plea pleaded by the party defendant.

Charters granted to corporations, saved.

IX. Provided also, and it is hereby further intended, declared and enacted, That this Act or any thing therein contained shall not in any wise extend or be prejudicial unto the city of *London*, or to any city, borough, or town corporate within this realm, for or concerning any grants, charters, or letters patents, to them or any of them made or granted, or for or concerning any custom or customs used by or within them or any of them; or unto any corporations, companies or fellowships of any art, trade, occupation or mystery, or to any companies or societies of merchants within this realm, erected for the maintenance, enlargement, or ordering of any trade of merchandize; but that the same charters, customs, corporations, companies, fellowships and societies, and their liberties, privileges, powers, and immunities, shall be and continue of such force and effect as they were before the making of this Act, and of none other; any thing before in this Act contained to the contrary in any wise notwithstanding.

Letters patent that concern printing, saltpetre, gunpowder, great ordnance, shot, or offices saved.

X. Provided also, and be it enacted, That this Act, or any declaration, provision, disablement, penalty, forfeiture, or other thing before-mentioned, shall not extend to any letters patents or grants of privilege heretofore made, or hereafter to be made, of, for, or concerning printing, nor to any commission, grant or letters patents, heretofore made, or hereafter to be made, of, for, or concerning the digging, making, or

compounding of saltpetre or gunpowder, or the casting or making of ordnance, or shot for ordnance, nor to any grant or letters patents heretofore made, or hereafter to be made, of any office or offices heretofore erected, made or ordained, and now in being, and put in execution, other than such offices as have been decried by any his Majesty's proclamation or proclamations: but that all and every the same grants, commissions, and letters patents, and all other matters and things tending to the maintaining, strengthening, and furtherance of the same, or any of them, shall be and remain of the like force and effect, and no other, and as free from the declarations, provisions, penalties, and forfeitures contained in this Act, as if this Act had never been had nor made, and not otherwise.

This Act shall not extend to commissions for allum mines.

XI. Provided also, and be it enacted, That this Act, or any declaration, provision, disablement, penalty, forfeiture, or other thing before mentioned, shall not extend to any commission, grant, letters patents or privilege heretofore made, or hereafter to be made, of, for or concerning the digging, compounding, or making of alum or alum mines, but that all and every the same commissions, grants, letters patents and privileges, shall be and remain of the like force and effect, and no other, and as free from the declarations, provisions, penalties, and forfeitures contained in this Act, as if this Act had never been had nor made, and not otherwise.

XII. [Nor to the liberties of Newcastle-upon-Tyne, nor to licences of keeping taverns.]

XIII. [Nor to letters patents granted to Sir Robert Mansel, Knt., or to James Maxwell, Esq.]

XIV. [Nor to those granted to Abraham Baker, or Lord Dudley.]

No. VII.

8 Anne, c. 19.—*An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned.*

'Whereas printers, booksellers, and other persons have of late frequently taken the liberty of printing, reprinting and publishing, or causing to be printed,

reprinted, and published, books and other writings, without the consent of the authors or proprietors of such books and writings, to their very great detriment, and too often to the ruin of them and their families:" for preventing therefore such practices for the future, and for the encouragement of learned men to compose and write useful books; May it please your Majesty, that it may be enacted, and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that from and after the tenth day of *April*, one thousand seven hundred and ten, the author of any book or books already printed, who hath not transferred to any other the copy or copies of such book or books, share or shares thereof, or the bookseller or booksellers, printer or printers, or other person or persons, who hath or have purchased or acquired the copy or copies of any book or books, in order to print or reprint the same, shall have the sole right and liberty of printing such book and books for the term of one and twenty years, to commence from the said tenth day of *April*, and no longer; and that the author of any book or books already composed, and not printed and published, or that shall hereafter be composed, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book and books for the term of fourteen years, to commence from the day of the first publishing the same, and no longer; and that if any other bookseller, printer, or other person whatsoever, from and after the tenth day of *April*, One thousand seven hundred and ten, within the times granted and limited by this Act as aforesaid, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books, without the consent of the proprietor or proprietors thereof first had and obtained in writing, signed in the presence of two or more credible witnesses; or knowing the same to be so printed or reprinted, without the consent of the proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books, without such consent first had and obtained as aforesaid: then such offender or offenders shall forfeit such book or books, and all and every sheet or sheets, being part of such book or books, to the proprietor or proprietors of the copy thereof, who shall forthwith damask and make waste paper of them; and further, that every such offender

After 10 April, 1710, the authors of books already printed, who have not transferred their rights, and the booksellers, &c. who have purchased copies, shall have the sole right of printing them for the term of 21 years.

And the authors of books not printed, to have the sole right of printing for fourteen years.

Punishment of bookseller, &c. printing without consent of the proprietor.

or offenders shall forfeit one penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published, or exposed to sale, contrary to the true intent and meaning of this Act; the one moiety thereof to the Queen's most excellent Majesty, her heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same, to be recovered in any of her Majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance shall be allowed.

'II. And whereas many persons may through ignorance offend against this Act, unless some provision be made, whereby the property in every such book, as is intended by this Act to be secured to the proprietor or proprietors thereof, may be ascertained, as likewise the consent of such proprietor or proprietors for the printing or reprinting of such book or books may from time to time be known;' be it therefore further enacted by the authority aforesaid, that nothing in this Act contained shall be construed to extend to subject any bookseller, printer, or other person whatsoever, to the forfeitures or penalties therein mentioned, for or by reason of the printing or reprinting of any book or books without such consent as aforesaid, unless the title to the copy of such book or books hereafter published shall, before such publication, be entered in the register book of the company of Stationers, in such manner as hath been usual, which register book shall at all times be kept at the hall of the said company, and unless such consent of the proprietor or proprietors be in like manner entered as aforesaid, for every of which several entries sixpence shall be paid, and no more; which said register book may, at all seasonable and convenient times, be resorted to, and inspected by any bookseller, printer, or other person, for the purposes before-mentioned, without any fee or reward; and the clerk of the said company of stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding sixpence.

Copies of books to be entered before publication in the register book of the company of Stationers; which may be inspected at any time without fee.

Penalty of the clerk refusing so to do.

III. Provided nevertheless, that if the clerk of the said company of Stationers for the time being shall refuse or neglect to register, or make such entry or entries, or to give such certificate, being thereunto required by the author or proprietor of such copy or

copies, in the presence of two or more credible witnesses, that then such person and persons so refusing, notice being first duly given of such refusal, by an advertisement in the *Gazette*, shall have the like benefit, as if such entry or entries, certificate or certificates had been duly made and given; and that the clerks so refusing shall, for any such offence, forfeit to the proprietor of such copy or copies the sum of twenty pounds, to be recovered in any of her Majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one *imparlance* shall be allowed.

After 25 March, the archbishop of Canterbury, &c. to settle the prices of books, upon complaint made that they are unreasonable.

IV. Provided nevertheless, and it is hereby further enacted by the authority aforesaid, That if any bookseller or booksellers, printer or printers, shall, after the said five and twentieth day of *March* One thousand seven hundred and ten, set a price upon, or sell, or expose to sale, any book or books at such a price or rate as shall be conceived by any person or persons to be too high and unreasonable; it shall and may be lawful for any person or persons to make complaint thereof to the Lord Archbishop of *Canterbury*, for the time being, the Lord Chancellor or Lord Keeper of the Great Seal of *Great Britain* for the time being, the Lord Bishop of *London* for the time being, the Lord Chief Justice of the Court of *Queen's Bench*, the Lord Chief Justice of the Court of *Common Pleas*, the Lord Chief Baron of the Court of *Exchequer* for the time being, the Vice-Chancellors of the two Universities for the time being, in that part of *Great Britain* called *England;* the Lord President of the Sessions for the time being, the Lord Justice General for the time being, the Lord Chief Baron of the *Exchequer* for the time being, the Rector of the College of *Edinburgh* for the time being, in that part of *Great Britain* called *Scotland;* who, or any one of them, shall and have hereby full power and authority, from time to time, to send for, summon, or call before him or them such bookseller or booksellers, printer or printers, and to examine and enquire of the reason of the dearness and inhancement of the price or value of such book or books by him or them so sold or exposed to sale; and if upon such enquiry and examination it shall be found, that the price of such book or books is enhanced, or any wise too high or unreasonable, then and in such case the said Archbishop of *Canterbury*, Lord Chancellor or Lord Keeper, Bishop of *London*,

two Chief Justices, Chief Baron, Vice-Chancellors of the Universities, in that part of *Great Britain* called *England*, and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the College of *Edinburgh*, in that part of *Great Britain* called *Scotland*, or any one or more of them, so enquiring and examining, have hereby full power and authority to reform and redress the same, and to limit and settle the price of every such printed book and books, from time to time, according to the best of their judgments, and as to them shall seem just and reasonable; and in case of alteration of the rate or price from what was set or demanded by such bookseller or booksellers, printer or printers, to award and order such bookseller and booksellers, printer and printers, to pay all the costs and charges that the person or persons so complaining shall be put unto, by reason of such complaint, and of the causing such rate or price to be so limited and settled; all which shall be done by the said Archbishop of *Canterbury*, Lord Chancellor or Lord Keeper, Bishop of *London*, two Chief Justices, Chief Baron, Vice Chancellors of the two Universities, in that part of *Great Britain* called *England*, and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the college of *Edinburgh*, in that part of *Great Britain* called *Scotland*, or any one of them, by writing under their hands and seals, and thereof public notice shall be forthwith given by the said bookseller or booksellers, printer or printers, by an advertisement in the *Gazette*; and if any bookseller or booksellers, printer or printers, shall, after such settlement made of the said rate and price, sell or expose to sale any book or books, at a higher or greater price than what shall have been so limited and settled as aforesaid, then and in every such case such bookseller and booksellers, printer and printers, shall forfeit the sum of five pounds for every such book so by him, her, or them sold or exposed to sale; one moiety thereof to the Queen's most excellent Majesty, her heirs and successors, and the other moiety to any person or persons that shall sue for the same, to be recovered with costs of suit, in any of her Majesty's courts of record at *Westminster*, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed.

and if altered from the price the bookseller set, may order him to pay costs to the party complaining.

Penalty on booksellers selling at higher rates. This clause repealed by 15 Geo. II. c. 30.

V. Provided always, and it is hereby enacted, That nine copies of each book or books, upon the best paper, that from and after the said tenth day of *April*, one thousand seven hundred and ten shall be printed and published as aforesaid, or reprinted and published with additions, shall, by the printer and printers thereof, be delivered to the warehouse-keeper of the said Company of Stationers for the time being, at the hall of the said company, before such publication made for the use of the Royal Library, the libraries of the Universities of *Oxford* and *Cambridge*, the libraries of the four Universities in *Scotland*, the Library of *Sion College* in *London*, and the library commonly called the Library belonging to the Faculty of Advocates at *Edinburgh* respectively; which said warehouse keeper is hereby required, within ten days after demand by the keepers of the respective libraries, or any person or persons by them or any of them authorized to demand the said copy to deliver the same for the use of the aforesaid libraries; and if any proprietor, bookseller, or printer, or the warehouse-keeper of the said Company of Stationers, shall not observe the direction of this act therein, that then he and they so making default in not delivering the said printed copies as aforesaid, shall forfeit, besides the value of the said printed copies, the sum of five pounds for every copy not so delivered, as also the value of the said printed copy not so delivered; the same to be recovered by the Queen's Majesty, her heirs and successors, and by the chancellor, masters, and scholars of any of the said Universities, and by the president and fellows of *Sion College*, and the said faculty of advocates at *Edinburgh*, with their full costs respectively.

After 10 April, nine copies of each book shall be delivered to the warehouse keeper of the company of stationers, for the use of the university libraries, &c.

Warehouse keeper to deliver the books ten days after demand.

Penalty of proprietor, &c. not observing the directions of this Act.

VI. Provided always, and be it further enacted, That if any person or persons incur the penalties contained in this act, in that part of *Great Britain* called *Scotland*, they shall be recoverable by any action before the court of session there.

Penalties in Scotland how recoverable.

VII. Provided, that nothing in this act contained do extend, or shall be construed to extend, to prohibit the importation vending or selling of any books in *Greek*, *Latin*, or any other language printed beyond the seas; any thing in this act contained to the contrary notwithstanding.

This act not to hinder the importation, &c. of books in Greek, &c. printed beyond sea, &c.

VIII. And be it further enacted by the authority aforesaid, that if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing or causing to be done any thing in pursuance of

General issue.

this act, the defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict be given for the defendant, or the plaintiff become nonsuited or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath.

This Act not to prejudice the right of the universities.

IX. Provided, that nothing in this act contained shall extend, or be construed to extend, either to prejudice or confirm any right that the said Universities, or any of them, or any person or persons have, or claim to have, to the printing or reprinting any book or copy already printed, or hereafter to be printed.

Actions for offences against this Act, to be brought in three months.

X. Provided nevertheless, that all actions, suits, bills, indictments, or informations for any offence that shall be committed against this Act, shall be brought, sued, and commenced within three months next after such offence committed, or else the same shall be void and of none effect.

After the fourteen years, the right of printing, &c. to return to the author for other fourteen years.

XI. Provided always, that after the expiration of the said term of fourteen years, the sole right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years.

No. VIII.

8 George II. c. 13.—*An Act for the Encouragement of the Arts of Designing, Engraving and Etching, Historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers, during the Time therein mentioned.*

'Whereas divers persons have by their own genius, industry, pains and expense, invented and engraved, or worked in *mezzotinto* or *chiaro oscuro*, sets of historical and other prints, in hopes to have reaped the sole benefit of their labours: and whereas printsellers and other persons have of late, without the consent of the inventors, designers and proprietors of such prints, frequently taken the liberty of copying, engraving and publishing, or causing to be copied, engraved and published, base copies of such works, designs and prints, to the very great prejudice and detriment of the inventors, designers and proprietors thereof;' For

remedy thereof, and for preventing such practices for the future, may it please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the twenty-fourth day of *June* which shall be in the year of our Lord One thousand seven hundred and thirty-five, every person who shall invent and design, engrave, etch or work in *mezzotinto* or *chiaro oscuro*, or from his own works and inventions shall cause to be designed and engraved, etched or worked in *mezzotinto* or *chiaro oscuro*, any historical or other print or prints, shall have the sole right and liberty of printing and reprinting the same for the term of fourteen years, to commence from the day of the first publishing thereof, which shall be truly engraved with the name of the proprietor on each plate, and printed on every such print or prints; and that if any printseller or other person whatsoever, from and after the said twenty-fourth day of *June* One thousand seven hundred and thirty-five, within the time limited by this Act, shall engrave, etch or work as aforesaid, or in any other manner copy and sell, or cause to be engraved, etched or copied and sold, in the whole or in part, by varying, adding to or diminishing from the main design, or shall print, reprint or import for sale, or cause to be printed, reprinted or imported for sale, any such print or prints, or any parts thereof, without the consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him or them respectively in the presence of two or more credible witnesses, or knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors, shall publish, sell or expose to sale, or otherwise, or in any other manner dispose of, or cause to be published, sold or exposed to sale, or otherwise, or in any other manner disposed of, any such print or prints, without such consent first had and obtained as aforesaid, then such offender or offenders shall forfeit the plate or plates on which such print or prints are or shall be copied, and all and every sheet or sheets (being part of, or whereon such print or prints are or shall be so copied and printed) to the proprietor or proprietors of such original print or prints, who shall forthwith destroy and damask the same; and further, that every such offender or offenders shall forfeit five shillings for every print which shall be

Property of prints vested in the inventor for fourteen years.

Proprietor's name to be affixed to each print.

Penalty on printsellers or others pirating the same.

found in his, her, or their custody, either printed or published, and exposed to sale, or otherwise disposed of, contrary to the true intent and meaning of this act; the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same, to be recovered in any of his Majesty's Courts of Record at *Westminster*, by action of debt, bill, plaint or information, in which no wager of law, essoin, privilege or protection, or more than one imparlance, shall be allowed.

Not to extend to purchasers of plates from the original proprietors.

II. Provided nevertheless, That it shall and may be lawful for any person or persons, who shall hereafter purchase any plate or plates for printing, from the original proprietors thereof, to print and reprint from the said plates, without incurring any of the penalties in this act mentioned.

Limitation of actions.

III. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever for doing or causing to be done any thing in pursuance of this act, the same shall be brought within the space of three months after so doing; and the defendant and defendants in such action or suit shall or may plead the general issue, and give the special matter in evidence; and if upon such action or suit a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs, for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law.

General Issue.

IV. Provided always, and be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons for any offence committed against this act, the same shall be brought within the space of three months after the discovery of every such offence, and not afterwards; any thing in this act contained to the contrary notwithstanding.

'V. And whereas *John Pine* of *London*, engraver, 'doth propose to engrave and publish a set of prints, 'copied from several pieces of tapestry in the house 'of Lords, and his Majesty's wardrobe, and other 'drawings relating to the *Spanish* invasion, in the year 'of our Lord one thousand five hundred and eighty-'eight;' Be it further enacted by the authority afore-

said, That the said *John Pine* shall be entitled to the benefit of this act, to all intents and purposes whatsoever, in the same manner as if the said *John Pine* had been the inventor and designer of the said prints. Clause relating to J. Pine.

VI. And be it further enacted by the authority aforesaid, That this act shall be deemed, adjudged and taken to be a public act, and be judicially taken notice of as such by all Judges, Justices and other persons whatsoever, without specially pleading the same. Public act.

No. IX.

12 *George II. c. 36.—An Act for prohibiting the Importation of Books reprinted Abroad, and first composed or written, and printed in* Great Britain; *and for repealing so much of an Act made in the Eighth Year of the Reign of her late Majesty Queen Anne, as impowers the limiting the Prices of Books.*

'Whereas the duties payable upon paper imported 'into this kingdom, to be made use of in printing, 'greatly exceed the duties payable upon the importa- 'tion of printed books, whereby foreigners and others 'are encouraged to bring in great numbers of books 'originally printed and published in this kingdom and 'reprinted abroad, to the diminution of his Majesty's 'revenue, and the discouragement of the trade and 'manufacture of this kingdom;' For the preventing thereof for the future, may it please your most excellent Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the twenty-ninth day of *September* one thousand seven hundred and thirty-nine, it shall not be lawful for any person or persons whatsoever, to import or bring into this kingdom for sale, any book or books first composed or written, and printed and published in this kingdom, and reprinted in any other place or country whatsoever; and if any person or persons shall import or bring into this kingdom for sale, any printed book or books, so first composed or written, and printed in this kingdom, and reprinted in any other Preamble.

place or country as aforesaid; or knowing the same to be so reprinted or imported, contrary to the true intent and meaning of this act, shall sell, publish, or expose to sale any such book or books; then every such person or persons so doing or offending, shall forfeit the said book or books, and all and every sheet or sheets thereof; and the same shall be forthwith damasked, and made waste paper; and further, that every such offender or offenders shall forfeit the sum of five pounds, and double the value of every book which he or they shall so import or bring into this kingdom, or shall knowingly sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety to any person or persons that shall sue for the same; to be recovered with costs of suit in any of his Majesty's Courts of Record at *Westminster* by action of debt, bill, plaint or information: in which no wager of law, essoin, or protection, or more than one imparlance shall be allowed; and if the offence be committed in *Scotland*, to be recovered before the Court of Session there, by summary action: provided that this act shall not extend to any book that has not been printed or reprinted in this kingdom within twenty years before the same shall be imported.

II. Provided always, That nothing in this act contained shall extend to prevent or hinder the importation of any book first composed or written, and printed in this kingdom, which shall or may be reprinted abroad, and inserted among other books or tracts, to be sold therewith, in any collection, where the greatest part of such collection shall have been first composed or written, and printed abroad; any thing in this act contained to the contrary notwithstanding.

Clause in 8 Anne, c. 19, repealed.

III. And be it further enacted by the authority aforesaid, That so much of an act made in the eighth year of the reign of her late majesty Queen Anne, intituled, *An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned*, whereby it was provided and enacted, That if any bookseller or booksellers, printer or printers shall, after the said five and twentieth day of *March* one thousand seven hundred and ten, set a price upon, or sell, or expose to sale any book or books, at such a price or rate as shall be conceived by any person or

persons to be high and unreasonable; it shall and may be lawful for any person or persons to make complaint thereof to the Lord Archbishop of *Canterbury* for the time being, the Lord Chancellor, or Lord Keeper of the Great Seal of *Great Britain* for the time being, the Lord Bishop of *London* for the time being, the Lord Chief Justice of the Court of *Queen's Bench*, the Lord Chief Justice of the Court of *Common Pleas*, the Lord Chief Baron of the Court of *Exchequer* for the time being, the Vice-Chancellors of the two Universities for the time being, in that part of *Great Britain* called *England*, the Lord President of the Sessions for the time being, the Lord Justice General for the time being, the Lord Chief Baron of the *Exchequer* for the time being, the Rector of the College of *Edinburgh* for the time being, in that part of *Great Britain* called *Scotland*, who, or any one of them, shall, and have hereby full power and authority from time to time, to send for, summon, or call before him or them, such bookseller or booksellers, printer or printers, and to examine and enquire of the reason of the dearness and enhancement of the price or value of such book or books by him or them so sold, or exposed to sale; and if, upon such enquiry and examination, it shall be found that the price of such book or books is enhanced, or any ways too high and unreasonable, then, and in such case, the said Archbishop of *Canterbury*, Lord Chancellor, or Lord Keeper, Bishop of *London*, two Chief Justices, Chief Baron, Vice-Chancellors of the Universities in that part of *Great Britain* called *England*, and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the College of *Edinburgh* in that part of *Great Britain* called *Scotland*, or any one or more of them, so enquiring and examining, have hereby full power and authority to reform and redress the same, and to limit and settle the price of every such printed book and books, from time to time, according to the best of their judgments, and as to them shall seem just and reasonable; and in case of alteration of the rate or price from what was set or demanded by such bookseller or booksellers, printer and printers, to pay all the costs and charges that the person or persons so complaining shall be put unto by reason of such complaint, and of the causing such rate or price to be so limited and settled; all which shall be done by the said Archbishop of *Canterbury*, Lord Chancellor, or Lord Keeper, Bishop of *London*, two Chief Justices, Chief Baron,

Vice-Chancellors of the two Universities in that part of *Great Britain* called *England*, and the said Lord President of the Sessions, Lord Justice General, Lord Chief Baron, and Rector of the College of *Edinburgh*, in that part of *Great Britain* called *Scotland*, or any one of them by writing under their hands and seals, and thereof public notice shall be forthwith given by the said bookseller or booksellers, printer or printers, by an advertisement in the *Gazette*; and if any bookseller or booksellers, printer or printers, shall, after such settlement made of the said rate and price, sell, or expose to sale, any book or books at a higher or greater price than what shall have been so limited and settled as aforesaid; then, and in every such case, such bookseller or booksellers, printer or printers, shall forfeit the sum of five pounds for every such book so by him, her, or them, sold or exposed to sale, one moiety thereof to the Queen's most excellent Majesty, her heirs and successors, and the other moiety to any person or persons that shall sue for the same, to be recovered with costs of suit, in any of her Majesty's Courts of Record at *Westminster*, by action of debt, bill, plaint or information, in which no wager of law, essoin, privilege or protection, or more than one imparlance, shall be allowed; and every part of the said clause shall be and the same is hereby repealed.

Farther continued by 27 Geo. II. c. 18, and 33 Geo. II. c. 16.

IV. And be it further enacted, That this act (except so much thereof as repeals the beforementioned clause in the said act of the eighth year of the reign of the late Queen *Anne*, relating to the prices of books) shall continue and be in force from the said twenty-ninth day of *September* one thousand seven hundred and thirty-nine, for and during the space of seven years, and from thence to the end of the then next session of Parliament, and no longer.

No. X.

7 Geo. III. c. 38.—*An Act to amend and render more effectual an Act made in the Eighth Year of the Reign of King George the Second, for Encouragement of the Arts of Designing, Engraving, and Etching Historical and other Prints; and for vesting in, and securing to* Jane Hogarth, *Widow, the property in certain Prints.*

7 Geo. III. c. 38. 8 Geo. II. c. 13.

'Whereas an act of Parliament passed in the eighth 'year of the reign of his late Majesty King George 'the Second, intituled, *An Act for the Encouragement of the Arts of Designing, Engraving, and 'Etching, Historical and other Prints, by vesting the 'Properties thereof in the Inventors, and Engravers, 'during the Time therein mentioned*, has been found 'ineffectual for the purposes thereby intended;' be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of *January*, One thousand seven hundred and sixty-seven, all and every person and persons who shall invent or design, engrave, etch, or work in *mezzotinto* or *chiaro oscuro*, or, from his own work, design, or invention, shall cause or procure to be designed, engraved, etched, or worked in *mezzotinto* or *chiaro oscuro*, any historical print or prints, or any print or prints, of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, shall have, and are hereby declared to have, the benefit and protection of the said act and this act, under the restrictions and limitations hereinafter mentioned.

Original inventors, &c. of prints, &c. intitled to the benefit of recited and present act, &c.

II. And be it further enacted by the authority aforesaid, That from and after the said first day of *January*, One thousand seven hundred and sixty-seven, all and every person and persons who shall engrave, etch, or work in *mezzotinto* or *chiaro oscuro*, or cause to be engraved, etched, or worked, any print, taken from any picture, drawing, model, or sculpture, either ancient or modern, shall have, and are hereby declared to have, the benefit and protection of the said act, and this act, for the term hereinafter mentioned, in like

manner as if such print had been graved or drawn from the original design of such graver, etcher, or draftsman; and if any person shall engrave, print, and publish, or import for sale, any copy of any such print, contrary to the true intent and meaning of this and the said former act, every such person shall be liable to the penalties contained in the said act, to be recovered as therein and hereinafter is mentioned.

" The sole right of printing and reprinting the late " *W. Hogarth's* prints, vested in his widow and exe- " cutrix for twenty years. Penalty of copying, &c. any " of them, before expiration of the term; such copies " excepted as were made and exposed to sale after the " term of fourteen years, for which the said works were " first licensed, &c."

V. And be it further enacted by the authority aforesaid, That all and every the penalties and penalty inflicted by the said act, and extended and meant to be extended, to the several cases comprised in this act, shall and may be sued for and recovered in like manner, and under the like restrictions and limitations, as in and by the said act is declared and appointed; and the plaintiff or common informer, in every such action (in case such plaintiff or common informer shall recover any of the penalties incurred by this or the said former act), shall recover the same, together with his full costs of suit.

VI. Provided also, That the party prosecuting shall commence his prosecution within the space of six calendar months after the offence committed.

The right intended, vested in the proprietors for 28 years.

VII. And be it further enacted by the authority aforesaid, That the sole right and liberty of printing and reprinting intended to be secured and protected by the said former act and this act, shall be extended, continued, and be vested in the respective proprietors, for the space of twenty-eight years, to commence from the day of the first publishing of any of the works respectively hereinbefore and in the said former act mentioned.

Limitation of actions.

VIII. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing, or causing to be done, any thing in pursuance of this act, the same shall be brought within the space of six calendar months after the fact committed; and the defendant or defendants in any such action or suit shall or may plead the general issue, and give the special matter in evidence; and if

General issue.

upon such action or suit, a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs; for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law. Full costs.

No. XI.

15 George III. c. 53.—*An Act for enabling the two Universities in* England, *the four Universities in* Scotland, *and the several Colleges of* Eton, Westminster, *and* Winchester, *to hold in perpetuity their Copyright in Books, given or bequeathed to the said Universities and Colleges for the Advancement of useful Learning, and other purposes of Education; and for amending so much of an Act of the eighth year of the Reign of Queen* Anne, *as relates to the Delivery of Books to the Warehouse-keeper of the Stationers' Company, for the use of the several Libraries therein mentioned.*

'Whereas authors have heretofore bequeathed or 15 Geo. III. c. 53.
'given, and may hereafter bequeath or give the copies
'of books composed by them, to or in trust for one of
'the two universities in that part of *Great Britain*
'called *England*, or to or in trust for some of the
'colleges or houses of learning within the same, or to
'or in trust for the several colleges of *Eton*, *Westminster*, and *Winchester*, and in and by their several
'wills or other instruments of donation, have di-
'rected or may direct, that the profits arising from the
'printing and reprinting such books shall be applied
'or appropriated as a fund for the advancement of
'learning, and other beneficial purposes of education,
'within the said universities and colleges aforesaid:
'And whereas such useful purposes will frequently be
'frustrated, unless the sole printing and reprinting
'of such books, the copies of which have been or shall
'be so bequeathed or given as aforesaid, be preserved

' and secured to the said universities, colleges, and ' houses of learning respectively, in perpetuity :' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the said universities and colleges respectively shall, at their respective presses, have, for ever, the sole liberty of printing and reprinting all such books as shall at any time hereafter have been, or (having not been heretofore published or assigned) shall at any time hereafter be bequeathed, or otherwise given by the author or authors of the same respectively, or the representatives of such author or authors, to or in trust for the said universities, or to or in trust for any college or house of learning within the same, or to or in trust for the said four universities in *Scotland*, or to or in trust for the said colleges of *Eton*, *Westminster*, and *Winchester*, or any of them, for the purposes aforesaid, unless the same shall have been bequeathed or given, or shall hereafter be bequeathed or given, for any term of years, or other limited term; any law or usage to the contrary hereof in any wise notwithstanding.

Universities, &c. to have, for ever, the sole right of printing, &c.

II. And it is hereby further enacted, That if any bookseller, printer, or other person whatsoever, from and after the twenty-fourth day of *June*, One thousand seven hundred and seventy-five, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books; or, knowing the same to be so printed or reprinted, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books; then such offender or offenders shall forfeit such book or books; and all and every sheet or sheets, being part of such book or books, to the university, college or house of learning respectively, to whom the copy of such book or books shall have been bequeathed or given as aforesaid, who shall forthwith damask and make waste paper of them; and further, that such offender or offenders shall forfeit one penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published or exposed to sale, contrary to the true intent and meaning of this act; one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any persons who shall sue for the same; to be re-

Persons printing or selling such books, shall forfeit the same, and also 1*d.* for every sheet

one moiety to his Majesty, and the other to the prosecutor

covered in any of his Majesty's Courts of Record at *Westminster*, or in the Court of Session in *Scotland*, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed.

III. Provided nevertheless, That nothing in this act extend to grant any exclusive right, otherwise than so long as the books or copies belonging to the said universities or colleges are printed only at their own printing presses within the said universities or colleges respectively, and for their sole benefit and advantage; and that if any university or college shall delegate, grant, lease, or sell their copyrights, or exclusive rights of printing the books hereby granted or any part thereof, or shall allow, permit, or authorize any person or persons, or bodies corporate, to print or reprint the same, that then the privileges hereby granted are to become void and of no effect, in the same manner as if this act had not been made; but the said universities and colleges, as aforesaid, shall nevertheless have a right to sell such copies so bequeathed or given as aforesaid, in like manner as any author or authors now may do under the provisions of the statute of the eighth year of her Majesty Queen Anne.

'IV. And whereas many persons may through ig-'norance offend against this act, unless some provision 'be made, whereby the property of every such 'book as is intended by this act to be secured to 'the said universities, colleges, and houses of learn-'ing within the same, and to the said universities 'in *Scotland*, and to the respective colleges of '*Eton*, *Westminster*, and *Winchester*, may be ascer-'tained and known;' Be it therefore enacted by the authority aforesaid, That nothing in this act contained shall be construed to extend to subject any bookseller, printer, or other person whatsoever, to the forfeitures or penalties herein mentioned, for or by reason of the printing or reprinting, importing or exposing to sale, any book or books, unless the title to the copy of such book or books, which has or have been already bequeathed or given to any of the said universities or colleges aforesaid, be entered in the register book of the Company of Stationers, kept for that purpose, in such manner as hath been usual, on or before the twenty-fourth day of *June*, One thousand seven hundred and seventy five; and of all and every such book or books as may or shall hereafter be bequeathed or given as aforesaid, be entered in such register, within

No person subject to penalties, unless entered before. No Books must be entered [illegible] [illegible]

the space of two months after any such bequest or gift shall have come to the knowledge of the vice-chancellors of the said universities, or head of houses and colleges of learning, or of the principal of any of the said four universities respectively; for every of which entries so to be made as aforesaid, the sum of sixpence shall be paid, and no more; which said Register Book shall and may, at all seasonable and convenient times, be referred to, and inspected by any bookseller, printer, or other person, without any fee or reward; and the clerk of the said Company of Stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee, not exceeding sixpence.

If clerk neglect to register, &c. proprietor to have like benefit, &c.

V. And be it further enacted, That if the Clerk of the said Company of Stationers for the time being shall refuse or neglect to register or make such entry or entries, or to give such certificate, being thereunto required by the agent of either of the said universities or colleges aforesaid, being the proprietor of such copyright or copyrights as aforesaid (notice being first given of such refusal by advertisement in the *Gazette*,) shall have the like benefit as if such entry or entries, certificate or certificates, had been duly made and given; and the clerk so refusing shall, for every such offence, forfeit twenty pounds to the proprietor or proprietors of every such copyright; to be recovered in any of His Majesty's Courts of Record at *Westminster*, or in the Court of Session in *Scotland*, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, protection, or more than one imparlance, shall be allowed.

8 Anne, c. 19.

'VI. And whereas in and by an act of parliament 'made in the eighth year of the reign of her late 'Majesty Queen Anne, intituled, *An Act for the 'Encouragement of Learning, by vesting the Copies of 'printed Books in the Authors or Purchasers of such 'Copies during the times therein mentioned*, it is 'enacted, That nine copies of each book or books, 'upon the best paper, that, from and after the tenth 'day of *April*, One thousand seven hundred and ten, 'should be printed and published, as therein men-'tioned, or reprinted and published with additions, 'shall by the printer or printers thereof be deli-'vered to the warehouse-keeper of the said Com-'pany of Stationers for the time being, at the Hall 'of the said Company, before such publication made,

'for the use of the royal library, the libraries of the 'four universities in *Scotland*, the library of *Sion Col-* 'lege in *London*, and the library commonly called *The* '*Library belonging to the Faculty of Advocates* in 'Edinburgh, respectively; which such warehouse 'keeper was thereby required, within ten days after 'demand by the keepers of the respective libraries, 'or any person or persons by them, or any of them, 'authorised to demand the said copy, to deliver the 'same for the use of the aforesaid libraries; and if 'any proprietor, bookseller, or printer, or the said 'warehouse keeper of the said company of stationers, 'should not observe the direction of the said act 'therein, that *then he and they so making default, in* 'not delivering the said printed copies as aforesaid, 'should forfeit as therein mentioned: and whereas 'the said provision has not proved effectual, but the 'same hath been eluded by the entry only of the title 'to a single volume, or of some part of such book or 'books so printed and published, or reprinted and re- 'published, as aforesaid;' be it enacted by the authority aforesaid, That no person or persons whatsoever shall be subject to the penalties in the said act mentioned, for or by reason of the printing or reprinting, importing or exposing to sale, any book or books, without the consent mentioned in the said act, unless the title to the copy of the whole of such book, and every volume thereof, be entered, in manner directed by the said act, in the register book of the company of stationers, and unless nine such copies of the whole of such book or books, and every volume thereof printed and published, or reprinted or republished, as therein mentioned, shall be actually delivered to the warehouse keeper of the said company, as therein directed, for the several uses of the several libraries in the said act mentioned.

No person subject to penalties in the said act, unless the title to the copy of the whole be entered, &c.

VII. And be it further enacted, by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing, or causing to be done, any thing in pursuance of this act, the defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict, or if the same shall be brought in the Court of Session in *Scotland*, a judgment be given for the defendant, or the plaintiff become nonsuited, and discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the

Limitation of actions.

General issue.

same remedy as a defendant in any case by law hath.

Public act.

VIII. And be it further enacted by the authority aforesaid, That this act shall be adjudged, deemed, and taken to be a public act; and shall be judicially taken notice of as such by all Judges, Justices, and other persons whatsoever, without specially pleading the same.

No. XII.

17 George III. c. 57.—*An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases.*

17 Geo. III. c. 57.
8 Geo. II.
7 Geo. III.

'Whereas an act of parliament passed in the eighth 'year of the reign of his late Majesty King *George* 'the Second, intituled, *An Act for the Encourage-* 'ment of the Arts of Designing, Engraving, and Etch- 'ing Historical and other Prints, by vesting the Pro- 'perties thereof in the Inventors and Engravers, during 'the time therein mentioned*:* And whereas by an act 'of parliament, passed in the seventh year of the reign 'of his present Majesty, *for amending and rendering* 'more effectual the aforesaid act, and for purposes 'therein mentioned, it was (among other things) en- 'acted, That, from and after the first day of *January* 'one thousand seven hundred and sixty-seven, all 'and every person or persons who should engrave, 'etch, or work in *Mezzotinto* or *Chiaro Oscuro*, or 'cause to be engraved, etched, or worked, any print 'taken from any picture, drawing, model, or sculp- 'ture, either ancient or modern, should have, and 'were thereby declared to have, the benefit and pro- 'tection of the said former act, and that act, for the 'term therein after mentioned, in like manner as if 'such print had been graved or drawn from the ori- 'ginal design of such graver, etcher, or draughtsman: 'and whereas the said acts have not effectually an- 'swered the purposes for which they were intended, 'and it is necessary for the encouragement of artists, 'and for securing to them the property of and in their 'works, and for the advancement and improvement

'of the aforesaid arts, that such further provisions 'should be made as are hereinafter mentioned and 'contained;' may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That, from and after the twenty-fourth day of *June*, one thousand seven hundred and seventy-seven, if any engraver, etcher, printseller, or other person, shall, within the time limited by the aforesaid acts, or either of them, engrave, etch, or work, or cause or procure to be engraved, etched, or worked in *Mezzotinto* or *Chiaro Oscuro*, or otherwise, or in any other manner copy in the whole, or in part, by varying, adding to, or diminishing from, the main design, or shall print, reprint, or import for sale, or cause or procure to be printed, reprinted, or imported for sale, or shall publish, sell, or otherwise dispose of, or cause or procure to be published, sold, or otherwise disposed of, any copy or copies of any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, which hath or have been, or shall be, engraved, etched, drawn, or designed, in any part of *Great Britain*, without the express consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him, her, or them respectively, with his, her, or their own hand or hands, in the presence of, and attested by, two or more credible witnesses, then every such proprietor or proprietors shall and may, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with double costs of suit.

If any engraver, &c. shall engrave, &c. any print, without the consent of the proprietor, he shall be liable to damages and double costs.

No. XIII.

27 George III. c. 38.—*An Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors, for a limited time.*

27 Geo. III. c. 38. Preamble.

'Whereas it may be expedient, for the encouragement of the arts of designing original patterns for linens, calicoes, cottons, and muslins, to vest the property thereof in the designers, printers, or proprietors, for a limited time; for which purpose may it please your Majesty, that it may be enacted:' and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That, from and after the first day of *June*, one thousand seven hundred and eighty-seven, every person who shall invent, design, and print, or cause to be invented, designed, and printed, and become the proprietor of any new and original pattern or patterns for printing linens, cottons, calicoes, or muslins, shall have the sole right and liberty of printing and reprinting the same for the term of two months, to commence from the day of the first publishing thereof, which shall be truly printed, with the name of the printer or proprietors at each end of every such piece of linen, cotton, calico, or muslin; and that if any calico printer, linen draper, or other person whatsoever, from and after the first day of *June*, one thousand seven hundred and eighty-seven, within the time limited by this act, shall print, work, or copy, such original pattern or patterns, or cause to be printed, worked, or copied, such original pattern or patterns, or shall print or reprint, or cause to be printed or reprinted, any such pattern or patterns, and shall publish, sell, or expose to sale, or in any other manner dispose of, or cause to be published, sold, or exposed to sale, or in any other manner disposed of, any linen, cotton, calico, or muslin printed without the consent of the proprietor or proprietors thereof, first had and obtained in writing, signed by him or them respectively, in the presence

From June 1, 1787, the proprietor of any original pattern for printing linens to have the sole right of printing it for two months from first publication;

and whoever shall within that period print the same, to be liable to an action for damages;

of two or more credible witnesses, knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors of such pattern, then every such proprietor or proprietors shall and may, if the offence be committed in *England*, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with costs of suit, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed; and if the offence be committed in *Scotland*, every such proprietor or proprietors shall and may, by an action to be brought before the Court of Session, or any Judge competent to try civil causes within his bounds, recover such damages as the said Court of Session, or the said Judge, shall give or assess, and for payment whereof decree shall be issued, with full costs of suit, on which all such execution shall pass as is competent by the laws and practice of *Scotland* in the like cases: Provided nevertheless, that it shall and may be lawful for any person or persons who shall hereafter purchase any plate or plates, block or blocks, for printing, from the proprietors thereof, to print, reprint, and expose for sale, or cause to be printed, reprinted, and exposed for sale, from the said plates or blocks, without being liable to any action on that account.

but any person purchasing plates from the proprietors may print therefrom.

II. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever, for any offence committed against this act, the same shall be brought within the space of six months after so doing, and the defendant or defendants, in such action or suit, if brought in *England*, shall and may plead the general issue, and give the special matter in evidence; and if, upon such action or suit, a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and receive full costs; for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law; and if such action be brought in *Scotland*, and not insisted in, or if the defender be assoilzied, then the defender shall be entitled to full costs, for the reco-

Mode of prosecuting offences against this act.

very whereof he shall have the same remedy as here-in-before is given to the pursuer.

Act to continue in force for one year, and to the end of the then next session.

III. And be it further enacted by the authority aforesaid, That this act shall continue in force for one year, and from thence to the end of the then next session of parliament; and shall be deemed, adjudged, and taken to be a public act, and be judicially taken notice of as such by all Judges, Justices, and other persons whatsoever, without specially pleading the same.

Continued by 29 Geo. III. c. 19.

No. XIV.

34 George III. c. 23.—*An Act for amending and making perpetual an Act made in the twenty-seventh Year of the Reign of his present Majesty, intituled,* An Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors, for a limited Time.—[4th *April*, 1794.]

34 Geo. III. c. 23. 27 Geo. III.

'Whereas an act was made in the twenty-seventh 'year of the reign of his present Majesty (intituled, '*An Act for the Encouragement of the Arts of design-* '*ing and printing Linens, Cottons, Calicoes, and Mus-* '*lins, by vesting the Properties thereof in the Designers,* '*Printers, and Proprietors, for a limited time)*; which 29 Geo. III. 'said act was, by another act made in the twenty-'ninth year of the reign of his present Majesty, con-'tinued from the expiration thereof until the first day 'of *July* one thousand seven hundred and ninety-'four: And whereas the said first recited act hath 'by experience been found to be useful and beneficial: Expedient to extend time limited by 27 Geo. III. 'And whereas it is expedient that the time limited by 'the said first recited act for vesting the property of 'new and original patterns for printing linens, cot-'tons, calicoes, or muslins, in the designers, printers, 'and proprietors thereof, should be extended for a 'longer time:' May it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons,

in this present parliament assembled, and by the authority of the same, That, from and after the first day of *July* one thousand seven hundred and ninety-four, every person who shall invent, design, and print, or cause to be invented, designed, and printed, and become the proprietor of any new and original pattern or patterns for printing linens, cottons, calicoes, or muslins, shall have the sole right and liberty of printing and reprinting the same for the term of three months, to commence from the day of the first publishing thereof, which shall be truly printed with the name of the printer or proprietors at each end of every such piece of linen, cotton, calico, or muslin; and that if any calico printer, linen-draper, or other person whatsoever, from and after the said first day of *July* one thousand seven hundred and ninety-four, within the time limited by this act, shall print, work, or copy such original pattern or patterns, or cause to be printed, worked, or copied such original pattern or patterns, or shall print or reprint, or cause to be printed or reprinted, any such pattern or patterns, and shall publish, sell, or expose to sale, or in any other manner dispose of, any linen, cotton, calico, or muslin, so printed, (without the consent of the proprietor or proprietors thereof first had and obtained *in writing, signed by him or them respectively in the* presence of two or more credible witnesses,) knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors of such pattern; then every such proprietor or proprietors shall and may, if the offence be committed in *England*, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with costs of suit, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed: And that in all other respects the said first recited act, and all the clauses, matters, and things therein contained, (except so far as the same is varied by this act,) shall be, and the same is hereby made perpetual.

Term further extended.

Act made perpetual.

No. XV.

38 George III. c. 71.—*An Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned.*—[*21st June*, 1798.]

'Whereas divers persons have, by their own genius, industry, pains, and expense, improved and brought the art of making new models and casts of busts, and of statues of human figures, and of animals, to great perfection, in hopes to have reaped the sole benefit of their labours; but that divers persons have (without the consent of the proprietors thereof) copied and made moulds from the said models and casts, and sold base copies and casts of such new models and casts, to the great prejudice and detriment of the original proprietors, and to the discouragement of the art of making such new models and casts as aforesaid:' For remedy whereof, and for preventing such practices for the future, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, every person who shall make or cause to be made any new model, or copy or cast made from such new model, of any bust, or any part of the human figure, or any statue of the human figure, or the head of any animal, or any part of any animal, or the statue of any animal; or shall make or cause to be made any new model, copy, or cast from such new model, in alto or basso relievo, or any work in which the representation of any human figure or figures, or the representation of any animal or animals shall be introduced, or shall make or cause to be made any new cast from nature of any part or parts of the human figure, or of any part or parts of any animal, shall have the sole right and property in every such new model, copy, or cast, and also in every such new model, copy, or cast in alto or basso relievo, or any work as aforesaid, and also in every such new cast from nature as aforesaid, for and during the term of fourteen years from the time of first publishing the same: Provided always, that every person who shall make or cause to be made any such new model, copy,

The sole right and property of making models or casts shall be vested in the original proprietor for 14 years.

or cast, or any such new model, copy, or cast in alto or basso relievo, or any work as aforesaid, or any new cast from nature as aforesaid, shall cause his or her name to be put thereon, with the date of the publication, before the same shall be published and exposed to sale.

Person making copies of any model or cast, without the written consent of the proprietor, may be prosecuted for damages, by a special action on the case.

II. And be it further enacted, that if any person shall, within the said term of fourteen years, make or cause to be made any copy or cast of any such new model, copy, or cast, or any such model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or any such new cast from nature as aforesaid, either by adding to or diminishing from any such new model, copy, or cast, or adding to or diminishing from any such new model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or adding to or diminishing from any such new cast of nature, or shall cause or procure the same to be done, or shall import any copy or cast of such new model, copy, or cast, or copy or cast of such new model, copy, or cast in alto or basso relievo, or any such work aforesaid, or any copy or cast of any such new cast from nature as aforesaid, for sale, or shall sell or otherwise dispose of, or cause or procure to be sold or exposed to sale, or otherwise disposed of, any copy or cast of any such new model, copy, or cast, or any copy or cast of such new model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or any copy or cast of any such new cast from nature as aforesaid, without the express consent of the proprietor or proprietors thereof first had and obtained, in writing signed by him, her, or them respectively, with his, her, or their hand or hands, in the presence of and attested by two or more credible witnesses, then and in all or any of the cases aforesaid, every proprietor or proprietors of any such original model, copy, or cast, and every proprietor or proprietors of any such original model, or copy or cast in alto or basso relievo, or any such work as aforesaid, or the proprietor or proprietors of any such new cast from nature as aforesaid respectively, shall and may, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of enquiry thereon, shall give or assess, together with full costs of suit.

Except such persons who

III. Provided nevertheless, that no person who shall hereafter purchase the right, either in any such

shall purchase the same of the original proprietor.

model, copy, or cast, or in any such model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or any such new cast from nature, of the original proprietor or proprietors thereof, shall be subject to any action for vending or selling any cast or copy from the same; any thing contained in this Act to the contrary hereof notwithstanding.

Limitation of actions.

IV. Provided also, that all actions to be brought as aforesaid, against any person or persons for any offence committed against this Act, shall be commenced within six calendar months next after the discovery of every such offence, and not afterwards.

No. XVI.

41 George III. c. 107.—*An Act for the further Encouragement of Learning, in the United Kingdom of Great Britain and Ireland, by securing the Copies and Copyright of printed Books, to the Authors of such Books, or their Assigns for the Time herein mentioned.*—[*2d July*, 1801.]

Authors of books already composed, and not printed or published, and of books to be hereafter composed, and their assigns, shall have the sole right of printing them for fourteen years.

'Whereas it is expedient that further protection should be afforded to the authors of books, and the purchasers of the copies and copyright of the same in the United Kingdom of *Great Britain* and *Ireland*;' may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the author of any book or books already composed, and not printed or published, and the author of any book or books which shall hereafter be composed, and the assignee or assigns of such authors respectively, shall have the sole liberty of printing and reprinting of such book and books, for the term of fourteen years, to commence from the day of first publishing the same, and no longer; and that if any other bookseller, printer, or other person whosoever, in any part of the said United Kingdom, or in any part of the *British* dominions in *Europe*, shall, from and after the passing of this Act, print, reprint, or import, or shall cause to be printed, reprinted, or imported, any such book or books, without the consent

Booksellers, &c. in any part of the United Kingdom, or British European dominions, who shall print, re-

of the proprietor or proprietors of the copyright of and in such book or books first had and obtained in writing, signed in the presence of two or more credible witnesses, or, knowing the same to be so printed, reprinted, or imported, without such consent of such proprietor or proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or shall have in his or their possession for sale, any such book or books, without such consent first had and obtained as aforesaid, then such offender or offenders shall be liable to a special action on the case, at the suit of the proprietor or proprietors of the copyright of such book or books so unlawfully printed, reprinted, or imported, or published or exposed to sale, or being in the possession of such offender or offenders for sale as aforesaid, contrary to the true intent and meaning of this Act; and every such proprietor and proprietors shall and may, by and in such special action upon the case to be so brought against such offender or offenders in any court of record in that part of the said United Kingdom, or of the *British* dominions in *Europe*, in which the offence shall be committed, recover such damages as the jury on the trial of such action, or on the execution of a writ of enquiry thereon, shall give or assess, together with double costs of suit; in which action no wager of law, essoign, privilege, or protection, nor more than one imparlance, shall be allowed; and all and every such offender or offenders shall also forfeit such book or books, and all and every sheet and sheets being part of such book or books, and shall deliver the same to the proprietor or proprietors of the copyright of such book or books, upon order of any court of record in which any action or suit, in law or equity, shall be commenced or prosecuted by such proprietor or proprietors, to be made on motion or petition to the said court; and the said proprietor or proprietors shall forthwith damask or make waste paper of the said book or books, and sheet or sheets respectively; and all and every such offender or offenders shall also forfeit the sum of threepence for every sheet which shall be found in his or their custody, either printed or printing, or published or exposed to sale contrary to the true intent and meaning of this Act, the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same in any such court of record, by action of debt, bill,

print, or import, &c. any such book without consent of the proprietor, shall be liable to an action for damages, and shall also forfeit the books to the proprietor, and 3d per sheet, half to the king, and half to the informer.

plaint, or information, in which no wager of law, essoign, privilege, or protection, nor more than one imparlance, shall be allowed: provided always, that after the expiration of the said term of fourteen years, the right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years.

Authors have a second 14 years' term, if living.

II. Provided also, and be it further enacted, that nothing in this Act contained shall extend, or be construed to extend, to any book or books heretofore composed, and printed or published in any part of the said United Kingdom, nor to exempt or indemnify any person or persons whomsoever, from or against any penalties or actions, to which he, she, or they shall or may have become, or shall or may hereafter be liable for or on account of the unlawful printing, reprinting, or importing such book or books, or the selling, publishing, or exposing the same to sale, or the having the same in his or their possession for sale, contrary to the laws and statutes in force respecting the same, at the time of the passing an Act in the Session of Parliament of the thirty-ninth and fortieth years of the reign of his present Majesty, intituled, *An Act for the Union of Great Britain and Ireland.*

Act shall not extend to books ready published, nor indemnify against penalties under former Acts in force at the Union of Great Britain and Ireland, 39 & 40 G. 3. c. 67.

III. 'And whereas authors have heretofore bequeathed, given, or assigned, and may hereafter bequeath, give, or assign, the copies or copyrights of and in books composed by them, to or in trust for the college of the Holy Trinity of *Dublin;* and, in and by their several wills or other instruments, have directed or may direct, that the profits arising from the printing or reprinting such books, shall be applied or appropriated as a fund for the advancement of learning, and other beneficial purposes of education, within the college aforesaid: and whereas such useful purposes will frequently be frustrated, unless the sole right of printing and reprinting of such books the copies of which shall have been or shall be so bequeathed, given, or assigned as aforesaid, be preserved and secured to the said college in perpetuity,' be it therefore further enacted, that the said college shall, at their own printing press, within the said college, have for ever the sole liberty of printing and reprinting all such books as shall at any time hereafter have been, or (not having been heretofore published or assigned) shall at any time hereafter be bequeathed, or otherwise given or assigned by the author or authors of the same respectively, or the

Trinity College, Dublin, shall for ever have the sole right of printing books given or bequeathed to them, unless they are given, &c. for a limited time only.

representatives of such author or authors, to or in trust for the said college for the purposes aforesaid, unless the same shall have been bequeathed, given or assigned, or shall hereafter be bequeathed, given, or assigned for any term of years, or any other limited term; any law or usage to the contrary thereof in anywise notwithstanding; and that if any printer, bookseller, or other person whosoever, shall, from and after the passing of this Act, unlawfully print, reprint, or import, or cause to be printed, reprinted, or imported, or knowing the same to be so unlawfully printed, reprinted, or imported, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or have in his or their possession for sale, any such last mentioned book or books, such offender or offenders shall be subject and liable to the like actions, penalties, and forfeitures as are hereinbefore mentioned and contained with respect to offenders against the copyrights of authors and their assigns: provided nevertheless, that nothing in this Act shall extend to grant any exclusive right to the said college of the Holy Trinity of *Dublin*, otherwise than so long as the books or copies belonging to the said college, are and shall be printed only at the printing press of the said college, within the said college, and for the sole benefit and advantage of the said college; and that if the said college shall delegate, grant, lease, or sell the copyrights or exclusive rights of printing the books hereby granted, or any part thereof, or shall allow, permit, or authorise any person or persons, or bodies corporate, to print or reprint the same, then the privilege hereby granted shall become void and of no effect, in the same manner as if this Act had not been made; but the said college shall nevertheless have a right to sell such copies so bequeathed or given as aforesaid, in like manner as any author or authors can or may lawfully do under the provisions of this Act, or any other Act now in force.

Penalty on persons printing such books the same as under § I.

To extend only to booksprinted at the college press.

But the college may sell their copyrights.

IV. Provided also, and be it further enacted, that no bookseller, printer, or other person whosoever, shall be liable to the said penalty of threepence *per* sheet, for or by reason of the printing, reprinting, importing, or selling of any such book or books, or the having the same in his or their custody for sale, without the consent of the proprietor or proprietors of the copyright thereof as aforesaid, unless before the time of the publication of such book or books by the

Booksellers, &c. shall not be liable to the penalty of 3d per sheet, unless the title to the copyright be entered by the proprietor, &c. at Station-

ers' Hall, London; nor if the consent of the proprietor be so entered.

proprietor or proprietors thereof (other than the said college) the right and title of such proprietor or proprietors shall be duly entered in the register book of the Company of Stationers in *London*, in such manner as hath been usually heretofore done by the proprietors of copies and copyrights in *Great Britain*: nor if the consent of such proprietor or proprietors for the printing, reprinting, importing, or selling such book or books, shall be in like manner entered; nor unless the right and title of the said college to the copyright of such book or books as has or have been already bequeathed, given, or assigned to the said college, be entered in the said register book before the twenty-ninth day of *September*, One thousand eight hundred and one, and of all and every such book or books as may or shall hereafter be bequeathed, given or assigned as aforesaid, be entered in the said register book within the space of two months after any such bequest, gift, or assignment shall have come to the knowledge of the provost of the said college; for every of which several entries sixpence shall be paid, and no more; which said register book shall at all times be kept at the hall of the said company, and shall and may at all seasonable and convenient times be resorted to and inspected by any bookseller, printer, or other person, for the purposes before mentioned, without any fee or reward; and the clerk of the said Company of Stationers shall, when and as often as thereto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding sixpence; and the said clerk shall also, without fee or reward, within fifteen days next after the thirty-first day of *December* and the thirtieth day *June* in each and every year, make or cause to be made, for the use of the said college, a list of the titles of all such books, the copyright to which shall have been so entered in the course of the half year immediately preceding the said thirty-first day of *December* and the thirtieth day of *June* respectively, and shall upon demand deliver the said lists or cause the same to be delivered to any person or persons duly authorized to receive the same for and on behalf of the said college.

Clerk of the company shall give certificates of entries, and make a half-yearly list of the books so entered for the use of Trinity College.

If the clerk refuses to make entries, &c. parties may give notice in the Lon-

V. Provided also, and be it further enacted, that if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register or make such entry or entries, or to give such certificate or certificates, being thereunto respectively required by

the author or authors, proprietor or proprietors of such copies or copyrights, or by the person or persons to whom such consent shall be given, or by some person on his or their behalf, in the presence of two or more credible witnesses, then such party or parties so refused, notice being first duly given by advertisement in the *London Gazette*, shall have the like benefit as if such entry or entries, certificate or certificates, had been duly made and given; and the clerk so refusing shall, for any such offence, forfeit to the author or proprietor of such copy or copies, or to the person or persons to whom such consent shall be given, the sum of twenty pounds; or if the said clerk shall refuse or neglect to make the list aforesaid, or to deliver the same to any person duly authorized to demand the same on behalf of the said college, the said clerk shall also forfeit to the said college the like sum of twenty pounds; which said respective penalties shall and may be recovered in any of his Majesty's courts of record in the said United Kingdom, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, nor more than one imparlance, shall be allowed.

don Gazette, and the clerk shall forfeit 20*l*.

VI. Provided also, and be it further enacted, That from and after the passing of this act, in addition to the nine copies now required by law to be delivered to the warehouse keeper of the said Company of Stationers, of each and every book and books which shall be entered in the register book of the said company, one other copy shall be in like manner delivered for the use of the library of the said college of the Holy Trinity of *Dublin*, and also one other copy for the use of the library of the Society of the King's Inns *Dublin*, by the printer or printers of all and every such book and books as shall hereafter be printed and published, and the title to the copyright whereof shall be entered in the said register book of the said company; and that the said college and the said society shall have the like remedies for enforcing the delivery of the said copies, and that all proprietors, booksellers, and printers, and the warehouse-keeper of the said company, shall be liable to the like penalties for making default in delivering the said copies for the use of the said college and the said society, as are now in force with respect to the delivering or making default in delivering the nine copies now required by law to be delivered in manner aforesaid.

Two additional copies of books entered at Stationers' Hall, shall be delivered there for the use of the libraries of Trinity College, and the King's Inns, Dublin.

No person shall import into any part of the United Kingdom, for sale, any book first compo ed, &c. within the United Kingdom, and reprinted elsewhere.

VII. And be it further enacted that, from and after the passing of this act, it shall not be lawful for any person or persons whomsoever to import or bring into any part of the said United Kingdom of *Great Britain* and *Ireland*, for sale, any printed book or books, first composed, written, or printed, and published in any part of the said United Kingdom, and reprinted in any other country or place whatsoever; and if any person or persons shall import or bring, or cause to be imported or brought for sale, any such printed book or books into any part of the said United Kingdom, contrary to the true intent and meaning of this act, or shall knowingly sell, publish, or expose to sale, or have in his or their possession for sale, any such book or books, then every such book or books shall be forfeited, and shall and may be seized by any officer or officers of customs or excise, and the same shall be forthwith made waste paper; and all and every person and persons so offending, being duly convicted thereof, shall also, for every such offence, forfeit the sum of ten pounds, and double the value of each and every copy of such book or books which he, she or they shall so import or bring, or cause to be imported or brought into any part of the said United Kingdom, or shall knowingly sell, publish, or expose to sale, or shall cause to be sold, published, or exposed to sale, or shall have in his or their possession for sale, contrary to the true intent and meaning of this act; and the commissioners of customs in *England*, *Scotland*, and *Ireland* respectively (in case the same shall be seized by any officer or officers of customs) and the commissioners of excise in *England*, *Scotland*, and *Ireland* respectively (in case the same shall be seized by any officer or officers of excise) shall also reward the officer or officers who shall seize any books which shall be so made waste paper of, with such sum or sums of money as they the said respective commissioners shall think fit, not exceeding the value of such books; such reward respectively to be paid by the said respective commissioners out of any money in their hands respectively arising from the duties of customs and excise: provided that no person or persons shall be liable to any of the last mentioned penalties or forfeitures, for or by reason or means of the importation of any book or books which has not been printed or reprinted in some part of the said United Kingdom, within twenty years next before the same shall be imported, or of any book or

Penalty on importing, selling, or keeping for sale, any such books, forfeiture thereof, and also 10*l.* and double the value.

Books may be seized by officers of customs or excise, who shall be rewarded.

Exceptions as to books not having been printed in the United Kingdom for 20 years, &c.

books reprinted abroad, and inserted among other books or tracts to be sold therewith in any collection, where the greatest part of such collection shall have been first composed or written abroad.

General issue.

VIII. And be it f rther enacted, that if any action or suit shall be commenced or brought against any person or persons whomsoever, for doing or causing to be done any thing in pursuance of this act, the defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff become nonsuited, or di-continue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath; and that all actions, suits, bills, indictments, or informations, for any offence that shall be committed against this act, shall be brought, sued, and commenced within six months next after such offence committed, or else the same shall be void and of none effect.

Limitation of actions under this Act six months.

No. XVII.

54 George III. c. 56.—*An Act to amend and render more effectual an Act of his present Majesty, for encour ging the Art of making new Models and Casts of Busts, and other Things therein mentioned; and for giving further Encouragement to such Arts.*—[18*th May*, 1811.]

'Whereas by an act passed in the thirty-eighth year of the reign of his present Majesty, intituled *An Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned;* the sole right and property thereof were vested in the original proprietors, for a time therein specified: and whereas the provisions of the said act having been found ineffectual for the purposes thereby intended, it is expedient to amend the same, and to make other provisions and regulations for the encouragement of artists, and to secure to them the profits of and in their works, and for the advancement of the said arts:' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the autho-

38 Geo. III. c. 1. § 1.

Sole right and property of all new and original sculpture, models, copies, and casts, vested in proprietors for 14 years.

rity of the same, that, from and after the passing of this act, every person or persons who shall make or cause to be made any new and original sculpture, or model, or copy, or cast of the human figure or human figures, or of any bust or busts, or of any part or parts of the human figure, clothed in drapery or otherwise, or of any animal or animals, or of any part or parts of any animal combined with the human figure or otherwise, or of any subject being matter of invention in sculpture, or of any alto or basso-relievo representing any of the matters or things hereinbefore mentioned, or any cast from nature of the human figure, or of any part or parts of the human figure, or of any cast from nature of any animal, or of any part or parts of any animal, or of any such subject containing or representing any of the matters and things hereinbefore mentioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture, model, copy, and cast of the human figure and human figures, and of all and in every such bust or busts, and of all and in every such part or parts of the human figure, clothed in drapery or otherwise, and of all and in every such new and original sculpture, model, copy and cast, representing any animal or animals, and of all and in every such work representing any part or parts of any animal combined with the human figure or otherwise, and of all and in every such new and original sculpture, model, copy and cast of any subject, being matter of invention in sculpture, and of all and in every new and original sculpture, model, copy and cast in alto or basso-relievo, representing any of the matters or things hereinbefore mentioned, and of every such cast from nature, for the term of fourteen years from first putting forth or publishing the same; provided, in all and every case the proprietor or proprietors do cause his, her or their name or names, with the date, to be put on all and every such new and original sculpture, model, copy or cast, and on every such cast from nature, before the same shall be put forth or published.

Name and date affixed.

Works published under Act, vested in proprietors for fourteen years.

II. And be it further enacted, that the sole right and property of all works, which have been put forth or published under the protection of the said recited act, shall be extended, continued to and vested in the respective proprietors thereof, for the term of fourteen years, to commence from the date when such last mentioned works respectively were put forth or published.

Putting forth pirated copies or pirated casts prosecuted.

III. And be it further enacted, that if any person or persons shall, within such term of fourteen years, make or import, or cause to be made or imported, or exposed to sale, or otherwise disposed of any pirated copy or pirated cast of any such new and original sculpture, or model, or copy, or cast of the human figure or human figures, or of any such bust or busts, or of any such part or parts of the human figure, clothed in drapery or otherwise, or of any such work of any animal or animals, or of any such part or parts of any animal or animals combined with the human figure or otherwise, or of any such subject being matter of invention in sculpture, or of any such alto or basso-relievo representing any of the matters or things hereinbefore mentioned, or of any such cast from nature as aforesaid, whether such pirated copy or pirated cast be produced by moulding or copying from, or imitating in any way, any of the matters or things put forth or published under the protection of this act, or of any works which have been put forth or published under the protection of the said recited act, the right and property whereof is and are secured, extended and protected by this act, in any of the cases as aforesaid, to the detriment, damage or loss of the original or respective proprietor or proprietors of any such works so pirated; then and in all such cases the said proprietor or proprietors or their assignee or assignees, shall and may, by and in a special action upon the case to be brought against the person or persons so offending, receive such damages as a jury on a trial of such action shall give or assess, together with double costs of suit.

Damages.

Double costs.

Purchasers of copyright secured in same.

IV. Provided nevertheless, that no person or persons who shall or may hereafter purchase the right or property of any new and original sculpture or model, or copy or cast, or of any cast from nature, or of any of the matters and things published under or protected by virtue of this act, of the proprietor or proprietors, expressed in a deed in writing signed by him, her or them respectively, with his, her or their own hand or hands, in the presence of and attested by two or more credible witnesses, shall be subject to any action for copying or casting, or vending the same; any thing contained in this act to the contrary notwithstanding.

Limitation of actions.

V. Provided always, and be it further enacted, that all actions to be brought as aforesaid, against any person or persons for any offence committed against this act, shall be commenced within six calendar months

next after the discovery of every such offence, and not afterwards.

Additional term of fourteen years, in case maker of original sculpture, &c. shall be living.

VI. Provided always, and be it further enacted, that, from and immediately after the expiration of the said term of fourteen years, the sole right of making and disposing of such new and original sculpture, or model, or copy or cast of any of the matters or things hereinbefore mentioned, shall return to the person or persons who originally made or caused to be made the same, if he or they shall be then living, for the further term of fourteen years, excepting in the case or cases where such person or persons shall by sale or otherwise have divested himself, herself or themselves, of such right of making or disposing of any new and original sculpture, or model, or copy, or cast of any of the matters or things hereinbefore mentioned, previous to the passing of this act.

No. XVIII.

54 George III. c. 156.—*An Act to amend the several Acts for the encouragement of Learning, by securing the Copies and Copyright of printed Books, to the Authors of such Books, or their Assigns.*—29th July, 1814.

8 Anne, c. 19. § 5.

'Whereas by an act, made in the eighth year of the reign of her late Majesty Queen Anne, intituled *An Act for the encouragement of Learning, by vesting the Copies of printed Books in Authors or Purchasers of such Copies, during the Times therein mentioned*, it was among other things provided and enacted, that nine copies of each book or books, upon the best paper, that from and after the tenth day of April one thousand seven hundred and ten should be printed and published as in the said act mentioned, or reprinted and published with additions, should, by the printer and printers thereof, be delivered to the warehouse-keeper of the Company of Stationers for the time being, at the hall of the said company, before such publication made, for the use of the Royal Library, the libraries of the Universities of *Oxford* and *Cambridge*, the libraries of the four Universities in *Scotland*, the library of *Sion* College in *London*, and the library of the Faculty of Advocates at *Edinburgh*; which said warehousekeeper is by the said act required to deliver such copies for the use of the said libraries;

and that if any proprietor, bookseller or printer, or the said warehousekeeper, should not observe the directions of the said act therein, that then he or they so making default in not delivering the said printed copies, should forfeit, besides the value of the said printed copies, the sum of five pounds for every copy not so delivered: and whereas by an act made in the forty-first year of the reign of his present Majesty, intituled *An Act for the further encouragement of Learning in the United Kingdom of* Great Britain *and* Ireland, *by securing the Copies and Copyright of printed Books to the Authors of such Books or their Assigns, for the Time herein mentioned*, it is amongst other things provided and enacted, that in addition to the nine copies required by law to be delivered to the warehousekeeper of the said Company of Stationers, of each and every book and books which shall be entered in the register books of the said company, two other copies shall in like manner be delivered for the use of the library of the College of the *Holy Trinity*, and the library of the Society of the *King's Inns* in *Dublin*, by the printer and printers of all and every such book and books as should thereafter be printed and published, and the title of the copyright whereof should be entered in the said Register Book of the said Company: and whereas it is expedient that copies of books hereafter printed or published should be delivered to the libraries hereinafter mentioned, with the modifications that shall be provided by this act;' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That so much of the said several recited acts of the eighth year of Queen Anne, and of the forty-first year of his present Majesty, as requires that any copy or copies of any book or books which shall be printed or published, or reprinted and published with additions, shall be delivered by the printer or printers thereof, to the warehousekeeper of the said Company of Stationers, for the use of any of the libraries in the said act mentioned, and as requires the delivery of the said copies by the said warehousekeeper, for the use of the said libraries, and as imposes any penalty on such printer or warehousekeeper for not delivering the said copies, shall be, and the same is, hereby repealed.

41 G. III. (U.K.) c. 107. § 6.

repealed.

Eleven printed copies delivered on demand, within 12 months after publication, for use of public libraries.

II. And be it further enacted, That eleven printed copies of the whole of every book, and of every volume thereof, upon the paper upon which the largest number or impression of such book shall be printed for sale, together with maps and prints belonging thereto, which, from and after the passing of this act, shall be printed and published, on demand thereof being made in writing to, or left at the place of abode of the publisher or publishers thereof, at any time within twelve months next after the publication thereof, under the hand of the warehousekeeper of the Company of Stationers, or the librarian, or other person thereto authorized by the persons or body politic and corporate, proprietors or managers of the libraries following; *videlicet*, the *British Museum*, *Sion College*, the *Bodleian Library* at *Oxford*, the *Public Library* at *Cambridge*, the Library of the *Faculty of Advocates* at *Edinburgh*, the Libraries of the four Universities of *Scotland*, *Trinity College Library*, and the *King's Inns Library* at *Dublin*, or so many of such eleven copies as shall be respectively demanded on behalf of such libraries respectively, shall be delivered by the publisher or publishers thereof respectively, within one month after demand made thereof in writing as aforesaid, to the warehousekeeper of the said Company of Stationers for the time being; which copies the said warehousekeeper shall and he is hereby required to receive at the hall of the said company, for the use of the library for which such demand shall be made, within such twelve months as aforesaid; and the said warehousekeeper is hereby required, within one month after any such book or volume shall be so delivered to him as aforesaid, to deliver the same for the use of such library: and if any publisher, or the warehousekeeper of the said Company of Stationers, shall not observe the directions of this act therein, that then he and they so making default in not delivering or receiving the said eleven printed copies as aforesaid, shall forfeit, besides the value of the said printed copies, the sum of five pounds for each copy not so delivered or received, together with the full costs of suit; the same to be recovered by the person or persons, or body politic or corporate, proprietors or managers of the library for the use whereof such copy or copies ought to have been delivered or received; for which penalties and value such person or persons, body politic or corporate, is or are now

Publishers, &c. neglecting.

Penalty.

hereby authorized to sue by action of debt or other proper action, in any Court of Record in the United Kingdom.

No copies of second, &c. edition, without addition or alteration, demanded.

III. Provided always, and be it further enacted, That no such printed copy or copies shall be demanded by or delivered to or for the use of any of the libraries hereinbefore mentioned, of the second edition, or of any subsequent edition of any book or books so demanded and delivered as aforesaid, unless the same shall contain additions or alterations: and in case any edition after the first, of any book so demanded and delivered as aforesaid, shall contain any addition or alteration, no printed copy or copies thereof shall be demanded or delivered as aforesaid, if a printed copy of such additions or alterations only, printed in an uniform manner with the former edition of such book, be delivered to each of the libraries aforesaid, for whose use a copy of the former edition shall have been demanded and delivered as aforesaid: Provided also, that the copy of every book that shall be demanded by the *British Museum*, shall be delivered of the best paper on which such work shall be printed.

Additions printed, and delivered separate.

Proviso for British Museum.

8 Anne, c. 19. s. 1. 41 G. 3. (U. K.) c. 107. s. 1.

IV. And whereas by the said recited acts of the eighth year of Queen Anne, and the forty-first year of his present Majesty's reign, it is enacted, that the author of any book or books, and the assignee or assigns of such author respectively, should have the sole liberty of printing and reprinting such book or books for the term of fourteen years, to commence from the day of first publishing the same, and no longer; and it was provided, that after the expiration of the said term of fourteen years, the right of printing or disposing of copies should return to the authors thereof, if they were then living, for another term of fourteen years: And whereas it will afford further encouragement to literature, if the duration of such copyright were extended in manner hereinafter mentioned; Be it further enacted, That from and after the passing of this act, the author of any book or books composed and not printed and published, or which shall hereafter be composed, and be printed and published, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book or books for the full term of twenty-eight years, to commence from the day of first publishing the same; and also, if the author shall be living at the end of that period, for the resi-

Instead of copyright for fourteen years, and contingently for fourteen more, authors, &c. shall have 28 year's copyright in works, and for residue of life.

Booksellers, &c. in any part of United Kingdom, or British dominions, who shall print, &c. any book, without consent of proprietor, liable to action for damages.

due of his natural life; and that if any bookseller or printer, or other person whatsoever, in any part of the United Kingdom of *Great Britain* and *Ireland*, in the isles of *Man*, *Jersey*, or *Guernsey*, or in any other part of the *British* dominions, shall, from and after the passing of this act, within the terms and times granted and limited by this act as aforesaid, print, reprint, or import, or shall cause to be printed, reprinted, or imported, any such book or books, without the consent of the author or authors, or other proprietor or proprietors of the copyright of and in such book and books, first had and obtained in writing; or, knowing the same to be so printed, reprinted, or imported, without such consent of such author or authors, or other proprietor or proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or shall have in his or their possession for sale, any such book or books, without such consent first had and obtained as aforesaid, then such offender or offenders shall be liable to a special action on the case, at the suit of the author or authors, or other proprietor or proprietors of the copyright of every such book or books so unlawfully printed, reprinted, or imported, or published or exposed to sale, or being in the possession of such offender or offenders for sale as aforesaid, contrary to the true intent and meaning of this act. And every such author or authors, or other proprietor or proprietors, shall and may by and in such special action upon the case, to be so brought against such offender or offenders, in any Court of Record in that part of the said United Kingdom, or of the *British* dominions, in which the offence shall be committed, recover such damages as the jury on the trial of such action, or on the execution of a writ of enquiry thereon, shall give or assess, together with double costs of suit; in which action no wager of law, essoin, privilege, or protection, nor more than one imparlance, shall be allowed; and all and every such

Penalty.

offender and offenders shall also forfeit such book or books, and all and every sheet, being part of such book or books, and shall deliver the same to the author or authors, or other proprietor or proprietors of the copyright of such book or books, upon order of any Court of Record, in which any action or suit in law or equity shall be commenced or prosecuted by such author or authors, or other proprietor or proprietors, to be made on motion or petition to the said Court; and the said author or authors, or other proprietor or

proprietors shall forthwith damask or make waste paper of the said book or books and sheet or sheets; and all and every such offender and offenders shall also forfeit the sum of three-pence for every sheet thereof, either printed or printing, or published or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same in any such Court of Record, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, nor more than one imparlance, shall be allowed: Provided always, that in *Scotland* such offender or offenders shall be liable to an action of damages in the Court of Session in *Scotland*, which shall and may be brought and prosecuted in the same manner in which any other action of damages to the like amount may be brought and prosecuted there; and in such action, where damages shall be awarded, double costs of suit, or expenses of process, shall be allowed.

Penalty.

Offenders in Scotland.

V. And, in order to ascertain what books shall be from time to time published, be it enacted, That the publisher or publishers of any and every book demandable under this act, which shall be published at any time after the passing of this act, shall within one calendar month after the day on which any such book or books respectively shall be first sold, published, advertised, or offered for sale, within the bills of mortality, or within three calendar months, if the said book shall be sold, published or advertised in any other part of the United Kingdom, enter the title to the copy of every such book, and the name or names, and place of abode of the publisher or publishers thereof, in the Register Book of the Company of Stationers in *London*, in such manner as hath been usual with respect to books, the title whereof hath heretofore been entered in such Register Book, and deliver one copy, on the best paper as aforesaid, for the use of the *British Museum;* which Register Book shall at all times be kept at the Hall of the said Company; for every of which several entries the sum of two shillings shall be paid, and no more: which said Register Book may at all seasonable and convenient times be resorted to and inspected by any person; for which inspection the sum of one shilling shall be paid to the warehousekeeper of the said Company of Stationers, and such warehousekeeper shall, when

Within what time title of books entered at Stationers' Hall.

Copy for British Museum.

Inspection of Register Book.

and as often as thereto required, give a certificate under his hand of every or any such entry, and for every such certificate the sum of one shilling shall be paid; and in case such entry of the title of any such book or books shall not be duly made by the publisher or publishers of any such book or books, within the said calendar month, or three months, as the case may be, then the publisher or publishers of such book or books shall forfeit the sum of five pounds, together with eleven times the price at which such book shall be sold or advertised, to be recovered, together with full costs of suit, by the person or persons, body politic or corporate, authorized to sue, and who shall first sue for the same, in any Court of Record in the United Kingdom, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, nor more than one imparlance, shall be allowed: Provided always, that in the case of Magazines, Reviews, or other periodical publications, it shall be sufficient to make such entry in the Register Book of the said Company, within one month next after the publication of the first number or volume of such Magazine, Review, or other periodical publication: Provided always, that no failure in making any such entry shall in any manner affect any copyright, but shall only subject the person making default to the penalty aforesaid, under this act.

Certificate

Title of book not entered.

Penalty.

Proviso for Magazines, &c.

Proviso.

Warehousekeeper of Stationers' Hall to transmit to librarians lists of books entered; and call on publisher for copies.

VI. And be it further enacted, That the said warehousekeeper of the Company of Stationers shall from time to time and at all times, without any greater interval than three months, transmit to the librarian or other person authorized on behalf of the libraries before-mentioned, correct lists of all books entered in the books of the said Company, and not contained in former lists; and that, on being required so to do by the said librarians, or other authorized person, or either of them, he shall call on the publisher or publishers of such books for as many of the said copies as may have been demanded of them.

Publishers to deliver books at library.

VII. Provided always, and be it further enacted, That if any publisher shall be desirous of delivering the copy of such book or volume as aforesaid, as shall be demanded on behalf of any of the said libraries, at such library, it shall and may be lawful for him to deliver the same at such library, to the librarian, or other person authorized to receive the same, (who is hereby required to receive and to give a receipt in writing for the same); and such delivery shall,

to all intents and purposes of this act, be held as equivalent to a' delivery to the said warehouse-keeper.

What deemed delivery.

VIII. And whereas it is reasonable that authors of books already published, and who are now living, should also have the benefit of the extension of copyright; be it further enacted, That if the author of any book or books, which shall not have been published fourteen years at the time of passing this act shall be living at the said time, and if such author shall afterwards die before the expiration of the said fourteen years, then the personal representative of the said author, and the assignees or assigns of such personal representative, shall have the sole right of printing and publishing the said book or books, for the further term of fourteen years after the expiration of the first fourteen years: Provided that nothing in this act contained shall affect the right of the assignee or assigns of such author to sell any copies of the said book or books, which shall have been printed by such assignee or assigns, within the first fourteen years, or the terms of any contract between such author and such assignee or assigns.

Authors of books published, now living, to have benefit of extension of copyright.

Proviso.

IX. And be it also further enacted, That if the author of any book or books which have been already published, shall be living at the end of twenty-eight years after the first publication of the said book or books, he or she shall for the remainder of his or her life have the sole right of printing and publishing the same: Provided that this shall not affect the right of the assignee or assigns of such author, to sell any copies of the said book or books, which shall have been printed by such assignee or assigns within the said twenty-eight years, or the terms of any contract between such author and such assignee or assigns.

Authors living at end of 28 years, sole right of publication for life.

X. Provided nevertheless, and be it further enacted, That all actions, suits, bills, indictments, or informations for any offence that shall be committed against this act, shall be brought, sued, and commenced, within twelve months next after such offence committed, or else the same shall be void and of no effect.

Limitation of actions.

END OF THE APPENDIX.

SUPPLEMENT

TO PATENTS.

CHAP. I.

INTRODUCTION (*a*).

SEVERAL important decisions have of late been made in our courts of law respecting letters patent for inventions. The object of this publication is to explain the law in its present state, in a concise and intelligible manner. It was imagined that object would be most readily accomplished by a *Supplement to each Chapter*.

The reader will therefore find under the proper divisions all the new cases which relate to the matter contained in them. If the inquirer have the original Treatise before him at the time that he peruses the Supplement, he will clearly see the application of the later authorities; and it would be convenient if he refresh his memory with the rules laid down in each Chapter of the Treatise before he reads the Supplement to it.

Inventors are much indebted to the learned judges of the present day for the liberal and enlightened construction which they have put upon the letters patent and upon the words of the specification. They will

(*a*) See p. 43 of the Practical Treatise.

notice the importance of the rules established in *Bloxam* v. *Elsee*, that an inventor *may be assisted by an engineer* to complete the mechanical means for carrying his intentions into effect; in *Lewis* v. *Marling* and *Jones* v. *Pearce*, that the *prior use* of a thing by which an inventor will lose his patent (if the subject has been used before) must be a *public* use; in *Lewis* v. *Davis*, that a very *small combination* of mechanical instruments may be the subject of a patent; in the cases of *Crosley* v. *Beverley*, *Lewis* v. *Marling*, and *Jones* v. *Pearce*, that great latitude is now allowed in constructing the meaning of the words used and the description of the invention given in the specification.

In the Supplement to each Chapter the inventor will also find observations respecting the improvements which might be advantageously introduced into our laws respecting the subject discussed in that Chapter.

Chap. II.

Of the Inventor (*a*).

It was observed (*b*) that no person, who has not, without assistance, formed the original idea of the subject in his mind, will be enabled to keep any patent which he may have obtained; and in the case of *Hill* v. *Thompson* (*c*) it was laid down, that if a servant make an improvement, his master is not entitled to take out a patent for it; but it appears from the case of *Bloxam* v. *Elsee* (*d*) that an important qualification has been made, which establishes, that if the inventor employ a skilful person for the express purpose of assisting him in completing the mechanical contrivances, the additions made by that person will belong to his employer, who may include them in the specification to his patent as a part of his own invention.

It was objected in that case, that *parts* of the improvements in Foudriniers' paper machine were the inventions of Mr. Donkin, who proved that when he made those improvements he was employed as an engineer for the purpose of bringing the machine to perfection, and was paid for so doing, and that he was acting as the servant of the inventor of the machine for the purpose of suggesting those *improvements*. He did not discover the principle of the machine, nor

(*a*) See page 52 of the Practical Treatise.
(*b*) Ibid. p. 53.
(*c*) 8 Taunt. 395. S. C. 2 B. Moore, 456.
(*d*) 1 Car. & P. 558.

invent the important movements of it. The patent was not disturbed on that ground.

The rule of law respecting the assistance from servants may thus be stated. If the servant make a new discovery by himself, such invention becomes his property; but if the master plans, and the servant only executes with alterations of his own, then the master is the true inventor of the machine.

Letters-patent are often taken out in the joint names of two or three persons. If the secret should be discovered that one or two of those persons bore no part in the invention of the machines, the patents would be void.

In those cases (*a*) in which the patentees have had to contend against the charge that their machines were not new, because similar machines had been invented by others, although not brought into public use, it is necessary that the patentees should be clear from all suspicion of having seen the machines in an imperfect state, or whilst they were partially concealed. It is not sufficient that they bring the machines first into public use. They must also be original inventors of them without any assistance from inspection or knowledge of the other machines.

Introducer of a Foreign Invention (*b*).—It is now the common practice when the invention has been obtained from a foreigner, to state in the title of the patent, that the patentee has received the communication from a person residing abroad, but that fact need

(*a*) *Lewis* v. *Marling*, 10 B. & C. 22. And S. C. 4 Car. & P. 52; *Jones* v. *Pearce*, MS. and see *post*.

(*b*) Page 56.

not be set forth. It has been doubted whether the patent can be supported if the inventor, the foreigner, retaining any interest in the patent, be an alien enemy (*a*).

Observations.—The law respecting the person to be considered the *first inventor* (*b*) does not require much alteration. If a communication be made from a foreigner residing abroad to a person in this country, that person can have a patent as being the original

(*a*) *Bloxam* v. *Elsee*, 1 Car. & P. 558.

(*b*) Inventors have been thus described by a writer in the London Journal of Arts and Sciences for 1831. "Useful inventors are of three classes; the first are men of genius, capable of producing important inventions that involve the entire projecting of new machines, or remodelling of existing ones, and the organization of new or complicated processes and systems of working. These are very few.

"The second are men who have not so extensive a scope of imagination and intellect as to project new systems or great changes, and to organize the means of effecting them, but who are capable of making marked improvements upon existing systems and machinery, or partial changes in them. This class is considerable.

"The third class is made up of men of small imagination, who are not capable of any great originality of thought, but who have a certain ingenuity which they can apply to the things that come within the range of their observation, and possess a tact for correctly and accurately executing that which they conceive.

"Their province is to improve in detail, to give a finish to the detached parts of the extensive combinations formed by superior minds, and to fill up the chasms that occur frequently in the plans of the greatest inventors. Happily this class is immense, being spread thickly over the whole body of mechanics, from the manufacturer and engineer down to the lowest workman. Such men constitute expert mechanicians, who are never at a loss for expedients for overcoming the practical difficulties of detail, that occur in their business, and are perpetually making trifling inventions which they require for immediate application."

inventor. Why not permit a foreigner in this country to give the information? And if a foreigner, why not an Englishman?

It might be advantageously enacted that the inventor might assign his right to a patent, so that the assignee should have the patent in his own name.

Chap. III.

Of a new Manufacture, or the Subject of a Patent (*a*).

A long experience has not suggested a better analysis of the different things which may be the subjects of letters patents for inventions than that already given at page 58 of the treatise.

The manufacture must not have been used (*b*).—It is necessary to keep in mind the words of the statute of James, in which it is enacted that the manufacture must be such "which *others*, at the time of making such letters patent and grants, *shall not use*."

The case of *Lewis* v. *Marling* (*c*) decided that the use must have been a *public use*, unless it could be shown affirmatively that the patentee had a knowledge of the subject in its imperfect state from the invention of another person. The patent was granted in 1818 to the plaintiffs for improvements on shearing machines,

(*a*) Page 57 of the Practical Treatise.

(*b*) Id. p. 62. S. P. in K. v. Daniel, in July, 1827, MS.

(*c*) 10 Barn. & Cress. 22. See the same case at Nisi Prius, C. & P. p. 52; and London Journal of Arts and Sciences for December, 1829.

for shearing or cropping woollen and other cloths. They claimed as their invention four things:—1st. The application of the flat spring for directing and pressing the cloth to the cutting edges. 2d. The application of the triangular steel wire on the cylinder. 3d. The application of a proper substance fixed on or in the cylinder A. to brush the surface of the cloth to be shorn; and, 4thly. "The described method of shearing cloth from list to list by a rotatory cutter."

As to the fourth thing claimed, the defendant contended that it was not new, and he proved that a similar machine was in use at New York twenty years ago, and that a specification of it was sent over in 1811 to one Thompson residing at Leeds, who employed two engineers to manufacture a machine from it; but it was never finished, in consequence of the disturbances made by the Luddites. This specification was shown to several persons, but the machine was never brought into use. It appeared also that in 1816 a model for a machine to shear from list to list by means of a rotatory cutter was brought over from America by one Smith, and he showed it to three or four persons in his manufactory, but no machine was ever made from it, nor was it publicly known to exist; and Smith always used machines manufactured by the plaintiffs. It appeared also that many years ago *one Coxon* had made a machine to shear from list to list, which was tried by a person called on behalf of the defendant,(*a*) but he did not think it answered, and soon discontinued the use of it.

For the defendant it was contended that this evi-

(*a*) It was proved at the trial that he used it nearly six months. MSS.

dence deprived the plaintiffs of the right to a patent, as their invention was not new.

Lord Tenterden observed at the trial, that as the invention of the machine for shearing from list to list by a rotatory cutter had not been generally used or known in this country, the plaintiffs might be considered the inventors within the meaning of the statute 21 Jac. 1, c. 3, s. 6, notwithstanding the specification and the model which had been brought over from America, and the making of a machine to work in that manner by Coxon, and his Lordship left to the Jury the questions, whether it had been generally known, and whether the patent had been infringed by the defendant. The jury found a verdict for the plaintiffs.

A rule was afterwards moved for, that there should be a new trial, on the ground (among others) (*a*) that the question of novelty and prior use had not been properly left to the jury by the learned judge.

Lord Tenterden said, to impugn the novelty of the invention, evidence was given that one Coxon had previously made a machine for shearing from list to list, but it was not approved of, and never came *into use*. Another piece of evidence was, that a model had been sent over from America and exhibited to a few persons, but no machine was made from it, and the very persons who had the model, bought and used machines manufactured by the plaintiffs. It was also proved that a specification had been brought over from America and two persons employed to make a machine from it. But that was never completed, so that until the plaintiff's invention came out, no machine was *publicly known* or used here for shearing from list

(*a*) See post.

ω list. I told the jury, that if it could be shown that the plaintiffs had seen the model or specification, that might answer the claim of invention; but there was no evidence of that kind, and I left it to them to say whether it had been *in public use and operation* before the granting of the patent. They found that it had not, and I think that there is no reason to disturb their verdict.

Mr. *Justice Bayley* observed, if the model brought from America had been seen by the plaintiff, he could not afterwards have claimed to be the inventor. But if I discover a certain thing for myself, it is no objection to my claim to a patent that another also has made the discovery, provided I first introduce it *into public use.* Here there was no ground to doubt that the plaintiffs were the inventors of the machine, and first introduced it into *public use.*

Mr. *Justice Parke*—There was no evidence in this case to show that the plaintiffs were not the inventors of this machine, in this country at least, but the statute further requires that it shall not have been used by others, and it is said that the latter part of the condition has not been satisfied. But there was no evidence of the use of such a machine before the grant of the patent, and there is no case in which a patentee has been deprived of the benefit of his invention because another also had invented it, unless he had also brought it into use.

Before this decision was made, it was the generally received opinion in Westminster Hall, (*a*) that a know-

(*a*) When that model was produced, to four counsel in consultation, (of whom one is now a judge and two are King's counsel,) one of the counsel exclaimed "there is an end of the patent—the production of the model will be sufficient, res ipsa loquitur."

ledge of an invention much less strong than those facts disclose would have made a patent invalid.

That case has however been followed by another, *Jones* v. *Pearce*, (*a*) in which the words—public use—have been more fully explained.

Jones had a patent granted to him in 1826 for a new and improved description of carriage wheels, which were made entirely of iron. They were formed on the *principle of suspension*, that is, by suspending the weight on the circumference of the wheel instead of its being borne on the nave. In ordinary carriage wheels the weight is supported by the spoke or spokes which happen to be immediately under the box or nave of the wheel, while the spokes above the nave support no part of the weight. In Jones's wheels the weight, by means of iron rods, was suspended from the upper part of the wheel. That desirable effect was produced by the rods or spokes passing into the nave without being blocked in it, but were permitted to play a little into the nave as the spokes approached and came in contact with the ground.

On behalf of the defendant it was proved that Mr. H. Strutt, (*b*) of Belper, near Derby, had discovered the principle of suspension wheels for carriages from an observation on his water wheels, which were founded on the principle of suspending the water, and that he made, about 17 or 18 years ago, a wheel-barrow, a strong cart, and a small cart, composed of wood and iron, upon that principle. The strong cart had been

(*a*) MS. and see London Journal of Arts and Sciences for July, 1832.

(*b*) A gentleman of great genius for mechanical discoveries, who died in early life much lamented.

used in a stone quarry about two miles from Belper, and the milk cart upon the farm. Neither of them had been sold or taken out of the neighbourhood of Belper. In consequence of Mr. Strutt's death the invention was not pursued. The carts after frequent repairs were thrown aside.

There was not any evidence to show that Jones had ever seen or heard of the wheels made by Strutt.

Mr. *Justice Pattcson*, who tried the cause, thus addressed the jury (*a*). Gentlemen—If on the whole of this evidence either on the one side or the other, it appeared that this wheel, constructed by Mr. Strutt's order in 1814, was a wheel on the same principles and in substance the same wheel as the other for which the plaintiff has taken out his patent, and that it *was used openly in public*, so that every body might see it, and had continued to use the same thing up to the time of taking out the patent, undoubtedly then that would be a ground to say that the plaintiff's invention is not new, and if it is not new, of course his patent is bad, and he cannot recover in this action; but if, on the other hand, you are of opinion that Mr. Strutt's is an experiment, and that he found it did not answer, and ceased to use it altogether, and *abandoned it as useless*, and nobody else followed it up, and that the plaintiff's invention which came afterwards was his own invention, and remedied the defect, (if I may so say,) although he knew nothing of Mr. Strutt's wheel, he remedied the defects of Mr. Strutt's wheel, then there is no reason for saying the plaintiff's patent is not good; it depends entirely upon what is your opi-

(*a*) London Journal of Arts and Sciencss for August, 1832.

nion upon the evidence with respect to that, because, supposing you are of opinion that it is a new invention of the plaintiff's, the patent is then good.

Then the only remaining question would be, whether the defendant has or has not infringed the patent. Now, as I have told you before, it seems the defendant has constructed a wheel whose construction is on the suspension principle,—that alone would not make it an infringement of the plaintiff's patent, because the suspension principle might be applied in various ways; but if you think it is applied in the same way, as according to the plaintiff's patent it is applied, then the want of two or three circumstances in the defendant's wheel, which is contained in the plaintiff's specification, would not prevent the plaintiff recovering in this action for an infringement of his patent.

It would be quite a different thing if it was shown that the defendant had had communication long before with Mr. Strutt, and had taken up Mr. Strutt's invention in Derbyshire, and had constructed something like Mr. Strutt's, without any knowledge of the plaintiff's patent, and had actually borrowed it from Mr. Strutt's, which was good for nothing. It would be the hardest possible thing to say that this was an infringement of the plaintiff's patent, but it merely comes to this by reason of the variance between the defendant's and the plaintiff's; it is only less useful and less desirable, but is in effect the same thing; then the two points for your consideration clearly are these—whether the plaintiff's invention is new, and if new, whether the defendant has so constructed his wheel as that it is an imitation of the plaintiff's patent; if you are of opinion for the plaintiff, on

both those points, your verdict will be for the plaintiff —but if you are of opinion on either of these two points against the plaintiff, then your verdict will be for the defendant. The jury found for the plaintiff.

The Manufacture must not have been used by the Patentee (*a*). The words of the statute of monopolies have been shown to apply as well to the public use of an invention before the date of the patent by the patentee himself, as by the community.

That doctrine is very well illustrated in the case of *Pennock and Sellers* v. *Dialogue*, in the Supreme Court of the United States of America (*b*). The patentees made their invention complete in 1811, and commissioned a person to sell the invented article for them, until the year 1818, when they applied for and obtained letters patent.

The Court, in delivering their judgment, made (among others) the following observations. "It is obvious that many of the provisions of our patent act are derived from the principles and practice which have prevailed in the construction of the law of England in relation to patents.

The true meaning of the words of the patent law, "not known, or used before the application," is, not known, or used *by the public* before the application.

If an inventor should be permitted to hold back from the knowledge of the public the secrets of his invention: if he should for a long period of years re-

(*a*) p. 64 of the Practical Treatise.

(*b*) See vol. ii, p. 1, of Reports "by Richard Peters, Counsellor at Law and Reporter of the decisions of the Supreme Court of the United States," which are given with great ability and knowledge of the subject under discussion.

tain the monopoly, and make and sell his invention publicly, and thus gather the whole profits of it, relying upon his superior skill and knowledge of the structure, and then, and then only, when the danger of competition should force him to procure the exclusive right, he should be allowed to take out a patent, and thus exclude the patent from any further use than what would be derived under it during his fourteen years, it would materially retard the progress of science and the useful arts, and give a premium to those who should be least prompt to communicate their discoveries."

The Manufacture must be material and useful (*a*).—In the case of *Bloxam* v. *Elsee*(*b*) the Chief Justice left the question to the jury, (on contradictory evidence,) whether the machine for which the first patent was granted was capable of producing useful paper; and directed them to find for the plaintiffs, if they were of opinion that it was, otherwise for the defendant, and the jury found a verdict for the plaintiff.

A Combination or Arrangement of things already known (*c*).

The case of *Lewis* v. *Davis* (*d*) is very important in showing what "Combination or arrangement of things already known" may be the subject of a grant. A patent had been granted in 1815 to Lewis for a machine for shearing cloths.

Another patent was granted in 1818 to Lewis and

(*a*) See page 66 of the Practical Treatise. S. P. Webster v. Uther, MS.
(*b*) 6 Barn. & Cress. 173. (*c*) See p. 75 of the Practical Treatise.
(*d*) 3 Car. & Pay. 502.

another person, entitled "Improvements of a machine for shearing and cropping woollen cloths, the same being improvements in a machine for which John Lewis had obtained a patent on the 27th July, 1815.

The specification of the patent granted in 1815, was given in evidence, from which it appeared that it was granted for a machine with rotatory cutters, which were to shear the cloth *from end to end.*

In the specification to the patent granted in 1818 one of the things claimed was "To shear with rotatory cutters *from list to list*, in the manner specified."

It appeared in evidence that the first method of shearing cloth was by the use of common shears in men's hands, which operation was performed from list to list: that machine was invented in 1788, which carried the shears from list to list—that the next improvement was disclosed in the patent of 1815, by which the rotatory cutter passed *from end to end.*

The question therefore arose whether these plaintiffs could have a grant for cutting cloth with a rotatory cutter *from list to list.*

It was proved that some alteration in the machine for cutting from end to end was necessary, and had been made by the plaintiffs before it could be applied to cut from list to list. Those alterations or improvements were all useful. The defendant had not taken into his machine any of those alterations or improvements, being *three* mechanical contrivances (*a*), claimed by the plaintiff, but had combined the rotatory cutter, which was old, with other mechanical contrivances.

(*a*) Ante, p. 7. In R. v. Fussell, the patent was held by Tenterden, C. J., to be void, because the only alteration was using *steam* instead of *hot water*. MS.

The Lord Chief Justice said, It appears that a rotatory cutter to shear from end to end was known, and that cutting from list to list by means of shears was also known. However, if before the plaintiffs' patent, the cutting from list to list, and the doing that by means of rotatory cutters *were not combined*, I am of opinion that this is such an invention as will entitle them to maintain the present action.

A Principle, Method, or Process carried into Practice by tangible Means. (*a*)

Some careful enactment is much wanted which should clearly define this rule of law. A large mass of evidence upon it was presented to the Committee of the House of Commons. Sometimes an accident discovers a principle, which, being known, may be applied in a thousand ways to different manufactures, and sometimes it is a discovery resulting from laborious investigation and ingenious deductions. The decisions made by the judges are carefully collected and commented upon in the Practical Treatise at a great length.

In that part of the specification to Jones's (*b*) patent for carriage wheels in which *the claim* is stated, the words would indicate that he claimed the suspension principle, but the learned judge who tried the cause said he should construe the words to mean that the patentee claimed the principle of suspension *only*, *as carried into effect* by the mechanical means before described.

(*a*) See p. 78.

(*b*) Jones v. Pearce, tried before Mr. Justice Patteson, MS.

The opinion of the Court of King's Bench, in *Hullett* v. *Hague* (*a*), is very important to inventors. It illustrates the position of law, that several persons may have several patents, founded on the same principle, if they use different mechanical contrivances.

The object to be obtained by two patents, was the evaporation of fluids at comparatively low temperatures: each party effected that object by the introduction of heated air into the fluid; but they both did it by different mechanical means, and were therefore entitled to hold their patents.

The case cannot be understood without a statement of the specifications. *Hullett* was the assignee of *Kneller* of a patent granted for " certain improvements in evaporating sugar" (which improvements were also applicable to other purposes). The specification was as follows. "I *W. G. Kneller* do declare that my invention consists in a method or process, and certain apparatus as hereinafter described, by which I am enabled to evaporate liquids and solutions at a low temperature, and thereby to avoid the injury to which certain substances, which require a nice and delicate application of heat, such as sugar, for instance, are liable by being exposed to too high a temperature: and I do further declare that my said invention and improvement consists in forcing, by means of bellows or any other blowing apparatus, atmospheric or any other air, either in a hot or cold state, through the liquid or solution subjected to evaporation, and this I do by means of pipes, whose extremities reach nearly (or within such distance as may be found suitable under

(*a*) 2 Barn. & Ad. 370.

peculiar circumstances), to the upper part or interior *area* of the bottom of the pan or boiler containing such liquid or solution, the other extremities of such pipes being connected with larger pipes, which communicate with the bellows, or other blowing apparatus, which forces the air into them. The pan or boiler may be of any shape or dimensions, but I prefer it with a flat level bottom, and I introduce the liquid or solution to the depth of from four to six inches. The heat may be applied to the lower or exterior area of the bottom of such pan or boiler, by naked fire, steam, or hot air, in the usual manner, and by means well understood; the air then forced into the heated liquid or solution keeps it in a constant agitation, abstracts its heat, and carries off the steam or vapour, which is to be expelled by raising the degree of heat under the pan or boiler, and increasing the quantity and velocity of the air injected into the liquid or solution; or, on the contrary, by lowering the heat and moderating the injection of air, the evaporation is retarded at the pleasure of the operator." The specification then, after describing at what degree of temperature this might be done, proceeded as follows:—"And I further declare that this, my invention, may be applied to the evaporation of other liquids as well as sugar, and that the form or construction of the apparatus, which I use to produce the above effect, may be varied according to circumstances, and the form or position of the pan to which it is to be applied: but two things are essential in its construction; the first of which is, that however numerous the blowing pipes may be, their lower orifices should be distributed as evenly and equally over the whole surface of the bottom of the

pan as possible; and secondly, that a stream of air should issue from the lower end of every one of them at the same time. To ensure this latter object it is immaterial whether the bottom of the pan or boiler be perfectly level, but it is quite necessary that all the lower ends of the blowing tubes should be on a level and parallel to the surface of the fluid to be evaporated, in order that there may not be a higher column of fluid in one tube than in another. The mode of construction necessary to produce these objects may be various, but in order the more distinctly to explain my meaning and my mode of operating, I hereunto subjoin a drawing of the apparatus which I have used, and find to answer the purpose." (The drawing was annexed to the specification.) "The form of this apparatus may be varied, provided its essential properties of the air blowing through all the *descending* tubes, and these being so disposed as to produce greatly divided and equally distributed currents of air over the whole bottom of the vessel at once, are maintained; because my invention consists in producing rapid evaporation at lower temperature than usual by the means herein-before described."

This specification having been read on the part of the plaintiff, the defendant put in another patent, under which he acted, granted to Richard Knight and Rupert Kirk on the 9th of May, 1822, entitled "a patent for the invention of a process for the more rapid crystallization and for the evaporation of fluids at comparatively low temperatures, by a peculiar mechanical application of air;" and the specification was as follows:—"We, the said Richard Knight and Rupert Kirk, do by these presents particularly de-

scribe and ascertain the nature of our said invention, and in what manner the same is to be performed, as follows; that is to say," (They then stated the inconveniences resulting from the common process of boiling fluids by the too rapid access of heat, and proceeded as follows:) "To obviate this and similar difficulties, and also for the purpose of facilitating the process of evaporation of fluids in general, we declare this our invention to be peculiarly adapted, and we do hereby set forth and describe the means by which we effect the same; that is to say, we propel a quantity of heated air into the lower part of the vessel containing the liquor, syrup, or fluid, whether in a cold or heated state, and cause such heated air to pass through the whole body of the liquor, in finely divided streams. The means used by us for heating and applying the air to the fluid are as follows: that is to say, a quantity of air is propelled (by means of a blowing engine, bellows, or other machine used for propelling air,) through a pipe or pipes (made of lead, copper, iron, or other fit material,) into the *lower part* of the copper, pan or vessel containing the heated syrrup, liquid, fluid, or other matter to be operated on, coiled or otherwise shaped and accommodated to the nature or form of the vessel; the said coil of pipe within and lying at the bottom of the said vessel being perforated with a number of small holes; the heated air being thus forcibly driven out in minutely divided currents passes rapidly through the liquid, and according to the quantity and temperature of the air so passing through the liquid, a greater or a less quantity of the liquid will be converted into vapour and carried off with the air. In lieu of the perforated pipe, a shallow

metallic vessel, of the nature of a cullendar, within the boiler, may be connected with the air pipe; and the cullendar being perforated with small holes, the heated air may be driven through this perforated cullendar, or any similar contrivance that may best suit the form of the vessel, or the nature of the fluid or material to be acted upon."

The specification then described how the heat might be applied, and proceeded thus:—"We further declare, that our invention consists *in the application of currents* of heated air, when forced or made to pass through the body of any fluid for the purpose of producing or facilitating evaporation; and we also declare, that the same may be advantageously applied to processes dependent upon the disengagement of aqueous vapour during the evaporation, concentration, and crystallization of various substances when dissolved in fluids, as in the manufacture of sugar, glue, salt, alum, soap, tallow, and similar processes." It was contended by the defendant's counsel that the patent assigned to the plaintiff was void; first, because the assignor claimed, according to his specification, the merits of the same invention for which Knight and Kirk had obtained a patent several years before; the object of both patents being the same, viz. the causing of evaporation by means of streams of atmospheric air introduced in any vessel near the bottom of the liquid; and the means also the same, viz. forcing the air through the liquid by bellows or other blowing machines. Secondly, supposing that the process described in the plaintiff's patent was an improvement on that pointed out in Knight and Kirk's specification, it was said that Kneller should have confined his pa-

tent to that improvement only. *Lord Tenterden* was of opinion that although the object to be effected by the two patents was the same, the means of effecting it were different; and that the patent granted to Kneller must be considered as one granted for effecting that object by the particular method described in the specification. A verdict was found for the plaintiff, but liberty reserved to the defendant to move to enter a nonsuit.

A motion was made to enter a nonsuit but it was refused: and in delivering the opinion of the Court, *Lord Tenterden* said, that Knight and Kirk's was, in substance, an invention of a process for the more rapid crystallization and for the evaporation of fluids at comparatively low temperatures; this object being effected by means of a coil of pipes lying at the bottom of the vessel, perforated with small holes, and thus operating on the liquid, or by a shallow cullendar placed at the bottom of the vessel. It was proved, that a pipe employed and acted upon in the manner described in the specification, viz. by forcing the air at the end of it, would accomplish that object.

"The patent on which the plaintiff relied, and for the infringement of which this action was brought, was for certain improvements in evaporating sugar, which improvements were also applicable to other purposes. By the specification Kneller declares that his invention consists in a method or process, and certain apparatus as thereinafter described. He does not claim as his invention the principle, but the apparatus, by which the principle of causing evaporation is to be carried into effect; for he states that, by his apparatus, he is

enabled to evaporate liquids and solutions at a low temperature. It is evident that the object of the two patents is the same. But the mode of effecting that object is different. The specification continues, "and I further declare that my said invention and improvement consists in forcing, by means of bellows or any other blowing apparatus, atmospheric or any other air, either in a hot or cold state, through the liquid or solution subjected to evaporation." Now it was said, that the words which immediately follow, "and this I do by means of pipes," constituted a separate and distinct sentence from those which immediately preceded them, and that the patentee had stated his invention in the preceding sentence, and had claimed the same invention as that described by Knight and Kirk in their specification. But we think that the words "and this I do by means of pipes," &c., must in conjunction with those which immediately precede them, be taken to form one entire sentence, and that they amount altogether to an allegation on the part of the patentee, that his invention consisted of the method or process of forcing, by means of bellows or any other blowing apparatus, hot or cold air through the liquid subjected to evaporation, this being effected by means of pipes placed as described in the specification. Now the method described in Knight and Kirk's patent appears to us to be perfectly different. It is either to have a pipe, accommodated to the form of the vessel, or a cullendar, *placed at the bottom* of the vessel. The method described in the plaintiff's specification is to have a large horizontal tube (*near the surface* of the liquid), into which there are introduced a number of small perpendicular tubes, descending

through the liquid to the bottom of the vessel, and having their lower ends exactly on a level, and parallel to the surface of the fluid. The air is then forced by the blowing apparatus from the open end of the large tubes to the other end, which is closed, and as soon as the large tube is filled the air descends through the smaller tubes to the bottom of the vessel, and bubbles up through the liquid, and the evaporation is thereby kept up constantly and equally in all parts. It appears to us that this is a method or apparatus perfectly distinct from the other, and for that method and apparatus the patent was taken out."

Observations. Great care will be required in framing a new act to give a proper definition to the subject of a patent, particularly as to first principles and chemical discoveries (*a*).

There should be a body of law made expressly for the discoveries in chemistry, because the rules which apply to the inventor of a machine do not adapt themselves to the discoverer of a chemical truth.

How far the first discoverer of a principle should be protected in a monopoly of the principle, and not be confined to the means by which he brings it into use, is a question of great difficulty; but it seems to be very dangerous to give a monopoly of the principle.

What shall be the extent of an alteration or improvement which shall support a patent, is also a question of great difficulty, but it might be removed by a good legislative definition of an improvement (*b*).

(*a*) See page 96 of the Practical Treatise.

(*b*) On this matter, there are some good observations in the London Journal of Arts and Sciences for 1832. "As for instance, A. invents a

But it is worthy of observation by inventors, that a slight combination of mechanical means, which form an instrument that is new and useful, will support a patent.

Chap. IV.

Of the Specification (*a*.)

Respecting that important Instrument, the specification, several cases have been decided in the courts of law. They will be introduced under the heads of the Analysis to be found in the Treatise.

No further improvements can be suggested in the manner of framing the specification, than that the

useful printing press (supposing that such a machine was not known before), for this he claims and obtains a patent; B. examines this press, works it, and studies it, which forms the very seed of a second invention by B. for an improved press—he also claims and obtains a patent; and although B.'s press is different from that of A.'s in some things, or in many things, yet it is its offspring; it is an apple grafted on a crab tree, which most likely would never have existed if the crab tree were not in being. The talents of B. having been added to those of A. have produced the improved press; B. runs away with all the reward (that of A. being inferior can find no customers), to the great prejudice, perhaps the ruin of A. Can it then be said that A. had justice done him? No, certainly not. Such proceedings must naturally check and damp the exertions of talented men, when original inventions present themselves to their views. On the other hand, it often happens that in cases similar to the one mentioned, A. brings an action against B. for infringement on his patent right, gains his cause, to the prejudice of B. Must not this discourage attempts at improvements of patented machines?"

(*a*) See page 100 of the Practical Treatise.

judges should have power to amend the description *in all matters* which could not have misled the public, and that the inventors should be at liberty to deposit a model in some public building: and that if a patent were bad as to part it should not be bad as to the whole.

When the price of patents has been reduced, it may be urged that we have not any public building that would contain the models. The answer is obvious. There would not be any necessity to keep the model more than 14 years, after which time it might be destroyed. In May 1829, the number of patents then in force was 1855, of which a great number would not require any drawing or model.

The title of the Patent (*a*).—The rules of law respecting the title of the patent have not been relaxed, and it would be imprudent, under any change in the system, that they should be much altered.

In the case of *Bloxam* and another, assignees of Fourdrinier and another, v. *Elsee* (*b*), it appeared that a patent was granted to *Gamble* for a *machine* for making paper in single sheets without seam or joining *from one to twelve feet and upwards wide* and from one to forty-five feet and upwards in length, the method of making which machine had been communicated to him by a certain foreigner, with whom he was connected.

The description in the specification showed that the machine invented was so constructed as to be capable of producing paper *of one definite width only*, and in order to vary the width, a new machine was required.

(*a*) Page 102.

(*b*) 6 Barn. and Cress. 169 and 178. For other points decided by that case see *post*.

The patent was declared to be void, and the *Chief Justice* (*Abbott*) said: I think one of the objections which has been taken in this case is valid and must prevail; and consequently it is not necessary to give any opinion upon the others. By the patent it appears that the patentee had represented to the crown that he was in possession of a machine for making paper in single sheets, without seam or joining, from one to twelve feet and upwards wide, and from one to forty five feet and upwards in length. Upon this representation the patent is granted. The consideration of the grant is the invention of a machine for making paper in sheets of width and length, varying within the limits designated. If any material part of the representation was not true, the consideration has failed in part, and the grant is consequently void, and a defendant in an action for infringing the patent has a right to say that it is so. Now I think it impossible to say that both width and length are not important parts of this representation. It may be that if the representation had mentioned length only, a patent would have been granted for the invention, which (in its improved state at least) is eminently useful in a very important manufacture, as saving both time and labour in a very considerable degree. But although I may think this probable, I am not at liberty to pronounce judicially that it would have been so. I must therefore see whether the representation was true. It has been contended in support of the patent that the recital does not import that paper of different widths was to be made by one and the same machine, but may mean only that the width might be obtained by different

machines, each adapted and constructed to the extent required. But I think this construction of the recital cannot be allowed; for it is a different thing whether a manufacturer must supply himself with several different machines or with one only, capable alone of accomplishing all the purposes to be obtained by many. And if the width is not to be considered as material, the length cannot so be considered, and then the representation will only be that he has invented machines, by the use of several of which, paper of various widths and lengths may be made without seam or joining. And this will be at variance with all the specifications, which plainly show that whatever was done was to be done by one and the same machine. Then if the representation be (as I think it is) that paper of various widths may be obtained by one and the same machine, I must look to the evidence to discover whether the patentee was possessed of a machine, or of the invention of a machine, capable of accomplishing this object. And unfortunately the evidence shows that he was not. I say unfortunately, because it is to be lamented that the advantage of great ingenuity, labour, anxiety, and expense should be lost to those who have bestowed them. The patentee was at the time possessed of one machine, and one only, and this adapted to one degree of width, and one degree only. And he was not then possessed of any method by which different degrees of width might be manufactured by that machine or any other.

General rules for making the specification (*a*).—It

(*a*) Page 108.

was observed, that although the description of the invention is addressed to the public in general, it need not be so circumstantial, or so explanatory, that persons entirely ignorant of the elements of the science from which the subject is taken, may thereby alone be able to learn and use the invention.

That position of law is confirmed by authority in the case of *Crosley* v. *Beverley* at nisi prius (*a*). In the specification to that patent for an improved gas apparatus no direction was given respecting the condenser, which is a necessary part of every gas apparatus. Lord Tenterden said: a workman who is capable of making a gas apparatus would know that he must put in a condenser. The patentee does not direct it to be put in, but he does not say that it is to be left out.

When terms used in Specification are ambiguous (*b*). Taking the title, patent and specification of Champion's patent together (*c*), it was very difficult to say whether the word *whatever* referred to the total exclusion of starch, or whether when combined with the words "without any starch," it was merely a description of the kind of sail cloth which had been improved. For that ambiguity the patent was declared to be void.

Necessary descriptions omitted in the Specification (*d*).—Every part of the invention which is new must be accurately described as to the manner in which it is

(*a*) 3 Car. and Paine, 513.
(*b*) Page 109.
(*c*) *Campion* v *Benyon*, 3 Brod. & Bing. 5; and see *post*.
(*d*) Page 111.

to operate. In the case of *Felton* v. *Greaves* (*a*). The patent was granted for a machine for an expeditious and correct mode of giving a fine edge to knives, razors, *scizzors* and other cutting instruments." The machine described in the specification consisted of two circular rollers of steel made *rough, like files*, and the instrument to be sharpened was passed backward and forward in an angle formed by their intersection. It appeared in evidence that if the machine was intended to give a fine edge to *scizzors* that the one roller should be smooth.

In the specification it was also stated that *other materials* besides steel *might* be employed, and it appeared that if Turkey stones, instead of steel, were used for both the rollers, it was possible to succeed with scizzors. The Lord Chief Justice observed :—The specification describes both the rollers as files. It is not stated either that the rollers must be one rough and the other smooth, or that Turkey stones must be substituted for the files, when it is intended to sharpen the edges of scizzors. The specification is insufficient.

There are persons who imagine that if they introduced the words, " and for other useful purposes," into the title of the patent that the title must be good; and that if they insert the words " other materials may be used," or " any other substance from which the thing can be obtained," into the description, that it is impossible to find fault with the specification. There is not a greater error. In the last case it appeared that the words, " other materials," did not assist the description or save the specification.

(*a*) 3 Car. & Payne's Rep. 611.

In addition to the old authorities, another case (*a*) has been decided, by which it appears that the words "any other substance" had been nearly fatal to an important patent. In the introductory part of the specification, Clegg, the original patentee, used these words, "My improved gas-apparatus is for the purpose of extracting inflammable gas by heat from pit-coals, tar, *or any other substance* from which gas or gases, capable of being employed for illumination, can be extracted by heat;" and then he went on to mention the other inventions. In the description of the retort, he called it "a horizontal flat retort, in which coal, or other materials capable of producing inflammable gas, are heated, and the gas extracted by distillation;" and in the course of it he spoke of the "coal or other substance," being "spread in a thin layer." Throughout the description of the retort, and the explanation of the drawings, he always spoke of "coal," or "coal or coke," or "coal or other substance," only.

It appeared that the retort was incapable of obtaining gas, except very imperfectly, or by considerable modifications, *from oil.*

The date of the patent was December 9, 1815, that, of the specification, June 8, 1816. At these periods it was known, as a philosophical fact, that gas was producible from oil; but it had not been proposed to manufacture such gas for purposes of illumination. Some speculations, indeed, were then going on, and a patent was obtained about the same time for making it; and the manufacture was subsequently brought into use, though not very generally.

(*a*) *Crosley* v. *Beverley.* 1 Mood. & Malk. 283, and see 3 Car. & P. 513.

The counsel for the defendant submitted that the unfitness of the retort for making gas from oil was fatal to the patent, and contended that it was the duty of the patentee not to overstate the limits within which his invention will be useful, that no person may be led to unavailing expense in trying it upon purposes for which it is unfit.

Lord Tenterden said—I must look at the whole of the specification together; and doing so, I think it is evident that it only represents the retort as suited to materials of the same kind as coal. I am of opinion also that I ought to understand the "other substances" mentioned to signify *substances then known* to be available for the purpose of illuminating with gas, not every thing which will burn with a flame; for all these, in a certain sense, will produce gas. It is clear, on the evidence, that oil was not then generally considered as such a substance; and the fact that some speculations were going on at the time with respect to its being so will make no difference. The patentee cannot be required to foresee the success of these speculations, if they have succeeded; but I must consider him, as a practical man, to have spoken of things which practical men then treated as usable for the purpose specified. On both grounds, therefore, I must decide against the objection. The law is severe enough in breaking up patents altogether for a fault in any part of them, without straining it in favor of such an objection.

This position of law was further illustrated in the case of *Crompton* v. *Ibbotson* (*a*). The patent was for an

(*a*) Danson and Lloyd's Reports, 33.

improved method of drying and finishing paper. The specification contained these words: "the invention consists in conducting paper by means of a cloth or cloths against a heated cylinder; which cloth may be made *of any suitable material*, but *I prefer* it to be made of linen warp and woollen weft; which cloth is shown in the drawing by blue lines."

It appeared by the evidence of the plaintiff's witness, that, as to the conducting medium, he had tried several things, but he was not aware of any thing that would answer the purpose except the material which the patentee said he preferred. Whereupon Mr. Justice Bayley directed a nonsuit.

A motion was made to set aside that nonsuit. It was refused, and Lord Tenterden said, the patent was obtained for the discovery of a proper conducting medium. The plaintiff found, after repeated trials, that nothing would serve the purpose except the cloth described in the specification; yet he says the cloth may be made of any suitable material, and merely that he prefers the particular kind there mentioned. Other persons, misled by the terms of this specification, may be induced to make experiments which the patentee knows might fail, and the public has not the full and entire benefit of the invention—the only ground on which the patent is obtained.

Parts of the Manufacture claimed not original (*a*).—In the case of *Campion* v. *Benyon* (*b*), it appeared that the patent was taken out "for an improved method of making sail-cloth without any starch

(*a*) Page 112. (*b*) Brod. & Bing. 5.

whatever." The improvement or discovery consisted in a new mode of texture, and not in the exclusion of starch, and the advantage of excluding that substance had been discovered and made public before that time. The Court held that the patent was void, as claiming, in addition to what the patentee had discovered, the invention of something already made public. Mr. *Justice Park* observed, " In the patentee's process he tells us that the necessity of using starch is superseded, and mildew thereby entirely prevented: but if he meant to claim as his own an improved method of texture or twisting the thread to be applied to the making of unstarched cloth, he might have guarded himself against ambiguity, *by disclaiming* as his own discovery the advantage of excluding starch."

Parts or things put in the Specification to mislead (*a*).—The rule that if any considerable part of the things described in the specification be unnecessary, it will be presumed that it was inserted only with a view to perplex and embarrass the inquirer, was confirmed by the case of *Savory* v. *Price* (*b*).

That patent had been granted for a method of making a neutral salt or powder, possessing all the properties of the medicinal spring at Seidlitz, under the name of " Seidlitz Powder."

The specification enrolled within the time required by the patent, *set out three distinct recipes*, and described the modes and proportions in which the results were to be mixed, in order to produce the " Seidlitz Powder."

(*a*) Page 116. (*b*) Ryan & Moody, 1.

It was proved that the three products so mixed answered the purpose professed in the patent, and that *the combination was new* and useful.

But upon cross-examination of the plaintiff's witnesses, the following facts were established. The recipe *No.* 1. produced the substance called "Rochelle Salts." Rochelle Salts were known to the world before 1815 under that name, and also as Soda Tartarizata.

Recipe *No.* 2. produced "Carbonate of Soda," which was known before 1815, and was in the Pharmacopœia of 1809; and a more expensive, but more perfect way of making it was also known, and it might be bought in shops.

The recipe *No.* 3. produced "Tartaric Acid," the method of making which was known at the time of the patent, and under that or some other name it might be bought in chemists' shops; and other methods of making it were known, all of which would be equally efficacious for the combination of Seidlitz Powders.

Rochelle salts, carbonate of soda, and tartaric acids *mixed in the manner prescribed*, produced the Seidlitz Powders.

The Chief Justice said—"It is the duty of any one, to whom a patent is granted, to point out in his specification the plainest and most easy way of producing that for which he claims a monopoly; and to make the public acquainted with the mode which he himself adopts. If a person, on reading the specification, would be led to suppose a laborious process necessary to the production of any one of the ingredients, when, in fact, he might go to a chemist's shop and buy the same thing as a separate simple

part of the compound, the public are misled. If the results of the recipes, or of any one of them, may be bought in shops, this specification, tending to make people believe an elaborate process essential to the invention, cannot be supported."

The Drawings incorrect (*a*). —On the trial at nisi prius it was objected in the case of *Bloxam* v. *Elsee* (*b*), that the specification was bad because there were several words in it not in English: such as *vice de pression*, *vice repulsion* and *vice de re-action*, for different screws: and the French word *chapitre*, for a cap, also occurred. It was however proved, that, from the drawings annexed to this specification, a skilful mechanic might make the machine; but it was contended that, as a specification could not be made by drawings alone, it must be made in apt words, intelligible to mechanics; and if this specification were held good, every thing mentioned in a specification might be called by a wrong name, and drawings referred to for the whole. Even the scale appended to the drawings was a scale of *pieds* and *pouces*, terms unknown to English mechanics.

The Lord Chief Justice observed, "It was proved that the names to the scale were quite immaterial: for relative proportion, which was all that was wanted, the scale would have been as good if there had been no names at all.

"An inventor of a machine is not tied down to make such a specification as, by words only, would enable a skilful mechanic to make the machine, but he is to be allowed to call in aid the drawings which he annexes to the specification, and if, by a comparison of

the words and the drawings, the one will explain the other sufficiently to enable a skilful mechanic to perform the work, such a specification is sufficient."

When one of different ways or different ingredients fails in its operation (*a*).—In the case of *Lewis* v. *Marling* (*b*) a most important point was settled. A patent was granted for improvements on shearing machines for shearing or cropping woollen and other cloths. The patentees in their specification claimed (amongst other things) " the application of a proper substance fixed on or in the cylinder *to brush* the surface of the cloth to be shorn." The brush for the surface of the cloth was soon found to be useless, and the patentees never sold any machines with it.

The Court decided that if the patent be granted for several things, one of which is supposed (at the time of enrolling the specification) to be useful, but is afterwards found not to be so, yet the grant is good in law. The opinions of the judges are very excellent.

Lord Tenterden observed, " As to the objection, on the ground that the application of a brush was claimed as a part of the invention, adverting to the specification, it does not appear that the patentee says the brush is an essential part of the machine, although he claims it as an invention. When the plaintiffs applied for the patent, they had made a machine to which the brush was affixed, but before any machine was made for sale they discovered it to be unnecessary. I agree, that if the patentee mentions that as an essential ingredient in the patent article, which is not so, nor even useful, and whereby he misleads the public, his patent may

(*a*) See page 119. (*b*) 10 Barn. & Cress. 22.

be void; but it would be very hard to say that this patent should be void, because the plaintiffs claim to be the inventors of a certain part of the machine not described as essential, and which turns out not to be useful. Several of the cases already decided have borne hardly on patentees, but no case has hitherto gone the length of deciding that such a claim renders a patent void, nor am I disposed to make such a precedent."

Mr. *Justice Bayley* said, "I am of the same opinion. To support a patent, it is necessary that the specification should make a full and fair disclosure to the public of all that is known to the patentee respecting his invention. If it does not, the consideration on which he obtains his patent fails. If he represents several things as competent to produce a specific effect, when only one will answer, that is bad; or if he suppresses any thing which he knows will answer, that also is bad. But it is objected here, that the plaintiffs described the application of the brush as parcel of their discovery. At the time when the patent was obtained a brush was used, and there is no reason to doubt that the plaintiffs at that time thought it necessary."

Mr. *Justice Park*.—"The objection to the patent as explained by the specification may be thus stated: the patent is for several things, one of which being supposed to be useful is now found not to be so; but there is no case deciding that a patent is on that ground void, although cases have gone the length of deciding, that if a patent be granted for three things, and one of them is not new, it fails in toto. The prerogative of the crown as to granting patents was restrained

by the statute 21 Jac. 1, c. 3, s. 6. to cases of grants, 'to the true and first inventors of manufactures, which others at the time of granting the patent shall not use.' The conditions, therefore, is, that the thing shall be new, not that it shall be useful; and although the question of its utility has been sometimes left to a jury, I think the condition imposed by the statute has been complied with, when it has been proved to be new."

The things described are not the best known to the Patentee (*a*).—Another important rule of law was established in the case of *Crosley* v. *Beverley* (*b*). Mr. Clegg, the patentee, had a grant for an improved gas apparatus, and he claimed a gas meter (or part of it), as described in the specification. It appeared on the examination of Mr. Clegg himself, that he had invented the method of making the gas meter, as described in the specification, in the time *between the dates of the patent and the specification*. Before he took out the patent he had completed the design of the meter, but he had not actually made one, and he found several improvements upon it before he sent in his specification, in which he described the meter so improved as the invention claimed by him. The Court were clearly of opinion the patent was valid in law, and *Lord Tenterden* observed, that he was at a loss to know upon and for what reason a patentee is allowed time to disclose his invention, unless it be for the purpose of enabling him to bring it to perfection. If, added his Lordship, in the intermediate time another person were to discover the improvements for so much of the

(*a*) See p. 121. (*b*) 9 Barn. & Cress. 63.

machine the patent would not be available. And Mr. *Justice Bayley* said,—It is *the duty* of a person taking out a patent to communicate to the public any improvement that he may make upon his invention before the specification has been enrolled.

Chap. V.

Of the Practice of obtaining Letters Patent for Inventions (*a*).

There has not been any important new decision respecting the method of obtaining the letters patent: but the practice requires much alteration, and observations will be made upon the different steps which the inventor is obliged to take before he obtains possession of his patent.

He is required to attend at several offices under government; which is a course that necessarily increases *the price paid* for the grant.

The question, whether the price of a patent ought or ought not to be *high*, has been much debated. There are advocates who strenuously contend on each side(*b*) of that important question. It is quite clear

(*a*) See p. 137 of the Practical Treatise.

(*b*) In the London Journal of Arts and Sciences for June, 1830, it is observed by a writer, "After all, the advocates of cheap patents make a much more mighty stumbling block of this first cost of a patent than it really is, and they seem to consider it as the great impediment to invention; which being removed, invention would flourish with a

that the present amount of fees is very heavy, but it is very doubtful whether patentees in general would be benefited by the grant of the right being made nearly gratuitously to every person who applied for it.

The conclusion to which the majority of persons have arrived is, that the price of the patent should be about one half of its present amount. If it were reduced to that sum, and the inventor could obtain his patent by paying (at one place for all the offices) one half of the money, on presenting his petition, and the other half on its completion, a large saving would also be made in his time, and a great reduction in the necessary professional assistance.

The amount of fees might also vary according to the length of time for which the privilege was granted.

The following sums of money are paid for letters patent for an invention, as appeared by several returns made to the House of Commons in the year 1826.

1. Return from the office of Secretary of State for the Home Department, England.

Reference to the Attorney or Solicitor General	£2	2	6
Royal Warrant	7	13	6

luxuriance hitherto unseen. Now the real cause which, under the present law, represses invention and makes capitalists loth to speculate in inventions, is the uncertainty which reigns through every stage of a patent, from the beginning to the end; uncertainty, first, whether the invention will answer; and secondly, whether the patent will stand the brunt of an action at law, through which ordeal it will surely have to pass, so soon as it has become profitable to the inventor. Both of these points can only be settled at great expense, and it is the fear of that expense, and not the first costs of a patent, which deters men from taking up the inventions of others, and ought to deter all prudent men of small means from attempting to take out patents and work them at their own risk."

With an addition of 1*l.* 7*s.* 6*d.* if the patent of invention extends to His Majesty's Colonies and Plantations abroad; and if the patent is granted to more than one person an additional fee upon the royal warrant of 1*l.* 7*s.* 6*d.* for each additional person.

King's Bill	£7 13 6

With an addition of 1*l.* 7*s.* 6*d.* if the patent extends to the Colonies; and if granted to more than one person an additional fee upon the King's Bill of 1*l.* 7*s.* 6*d.* for each additional person.

2. From the office of the Secretary of State for the Home Department, Scotland.

Reference to the Lord Advocate . .	£2 2 6
Royal Warrant and Stamp	16 17 0

And if granted to more than one person, an additional fee of 2*l.* 15*s.* for each additional person.

3. From the office of the Secretary of State for the Home Department, Ireland.

Reference to the Lord Lieutenant . .	£2 2 6
Warrant and Stamp	9 3 6

And if granted to more than one person an additional fee of 1*l.* 7*s.* 6*d.* for each additional person.

Signed by GEO. R. DAWSON.

Whitehall, 6th April, 1826.

4. Return from the Attorney or Solicitor General's offices of the expenses incurred there for taking out a patent for England.

To the Attorney General for his report .	£3 3 0
To the Clerk	1 1 0

If a caveat be entered the Clerk receives . .	£0	5	0
To the Attorney General for his approving, settling and signing the bill	5	0	0
If the patent is opposed (which sometimes happens) the following fees are charged:			
To the Clerk for every summons summoning the parties to attend before the Attorney General	0	5	0
To the Attorney General for the hearing of the parties by themselves or their agents and witnesses; each party	2	12	6
To the Clerk	0	12	6

The same fees are paid whether the patent passes the office of the Attorney or Solicitor General.

Signed by H. HAINES and H. OWENS,

10*th April*, 1826. *Clerks to the Attorney and Solicitor General.*

5. Return from the Patent Office of the Attorney General of the expenses incurred there for taking out a patent for England.

Stamp duty on the warrant from the King to prepare a bill for His Majesty's signature to pass the great seal	£1	10	0
To the Clerk of the Patents for preparing the bill and docquet, and his fee	5	10	6
Stamp duty on the bill	1	10	0
Ingrossing Clerk	1	1	0
To the Clerk of the Patents for preparing and engrossing two transcripts of the bill to be passed through the signet and privy seal offices, parchment for such transcripts, and transmitting the same to those offices; each transcript 13*s*. 9*d*.	1	7	6
Stamp duty on each transcript 1*l*. 10*s*. . .	3	0	0

Signed by M. POOLE,

10*th April*. 1826. *Clerk in the Patent Office.*

6. Return from the Signet Office, of the fees payable there for a common patent for an invention for England, and also for Ireland.

For England	£4	7	0
For Ireland	3	3	0

Signet Office,
10th April, 1826.

Signed THOS. VENABLES,
Deputy Clerk of the Signet attending.

7. Return from the Privy Seal Office, of the ordinary expenses payable there for a grant of a patent for an invention passing the Privy Seal for England.

Office Fees	£4	0	0
Stamp	0	2	0
	4	2	0

Privy Seal Office,
April, 1826.

JOHN THOMAS FANE,
Clerk of the Privy Seal in attendance.

8. Return from the Lord Chancellor's Patent Office, of the fees payable there on a patent for an invention for England passing under the great seal.

Patent Office	£5	17	8
Stamps	30	2	0
Boxes	0	9	6
Deputy	2	2	0
Hanaper	7	13	6
Deputy	0	10	6
Recipe	1	11	6
Sealers	0	10	6
	£48	17	2

Every additional name pays an additional fee to the Hanaper of 2*l.* 13*s.* 6*d.*

Patent Office, Adelphi,
17th April, 1826.

Signed, JAMES SETON,
D. C. Patents.

In Chap. x. will be given the different amounts of fees paid in several countries, from which it will appear that the price paid for the English patent is very great in proportion to that paid for foreign grants to secure inventions.

A perusal of this list of fees must convince every impartial inquirer, that the mode of granting a patent for an invention is very dilatory and too expensive. The charges of additional fees for additional names, and further fees if the grant is extended to the colonies, appear to be illegal (*a*).

(*a*) In the London Journal of Arts and Sciences for February 1830, there is a very able letter on the subject of these fees, signed Vindicator, from which the following extract is made:—"We will refer to the several stages of the petition and subsequent documents, as described by Mr. Abbott, a gentleman in the Petty Bag Office (Report, p. 47, et seq.) Mr. Attorney General's classic production, called the 'Bill,' changes its cognomen for the purpose of showing its activity in collecting the fees, as fantastically as harlequin does his dress. It is 'Mr. Attorney General's Bill,' as the proper father—then 'The King's Bill,' by adoption—then the 'Signet Bill,' by grace—then the 'Privy Seal Bill,' without grace; but now comes the legerdemain par excellence; it is not converted into 'My Lord Chancellor's Bill,' yet the fees to the Old Hanaper and to Mr. Deputy Hanaper, its trusty custos, are converted out of the patentee's pocket to the amount of £8 4*s.*, although there is not a single official act done, no, not even a scratch of the pen, for the extravagant charge: nor does Mr. Deputy even make his appearance on behalf of himself and the 'Hanaper.' How then is the business managed? Mr. Abbot explains it. He says (p. 49,) 'The Bill originally used to pass another stage which is now dispensed with, it used to go to the Hanaper—to pay the Hanaper fees on it,' (an important public object, no doubt); 'it is not now taken to the Hanaper Office.'

"The reader's unmystified intellect will naturally draw the inference, that as the bill was formerly taken to the Hanaper to pay the Hanaper fees on it, and that as this stage of the business is now dispensed with, the fees are necessarily dispensed with. A conclusion from sound

Several of the numerous instruments which the inventor is obliged to make may be dispensed with. The inventor might present a petition with a notice (not an affidavit) that he intends to procure patents for Ireland and Scotland, and take it to the office of the Secretary of State for the Home Department.

The affidavit, that the petitioner is the inventor, is an unnecessary oath. It leads to perjury, and is not any

premises may be very logical where fees do not form the corollary; *e. g.* 'but the Lord Chancellor's officer, the Clerk of the Patents at the Great Seal, receives the Hanaper fees and pays them over.' So that even the formal ceremonial of the old Hanaper's state is dispensed with, the Majesty of the Great Seal is proved by its own officers to consist in receiving fees, and the intellect and labour of the community are to be taxed for keeping up this pretty farce! If this be not unblushing charlatanism, I do not know what is. I believe that upon further investigation the whole family of 'State and Chancery recipes' will be found as unessential to the actual security of an invention, and the ordinary business of life, as is this admirable instance of additional protection given to a patent by its not passing to the Hanaper, in order to pay the Hanaper fees.

"An extension of the patent to the colonies 'is attended with no extra trouble, nor is there any separate document,' only an addition to the prayer of the petition of the words, 'and all your Majesty's plantations and colonies abroad.' For this heavy duty, the copying of eight words—nearly £6 are charged at the Secretary of State's and other offices!!

"The courtly minuet dances performed by the petition, warrants, report, &c. for an Irish patent, between London and Dublin, occupying with their eccentric fantasias nearly six months (even sometimes twelve months,) 'to the imminent danger, and in some instances the utter destruction of the Irish patentee's right,' are strongly and correctly described by Mr. Abbott. He says (p. 51), with the proper feelings of a man intent upon the interests of his employers, 'I have often had occasion to remonstrate on the danger likely to arise from that delay, and I have pressed it in every way I could, but I could never get a patent (Irish) in less than five or six months there'."

safeguard. It is, however, required to be made in almost every country. The affidavit is sometimes made by two or three persons swearing that they are the *joint inventors*, whereas one of them is perhaps only the inventor of the means of raising the money requisite to carry on the business. When the law is enacted that an inventor may assign his invention, so that the assignee may take out the patent in his own name, then it is quite clear that this affidavit would become quite unnecessary.

This petition and notice should then be carried, with a reference of it to the Attorney General, to the office for patents for invention, and not to the private office of the Attorney or Solicitor General. At that office and at that time the deposit of half the amount of the fees should be made. The titles of the intended patents should be inserted in the Gazette, from which they would be published all over the kingdom.

The office for patents for inventions should be remodelled. The Attorney General of the day should be at the head of it, with power to appoint a sufficient number of officers to do the work (*a*), and all questions respecting priority of invention could be decided by him. A large penalty or imprisonment should be awarded to an officer who became an agent for taking out patents. One month should be allowed to enable persons to lay their complaints before the Attorney General, but the *date of the petition* should be made the date of the letters patent.

(*a*) One of them would most probably be a barrister of scientific attainments, who would decide the law and fact at that early stage with expedition.

The King's Signature, which is now required at two separate times, should be rendered unnecessary. It is quite an idle waste of time that an inventor should go twice to the Secretary of State for the sign manual of his Majesty. In former times, when letters patent related to grants of land, and to monopolies from which the king was to derive a profit either directly or indirectly, it might have been prudent, but at the present time it is a custom worse than useless.

The signet and the *privy seal* may be passed over, and the instrument might be carried at once from the office of patents to the Lord High Chancellor, for the great seal.

As to Ireland and Scotland; when the letters patent have been first taken out in England and passed the great seal, then the office for patents for inventions in England, upon receipt of half the amount of fees for Scotland and Ireland, should communicate *direct* to the offices in Scotland and Ireland, that the letters patent had passed the great seal, and thereupon letters patent in those countries should be made out for them, without any further trouble on the part of the inventor.

The same time (a month) should be allowed to persons in Ireland to go before the Irish Attorney General, or in Scotland to go before the Lord Advocate: and the titles should for that purpose be published in the Dublin and Edinburgh government papers.

The Specification (*a*).—Many alterations might be

(*a*) See p. 141.

made in the manner of framing the specification: but the principal improvement would arise from permitting a model to be deposited in some public building, and enacting that all the immaterial parts in the description might be altered by the judges.

When the patent has once passed the great seal, it cannot be altered; but if a clerical error should creep into the enrolment of the specification, then the Court will interfere on motion, and order the enrolment to be amended (*a*).

The time allowed for making and enrolling the specification should in all cases be the same. Six months is a period much too long. It enables parties to commit many frauds, and might be reduced to one month for each kingdom, and two months for the United Kingdom of Great Britain and Ireland.

The acknowledgment of the specification is required to be made in person. No injury could arise from its being done by a power of attorney in cases in which the parties happened to be abroad, or unwell.

Some provision should also be made for those cases in which the party becomes very ill, or dies between the date of the patent and the acknowledgment of the specification. His representative might have the power to put in the specification. If it were imperfect it would be open to any person to repeal it.

The Caveat.—This instrument, which has (in its present form) illegally crept into the system, is the grand source of all the frauds which torment real

(*a*) In re Redmund, 5 Russ. Rep. 44.

real inventors. It is the means by which dealers in patents (possessed of money, but deficient in brains,) rob the poor inventors. It is impossible to describe the system of fraud and vexation which has arisen from the permission to enter caveats. If all the cases which have come to the knowledge of professional men were set forth, this little book would, on the principle that "the greater the truth the greater the libel," (*a*) contain many libels. There is but one remedy—the system must be abolished altogether.

When a title appears in the Gazette, all parties must take notice of it, and apply to the Attorney General at the Patent Office, within one month, for redress of any supposed injury.

The Acts of Parliament to increase the benefits to

(*a*) The following anecdotes are quoted from the London Journal of Arts and Sciences, for June 1829. "A writer says, "an inventor has within a few days informed me, that in support of an invention which was recently announced in your Journal, he had to appear by his solicitor to no less than eighteen oppositions, at an expense of nearly 100*l.* to himself. Upon eighteen attendances, fees to Mr. Attorney General, at 3*l.* 10*s.* each, amount to 63*l.* for the inventor; and eighteen at 3*l.* 5*s.* each, are 58*l.* 10*s.* for the contrary side, besides their other expenses; consequently upon this single affair, Messrs the Attorney and Solicitor General, who divide the fees, received one hundred and twenty-one pounds and ten shillings.

"Connected with the subject of opposition and hearings before Mr. Attorney General, a curious piece of information has been lately given me. I am told that a gentleman connected with the office undertakes, upon payment of 10*l.* by the inventor, to carry him through all hearings and oppositions. If this be so, and the proposal was generally understood and acted upon, as by universal, a subtraction from the pockets to the amount of 1500*l.* to 2000*l.* per annum would be effected for this article of service. It undoubtedly is better to pay ten pounds to a certainty, than to run the chance of paying sixty to one hundred pounds."

patents, would be so rare under better laws, that the present rules respecting them need not be altered, except that harsh rule that no assignee of a patent right shall have it extended for his benefit, and that the application must be made only within two years of the expiration of the patent right (*a*).

Chap. VI.

Of the Construction of Letters Patent (*b*).

Some cases have come before the Court respecting the kind of construction to be put upon instruments made to protect inventions. It is provided in the letters patent (*c*) that they shall be taken, construed, and adjudged in the most favourable and beneficial sense, for the best advantage of the patentee and his assigns, as well in all the courts of record as elsewhere, notwithstanding the not full and certain describing the nature and quality of the invention, or of the materials thereto conducing and belonging. Yet the judges (*d*) *in former times* did not hesitate to put the most unfavourable construction on all the words which the inventor used in the title to his patent, and in his specification.

It is worthy of observation that the tide has turned

(*a*) Standing order of House of Lord, 28th March 1808. See Dwarris on Statutes, Vol I. p. 58.

(*b*) See p. [illegible] the Practical Treatise. See Appendix, p. [illegible].

(*c*) See p. [illegible] Treatise.

in favour of patentees, and that the judges *of the present day* make every reasonable intendment in favour of the patentee. It would be well if the Courts of Law had the power to correct all unintentional errors and matters of form. And in a new act of parliament it should be expressly enacted, that the construction most in favour of the patentee should be always put upon the words in the description of the invention, lest other judges should arise who might think that patents for inventions are odious monopolies, and return back to the old method of rigid construction.

The Construction of Acts of Parliament passed to enlarge Patent Rights(*a*).—It was formerly held that a judge could not look into the act of parliament for any explanation of the contents of the patent or specification. In a late case(*b*) that doctrine was confirmed. It may be useful to state the facts at length, for there were two patents in it.

By letters patent of the date of the 20th April, 1801, reciting, amongst other things, that one Gamble had by his petition represented to the King, that he was in possession of a machine for making paper in single sheets without seam or joining, from one to twelve feet and upwards wide, and from one to forty-five feet and upwards in length, the method of making which machine had been communicated to him by a certain foreigner with whom he was connected, and that he conceived the same would be of great public utility, and that the same was new in the kingdom, and had not been practised therein by any other person whomsoever, to

(*a*) See p. 138 of the Practical Treatise.
(*b*) Bloxam v. Elsee, 6 B. & C. 171.

the best of his knowledge or belief—his late Majesty granted to Gamble, his executors, administrators, and assigns, the sole privilege "of making, using, exercising, and vending the said invention, for fourteen years."

By other letters patent of the 7th June, 1801, reciting, amongst other things, that Gamble had, by his petition, represented to the King, that he, in consequence of a further communication made to him by a certain foreigner residing abroad, with whom he was connected, was in the possession of certain improvements on and additions to a machine for making paper in single sheets, without seam or joinings, from one to twelve feet and upwards wide, and from one to forty-five feet and upwards in length, being the machine for which he had obtained the letters patent bearing date the 20th April, 1801; that such improvements and additions would not only make the said machine more perfect and complete, but by far more useful to the public than it was in its then present state; that the same so improved was new in this kingdom, and had not, with such additions and improvements, been practised therein by any person, to the best of his (Gamble's) knowledge or belief—his late Majesty did, by the last mentioned letters patent, grant to Gamble, his executors, administrators, and assigns, the sole privilege of making, using, exercising, and vending his said invention, for the term of fourteen years from the date of the last mentioned letters patent.

On the 7th January, 1804, Gamble assigned all his interest in these two patents to H. Fourdrinier and S. Fourdrinier, the bankrupts.

By an Act of Parliament passed in 1807, *reciting that* H. Fourdrinier and S. Fourdrinier and Gamble had made, used, and continued to make use of the said improved machine in a very extensive trade, in part whereof H. Fourdrinier and S. Fourdinier and Gamble were jointly concerned as copartners, and that they had been put to great expense, &c., it was enacted, that the sole privilege, right, and authority of making, using and vending the said improved machine within the United Kingdom of Great Britain and Ireland, and in his late Majesty's colonies and plantations abroad, should, from and after the passing of that act, be, and the same was thereby declared to be vested in H.Fourdrinier, S. Fourdrinier, and Gamble, their executors, administrators, and assigns, for and during the term of fifteen years from thenceforth next ensuing, being an addition of seven years, or thereabouts, to the term granted by the said letters patent.

By the *sixth section* it was enacted, that *every objection* which might have been made to the validity of the said letters patent, and to the sufficiency of the specifications enrolled as aforesaid, should be of the like force and effect in law in any action or suit brought by virtue of that act, as such objections respectively would have been if that act had not been passed, and if also the specifications to be enrolled, as required by that act, had been enrolled, instead of the former specifications respectively, except only as to the extension of the said privileges for the further term of years thereby granted.

Lord Tenterden in his judgment made the following observations: " I think it may be admitted that by subsequent improvements and discoveries, a machine was

obtained capable of making paper of width varying within certain limits, though probably not extending to more than half the width mentioned in the patent. The specification enrolled under the act of parliament appears sufficiently to describe such a machine, and a mode of adjusting it to different degrees of width within the limits of its own breadth. The first specification is evidently confined to one width only. Then can the last specification be taken to furnish an answer to the objection? Now, supposing the act of parliament so far substitutes the last specification in the place and stead of the former specification, as to remove all formal objections to them, to which the latter is not open, still it cannot so far operate retrospectively as to enable the patentee to say that he possessed in 1801, or had then discovered or invented a machine which it appears that he did not possess, and had not invented or discovered until a much later date. If the first machine had been capable of working at different degrees of width, *though clumsily and imperfectly*, the latter machine would have been an improvement of it; but as the first, whether considered as existing actually or in theory, was wholly incapable of this, the latter machine does not in this respect furnish an improvement of anything previously existing, but an addition of some new matter not existing or known at the date of the first patent, and which nevertheless is therein represented as existing or known, and which cannot but be considered an important part of the representation then made, and of the consideration of the grant. If the first grant was void, the subsequent grants by the patent and by the statute must fall to the ground, as having nothing to support

them. I think myself compelled therefore to yield to this objection."

When the Court of King's Bench took time to consider of their judgment, in the last reported case, *Hullett* v. *Hague* (*a*), *Lord Tenterden* said—" I cannot forbear saying that I think that *a great deal too much critical acumen* has been applied to the construction of patents, as if the object was to defeat and not to sustain them."

CHAP. VII.

OF THE PROPERTY IN AN INVENTION.

THERE has not been many decisions which illustrate the nature of the property that an inventor has acquired in his patent (*b*).

Number of Persons interested (*c*).—Many questions have arisen in practice respecting the power of granting *licences* (*d*), which will never be satisfactorily settled until some legislative enactments have been made to regulate them.

It would be foreign to the purpose in a legal treatise, to speculate upon the probable opinion of the courts of law upon the questions—whether a patentee can grant licences to companies consisting of more than five persons—whether the licences can be

(*a*) 1 Barn. & Ad. 377. In the year 1831.
(*b*) See page 150 of the Practical Treatise.
(*c*) See ibid. p. 161. (*d*) See ibid. p. 169.

granted for particular districts, and whether licences can be regranted by persons to whom the patentees have made licences.

Bankruptcy (*a*).—It was observed that the letters patent would pass to the assignees of a bankrupt. A doubt was raised in the late case of *Bloxam* and another (assignees of Fourdrinic) v. *Elsee* (*b*), whether the assignment was not void if the creditors exceeded five in number. An act of parliament had been passed for enlarging the term granted to the patentee for the enjoyment of the patent by the assignees of the patent granted to Mr. Gamble. It was enacted, that in case the power, privilege, or authority, granted by the letters patent, should at any time become vested in or in trust for more than the number of five persons or their representatives, at any one time, *otherwise* than by devise or succession (reckoning executors and administrators as and for the single persons they represent as to such interest as they are or shall be entitled to in right of such their testators or testator), then and in every of the said cases, all liberties, privileges and advantages vested in the patentees, their executors, administrators, and assigns, should cease, determine, and become void.

The parties who were interested in the patent under the act of parliament became bankrupt, and creditors exceeding five in number proved under the commission. The Court held that the clause applied only to an assignment by act of the party, and not to an assignment by operation of law, and consequently

(*a*) See page 165 of the Practical Treatise.
(*b*) 6 Barn. & Cress. 169. At nisi prius, 1 Car. & P. 558.

that the interest of the assignees of the bankrupt in the patent had not ceased.

By the seventh section of the act of parliament (*a*), it was provided, that H. Fourdrinier, S. Fourdrinier, and J. Gamble, their executors, &c. or any person or persons who should at any time during the said term of fifteen years have or claim any right, title, or interest in law or equity in or to the power, privilege, or authority of the sole making, using, and vending the said improved machine, should make any transfer or assignment of the said liberty or privilege thereby vested in H. Fourdrinier, S. Fourdrinier, and J. Gamble, their executors, &c. or any share or shares of the benefit or profits thereof, or should declare any trusts thereof to or for any number of persons exceeding the number of five, or should divide the benefit of the liberty or privileges thereby vested in H. F., S. F., and J. G., their executors, administrators and assigns, into any number of shares exceeding the number of five, or should do or procure to be done any act whatsoever, during such time as such person or persons should have any right or title either in law or equity, which should be contrary to the true intent and meaning of an act of the 6 Geo. I. c. 18. s. 18; or in case the said power, privilege or authority should at any time become vested in or in trust for more than the number of five persons or their representatives at any one time, or otherwise than by devise or succession, (reckoning executors and administrators as and for the single persons they represent as to such interest as they are or shall be entitled to in right of such their testators or testator,) then and in every of

(*a*) See page 169 of Practical Treatise; and ante, p. 54.

the said cases, all liberties and advantages whatsoever thereby vested in H. F., S. F., and J. Gamble, their executors, administrators, and assigns, should utterly cease, determine, and become void, any thing therein contained to the contrary thereof notwithstanding.

On the 8th of Nov. 1810, a commission issued, under which the Fourdriniers were declared bankrupts, and the plaintiffs were duly chosen assignees, and more than twenty creditors having proved under the commission, it was objected that the property in the patent having become vested in the assignees of the bankrupt in trust for more than five creditors, the interest of the patentees, by the seventh section of the act of parliament, had ceased and determined. The Lord Chief Justice was of opinion that an assignment under a commission of bankrupt was not within the meaning of the act of parliament, and he overruled the objection.

After a motion made to the Court, the *Lord Chief Justice Abbott* said, "Looking at the act of parliament and looking at the usual clause in letters patent, and finding that in each of them there is a reference to the statute 6 Geo. I. c. 18, and construing the whole clause either in the letters patent or in the act of parliament, with reference to that which appears to my mind to be plainly and manifestly its object, it is my opinion that the whole clause is *confined to assignments by acts of the party*, and does not apply to any assignment or transfer by operation of law, and, consequently, that it will not apply to an assignment under a commission of bankrupt. Under the ship register acts there are peculiar clauses requiring every assignment to be notified in a particular

manner, as clear and minute as words can be, without any exception of bankruptcy, or any thing of that kind, and yet it has been held, that the assignees of a bankrupt take the interest in a ship, though there is no registration of the conveyance. Upon that point I think there should be no rule, but some of the other points are well deserving of consideration, and as to them the defendant may take a rule."

Mr. *Justice Bayley*.—"I have no doubt upon the construction of this clause. I disclaim all right in the Court to introduce or exclude words from this clause, but I think we are bound to construe the words which the clause contains, and that is all which I desire to do. The words in this clause are, 'In case the power, privilege, or authority shall at any time become vested in or in trust for more than the number of five persons or their representatives, at any one time, otherwise than by devise or succession (reckoning executors and administrators as and for the single persons they represent).' There are not only the words 'the number of five persons,' but there are the words 'or their representatives;' and those words, 'or their representatives,' are entitled to have some meaning, and the words 'otherwise than by devise or succession' will apply to the words 'or their representatives' as well as 'the number of five persons.' Now the question in my mind is, what does the act mean by 'their representatives?' If the assignees of a bankrupt are the representatives of a bankrupt, this patent is not vested in them, otherwise than this act of parliament says it may be vested; it was vested in the Fourdriniers, the bankrupts, if they did not exceed the number of five: the bankruptcy, by a statutable

transfer, has made the assignees of the bankrupt the representatives of the bankrupt, and that is the construction which, in my opinion, these words are entitled to receive."

Mr. *Justice Holroyd*.—"I think that in this case the assignees of the bankrupt are to be considered as the representatives of the bankrupt, and that they had his property as his representatives, and not as the representatives of the creditors. It is true, they take the property for the purpose of selling and disposing of it; and it is true, that the proceeds from the sale they may hold in trust for the creditors, but they are the representatives of the bankrupt in relation to this property. They hold it *subject to the power of converting it into money*, and then that money they will hold *in trust*. It appears to me that, under the act of parliament, it is not void, though the creditors may amount to more than five."

Mortgage and Lien.—From the reasoning in the cases of *Cartwright* v. *Amatt* (*a*) and *Bloxam* v. *Elsee* (*b*) it would seem that the mortgage of a patent to more than five persons would be valid, for neither their interest as creditors of the patentee, nor their character as trustees to the patentee, until they were repaid, would cause a forfeiture, because creditors are not entitled to *any proportion of the patent right* as such, but only to the amount of their debts.

In 1812 a case (*c*) came before the Lord Chancellor, of a bankrupt having a patent for an invention, who,

(*a*) 2 Bos. & Pul. 43.

(*b*) 2 Ante, p. 52.

(*c*) Evans's Statutes, vol. iv. p. 67, n. Ex parte Granger.

after having mortgaged the right, continued in the *notorious use* of the invention until his bankruptcy. The Lord Chancellor was induced to think that the right passed to the assignees under the statute, but directed a case for the Court of King's Bench, which was never argued.

A Trust of a Patent (*a*).—It has been shown that the invention may be communicated by a foreigner residing abroad, and that a patent may become the subject of a trust for the benefit of British subjects; but it was doubted in the case of *Bloxam* v. *Elsee* (*b*), at Nisi Prius, whether a patent could properly be taken out by a British subject on a secret trust, to be held for the benefit of the real inventor, who was an alien enemy at the time, although it was stated in the patent that the patentee had received the invention from a certain foreigner; and the point has not been solemnly decided.

Observations.—The decision that the creditors of a bankrupt may be interested in a patent, although they exceed five in number, is very important; but an improvement might be made in the law, by permitting an assignment of the letters patent to be made to any number of persons. It is for the benefit of the public that the invention should be largely used, and there is not any force in the observation that a great company may make a monopoly of it.

(*a*) See page 168 of Practical Treatise.
(*b*) 1 Carr. & P. 558.

Chap. VIII.

Of the Infringement of a Patent, and the Remedies for that Injury.

What amounts to an Infringement (*a*)*?*—It is a very difficult question, and by some persons (*b*) it has been thought that it is a matter beyond the comprehension of the ordinary tribunals; and they have recommended that a Court of Commissioners should be formed. A little reflection would convince any unprejudiced mind that the same judges and juries who decide causes arising from matters connected with every relation of life, and involving every exertion of men to enrich themselves, might well decide the

(*a*) See p. 173 of the Practical Treatise.

(*b*) See a letter in the London Journal of Arts, in which a writer thus expresses himself:—"How and where can the exact line be drawn of what is and is not a new invention, and of what is and is not an infringement? What rule—what law—can be laid down to define its exact demarcation, not subject to various interpretations? In my humble opinion *none*—I think it impossible; but that some professional men, from their situation in life, endowments by nature, their turn of mind and studies, their education, and from a variety of other circumstances, are far better able to sit in judgment upon these delicate points than the multitude at large, undiscriminate juries, and even the judges of the land, I firmly believe to be the case. I therefore beg leave to submit to your consideration that a properly constituted court, composed of the kind of men before described, should *judge patent causes subject to appeals to other courts*, where the setting forth the grounds of their decisions would throw such strong light upon the merits of the points at issue, as would best enable ordinary judges to get clear conceptions of the cases before them."

question, whether a person had infringed a patent. The judges possess, as a part of their education, a knowledge of the first principles of every science, and it would be as reasonable to say, that physicians and surgeons should try all cases which require a knowledge of medicine or surgery to be understood, as that mechanics and chemists should try the validity of claims for patents. In both cases it is more reasonable that physicians, surgeons, mechanics and chemists should be witnesses.

The answers to the questions, whether patents are for the same or different things, or whether one patent is an infringement upon another, may be drawn from many circumstances: as the concurring or contradictory evidence of persons worthy of credit well acquainted with the matter. But the use made of a supposed invention by the public is the best criterion, whether it is an improvement or not.

In *Webster* v. *Uther* (*a*) the Lord Chief Justice observed, "I believe I told the jury that it was the smallest matter for which I ever knew a patent taken." The invention was called an improvement on the patent percussion gun lock, and consisted in the *addition of a bolt* sliding or moving in a groove, by which the roller magazine was then fixed, that had formerly been fastened by a screw and washer; the defendant's lock had a spring in the bolt.

The jury (upon the evidence *of sportsmen* that the lock with a sliding bolt was more readily used in the field, particularly in wet weather, than the screw and washer,) found that the alteration was a material and

(*a*) MSS. Exeter Term, 1824, before Lord Tenterden

useful improvement; and upon evidence *by mechanics* that a spring in a bolt was the same thing as a bolt sliding in a groove, they found that the defendant had infringed the patent of the plaintiff. The Court would not grant a new trial.

It was contended in that case, *Webster* v. *Uther*, that the question, whether the thing was a proper subject for a patent, was one of law and not of fact for the jury. And in *Barton* v. *Hall* (*a*), which was an action for an infringement of *Barton's* patent for improvements in metallic pistons for steam engines, the judge directed a nonsuit, taking on himself to decide that the pistons, which were alleged to be infringements, were not the same invention as that described in the specification of the plaintiff.

In *Jones* v. *Pearce* (*b*) the jury asked the judge whether it was a necessary part of the infringement that the defendant should have sold or used the carriage wheels which he had made. Mr. *Justice Patteson* said, the evidence is, that the defendant, who was an ironmonger, had *made* two wheels, one of which was put on a gig and the other was seen near it; and he told the witness that he had made them on a new principle. Now one of the counts of the declaration is for making; and if he did actually make the wheels, the act of making them would be a sufficient infringement of the patent; for the terms of the patent are, "without leave or licence *made*, &c."

The Pleadings. *Vesan* (*c*). In *Brunton* v. *White* (*d*)

(*a*) MSS. 11th July, 1837, before Lord Wynford.

(*b*) MSS. ante p. [illegible].

(*c*) See p. 117 of the Practical Part.

(*d*) 7 D. & R. [illegible].

the venue was laid in London. A motion was made to change the venue to Lancashire. The Court refused, on the ground that there was not any precedent for such a motion.

This rule of law requires to be altered, because it is very expensive to both the litigating parties that they should be obliged to try their cause in the county of Middlesex, when every one of the witnesses (perhaps) live in Gloucestershire. Both parties ought to have the option.

The Plea (*a*) is the general issue. It would be a rule much to the advantage of patentees if a notice of the objections upon which the defendant relies was delivered with the plea. It would save a great amount of the expenses.

The Evidence —In the case of *Lewis* v. *Davis* *b* the patent put in evidence referred in its title to another patent. The plaintiffs claimed a patent for "improvements in a machine for which J. Lewis took out a patent in 1815." It was contended, that the specification to the patent of 1815 ought to be put in evidence. *Lord Tenterden* held that it was necessary to give both the specifications in evidence, and observed, "When the parties applied to the crown in the year 1818, they might have applied for a patent for their invention, without reference to any thing that had gone before. Now that they have not done; on the contrary, they profess to have improved a machine already known. That machine may be used by any one after fourteen years from the earlier patent, but any new matter which is included in the present patent is not

(*a*) See p. 161 of the Practical Treatise. (*b*) 1 Car. & P. 304.

open to every body till fourteen years from a later period. It is therefore material to show what are the improvements contained in the plaintiff's patent. Now I cannot say what are improvements upon a given thing, without knowing what that thing was before; for aught I know all the things mentioned in the plaintiff's specification may have been included in the former specification. Sometimes the fact of infringement must be presumed from the acts of the party, as where he sells the same article, and will not show his factory (*a*)."

A new Trial at Law (*b*).—On the motion for a new trial, in *Lewis* v. *Marling* (*c*), affidavits were produced as to the knowledge of that whereof the plaintiffs claimed to be inventors before the patent was granted. *Lord Tenterden* said, it is contrary to the practice to grant a rule in such a case on affidavits. If the facts disclosed in them are sufficient to vitiate the patent, it may be repealed by *scire facias*.

Costs (*d*).—The costs of an action for the infringement of a patent are guided by the rules respecting other actions in the case. It is often necessary for the parties to make many expensive *experiments* in order to give evidence for or against a patent. The costs of those experiments do not fall on the losing party. In the case of *Seeom* v. *Olive* (*e*), the Court (after hearing arguments) directed that the Prothonotary should re-

(*a*) Hall v. Gervas and Boot, MSS. December 1822, in K.B.

(*b*) See page 182 of the Practical Treatise.

(*c*) 10 Barn. & Cres. 25.

(*d*) See page 183 of the Practical Treatise.

(*e*) 3 Brod. & Bing. 72.

view his taxation, on the ground that no allowance ought to be made for the expense of experiments, nor for the time of scientific witnesses, unless they were medical men.

Remedy in Equity.

The proceedings in equity are so very expensive, that if they could be dispensed with, a great saving in time and money would arise to patentees. The inventor by taking proceedings in two courts (law and equity), is much distracted. If a power were given to the common law courts in which actions have been commenced, to restrain the infringer *on a motion* in term, or summons in vacation, made by the patentee, the remedy would be quick in its operation, less expensive, and quite as efficient as an injunction issued from a court of equity.

It seldom happens that the Court of Chancery grants a perpetual injunction, but the parties are directed to try the question by a *feigned issue*, or the patentee is, after much delay and expense, left to his choice of bringing an action at law or not, as he may be advised.

The only good that can arise from courts of equity meddling in the patents for inventions, is obtained from the account which the infringer is directed to keep. It could be kept in a common law court quite as well.

The practical use of the jurisdiction of the Court of Chancery over patents for inventions, was well illustrated when *Forsyth's patent* (*a*) (for giving fire

(*a*) MSS. heard July 1816.

to artillery and all kinds of fire arms) was before that Court. Forsyth's invention was obtained for the application of percussion powder for priming artillery and fire arms, by introducing it into a hollow cylinder communicating with the touch-hole, and inserting a movable plug or stopper into the cylinder, so as to inclose the powder between the bottom of the cylinder and the end of the plug. By striking a blow on the plug the powder became ignited and the piece fired off. The Lord Chancellor *had doubts* as to the novelty of the invention, and he decreed, that the patentee might bring an action at law; and, having succeeded, might move for an injunction. In other words, he found no protection in equity, but brought an action at law, *Forsyth* v. *Reviere* (*a*), by which his patent was supported.

Chap. IX.

Of Letters Patent when void, and the Manner of having them cancelled (*b*).

It was observed, that until the patent is actually cancelled, the patentee may go on against different parties, maintaining legal proceedings upon it. The public can find protection only in a *scire facias* to repeal the patent. That course is very vexatious and attended with great expense. After one trial at law, decided against the patent, there ought to be a power

(*a*) See page 55 of the Practical Treatise. (*b*) Ibid. p. 189.

in the common law court to direct that the patent be cancelled.

What renders a Patent void (*a*).—The words of the statute of James, "so as also they be not contrary to the law nor mischievous to the state, by raising prices of commodities at home, or hurt of trade, or generally inconvenient"—might be repealed, for they are inoperative, but alarm inventors.

Proceedings by Scire Facias to repeal a Patent (*b*).

The process by which patents are declared to be void requires much alteration. It ought to be considered *as an action* brought by one of the public against the patentee for obtaining an improper patent, and if he fails in establishing the invalidity of the patent, he ought to be mulct in the costs (*c*).

The expense of obtaining a *scire facias* is great, and there is much delay. By a legislative enactment it might be much improved. The writ cannot be entirely superseded, because there should always remain in the crown a strong power immediately applicable for repealing its own improvident grants.

The manner in which patentees may torment each other by writs of *scire facias*, may be thus illustrated.

Hadden obtained a patent in 1818, for an improvement in preparing, spinning, and roving wool, which was done by applying heat to the fibres of wool during the operation of spinning, and it was effected by insert-

(*a*) See p. 190 of the Practical Treatise.
(*b*) Ibid. p. 196.
(*c*) Ibid. p. 200.

ing hot iron heaters into hollow rollers, between which the slivers of wool passed. Lister obtained a patent for the same object in 1823, and effected the purpose by applying steam within the hollow rollers, and causing the slivers previously to pass through water to soften them.

Then, Hadden, thinking himself aggrieved by the patent of Lister, sued out a writ of *scire facias* to repeal it(*a*), on the ground that the process used by Lister was the same as his own. Lister returned the compliment by suing out another writ against the patent of Hadden, on the ground that the invention was not new. *They both* (in the same day) *succeeded;* Hadden in proving that Lister had infringed his neighbour's patent; and Lister in proving that neither of them ought to have had a patent.

Another instance occurred (*b*). Daniell had a patent in 1819 for improvements in dressing woollen cloth. They were thus effected. After the surface of the cloth had been properly dressed, and the nap on the surface laid very smooth, the piece was rolled up very smoothly and evenly in a close and compact roll: which piece being immersed in hot water, the fibres of the wool became softened, and acquired a tendency to retain the same direction; and thus the effect of the dressing was rendered permanent. Fussell obtained a patent in 1824 for an improved method of heating woollen cloth for the purpose of giving a lustre in dressing—this process was the same as Daniell's,

(*a*) *The King* v. *Lister*, and *The K* v. *Hadden*, tried January, 1826, in the King's Bench.

(*b*) *The King* v. *Fussell*, and *The Ki* *Daniell*, tried July, 1827, before Lord Tenterden.

except that he submitted the roller to steam instead of hot water. Daniell saw, with justice, the repeal of Fussell's patent, on the ground that it was the same as his own, and Fussell had the satisfaction of proving that many years before the date of Daniell's patent, a person had used a similar method. And thus they both succeeded in destroying each other's patents.

The Evidence (*a*).—The case of *Rex* v. *Hadden* (*b*) illustrates the practice of giving evidence on a *scire facias*. A witness was called to prove that the invention was not new, because he had made a similar machine for the same object. A drawing, not made by the witness, of the machine, as constructed by him, was put into his hands, and he was asked whether his machine agreed with that drawing. It was objected that inasmuch as the drawing was not made by the witness, he could not be allowed to answer that question, but that he was bound to describe the machine. Mr. *Justice Bayley* observed,—"I think that the witness may look at the drawing, and you may ask him whether he has such a recollection of the machine he made as to be able to say that that is a correct drawing of it."

(*a*) See page 199 of the Practical Treatise.

(*b*) 2 Car. & Paine, 184.

CHAP. X.

FOREIGN LAWS RESPECTING INVENTIONS (*a*).

IN this chapter will be found the laws of those countries respecting inventions, in which British subjects are accustomed to secure the privilege of using their inventions.

The same analysis will be given (as nearly as possible) as that which was made of the British law.

THE AMERICAN LAW.

The laws of America are contained in two acts of congress. An act passed 21st February, 1793, (repealing an act passed 10th April, 1790,) and an act passed 17th April, 1800.

The Inventor (*b*).—Any *citizen* who has invented any new and useful art, machine, manufacture, or composition of matter; or any new and useful *improvement* not known or used (*c*) before the application, may have letters patent granted to him, his heirs, administrators and assigns, for a term not exceeding *fourteen* years, for the exclusive right of making, constructing, using, and vending the invention.

(*a*) See the Appendix to the Parliamentary Report, dated 12th June, 1829.

(*b*) See ante, chap. ii.

(*c*) See the American case of Pennock v Dialogue, 2 Peters' Reports, p. 1; ante, p. 13.

If an inventor die, a patent may be taken out by his legal representative.

Letters patent are given to all *aliens* who have resided two years in America, if the invention has not been published in any foreign country.

The Manufacture (*a*).—The subject of the patent must be some new *art*, *machine*, *manufacture*, or *composition of matter*.

If any person discover an *improvement* in the principle of any machine, or in the process of any composition of matter, for which a patent has been granted, he may have a patent for the improvement, but he is not at liberty to make, use, or vend the original discovery, and the first inventor is not at liberty to use the improvement (*b*).

It was further declared, that simply changing the form or the proportions of any machine, or composition of matter, in any degree, is not to be deemed a discovery.

The Specification (*c*).—A schedule is appended to the letters patent. It is a written description of the invention, and the manner of using, or the process of compounding the same, in such full, clear, and exact terms as to distinguish the same from all other things before known, and to enable any person skilled in the art or science of which it is a branch, or with which

(*a*) See ante, chap. iii.

(*b*) See p. 41 of the Practical Treatise. This enactment appears at first sight unnecessary, but it was wisely introduced, because in England, in *Bircot's case*, the Court decided that an addition could not support a patent.

(*c*) See ante, chap. iv.

it is most nearly connected, to make, compound, and use the same.

And in the case of any machine, the inventor must fully explain the principle, and the several modes in which he has contemplated the application of that principle or character, by which it may be distinguished from other inventions; and he must accompany the whole with *drawings* and written references, where the nature of the case admits of drawings, or with *specimens of the ingredients* and of *the composition* of the matter, sufficient in quantity for the purpose of experiment, where the invention is a composition of matter.

He must also deliver *a model* of his machine, if the Secretary of State should deem such model to be necessary.

The Practice of obtaining the Letters Patent (*a*).—The inventor begins by paying thirty dollars into the *treasury*, and taking two receipts.

At the *Secretary of State's Office* he deposits one of those receipts and presents a *petition*, praying that a patent may be granted for his invention, of which it contains *a short description* (title).

He also makes an *affidavit* or affirmation, that he verily believes that he is the true inventor, and if he is an alien, then he swears that the same has not, to his best knowledge and belief, been before known or used in that or any foreign country, and that he has resided more than two years last past in America. The Secretary causes letters patent to be made out,

(*a*) See ante, chap. v.

bearing test by the President; which are then taken to the Attorney General to be examined, who must *within fifteen days* certify whether they are conformable to law, and return them to the Secretary, who causes the seal of the United States to be fixed, and records them in a book kept for that purpose. They are then delivered to the patentee or his order.

The description (specification) must be signed by the inventor, and attested by two witnesses, and filed in the office of the Secretary.

Caveat (*a*).—In case of *interfering applications* from two persons, the same are submitted to the *arbitration* of three persons, one of whom is chosen by each of the applicants, and the third by the Secretary of State. If there are more than two applicants, and they do not agree among themselves as to two of the persons, then the Secretary appoints all the three arbitrators. Their award is final.

The Acts of the State (*b*).—The Congress of the United States will sometimes interfere to relieve parties. Mr. Brown, the inventor of the Gas Vacuum Engine, had an act of Congress (*c*) passed in his favour, enabling him to have letters patent, although he (being an alien) had not resided two years in America, and his invention had been published in a foreign country (England).

The Construction of Letters Patent (*d*).—It appears

(*a*) See p. 144 of the Practical Treatise.
(*b*) Id. p. 148.
(*c*) The act is a specimen of legislative *brevity*.
(*d*) See ante, chap. vi.

from the reports of the decisions in the Supreme Court at Washington, that the Judges incline to put a liberal construction on letters patent.

Of the Property in an Invention (*a*).—The inventor, his executor or administrator, may assign the title and interest in the invention at any time: and the assignees may pass it to other persons to any degree. The assignments must be recorded.

Legal Proceedings for an Infringement (*b*).—If any one infringe the patent, he may be sued by the patentee or his assigns for three times the actual damage sustained.

The defendant may plead the general issue and give any special matter (of which notice shall have been given in writing to the plaintiff or his attorney *thirty days* before the trial) in evidence—as that the specification does not contain the whole truth, or that it contains more than is necessary to produce the effect, for the purpose of deceiving the public—that it was not original, but had been in use—or that the patentee had surreptitiously obtained a patent for the discovery of another person; in either of which cases judgment is to be given for the defendant, and the patent declared to be void.

A certified copy of the specification, from the Secretary of State's office, is made competent evidence in all courts touching the patent right. For all copies of papers, the person obtaining them must pay 20 cents for every sheet of 100 words, and two dollars for every copy of a drawing.

(*a*) See ante, chap. vii. (*b*) See ante, chap. viii.

Cancelling void Patents (*a*).—A motion may be made before the Judges of the district court, that the patent was obtained surreptitiously, or upon false suggestion, *within three years* after the issuing of the said patent, but *not afterwards*, who may (for sufficient cause shown) give judgment for the patentee, or for the repeal of the patent, with costs to either party.

The Spanish Law.

The present laws in force in Spain are given in a decree of King Ferdinand VII. dated the 27th March, 1826.

The Inventor (*b*).—Any person, of whatever condition *or country*, who proposes to establish any new invention, may have a *Royal Patent of Privilege*, without previous examination of the novelty or utility of the object; but without the concession of the grant being considered in any way as a recognition of the novelty or utility of the invention.

The Manufacture (*c*).—The subject of a patent may be any *machine*, *apparatus*, *instrument*, or a *mechanical* or *chemical process* or *operation*, which may be wholly or in part new, or which may not have been established in the same manner and form in the kingdom.

If the subject has not been practised in Spain, nor in any foreign country, then the privilege will be given by a *Patent of Invention*, but if it have been practised abroad, then the party will have a *Patent of Introduction*.

(*a*) See article 24. (*b*) See article 6.
(*c*) See article 5.

The Specification (*a*).—When the petition for a patent is presented it must be accompanied with a *plan* or *model*, and a description or explanation of the invention, specifying what is the peculiar mechanism or process which is presented therein, as not having been hitherto practised; the whole being stated with the greatest precision and clearness, so that there may be at any time no doubt as to the identity of the invention, and of that peculiarity which is represented as hitherto unpractised in that form.

The Practice of obtaining the Patent (*a*).—The inventor must draw up a *memorial* (petition) and deliver it to the Intendant of the province in which he resides, or to the *Intendant of Madrid*.

The petition is addressed to the King, and shortly describes the object of the privilege, whether it is the invention of the petitioner or whether it is brought from a foreign country, and also of the *time* for which the privilege is sought. Not more than one invention can be introduced into the same representation.

The plan or model must be delivered in a box or packet closed and sealed, as well as the plans, descriptions, and papers of explanation.

The Intendant indorses the box or packet and remits it to the Secretary of State, who forwards it to the *Supreme Council of State*, who open the box or packet, and grant or refuse a patent.

Before the patent is issued, the inventor produces

the receipt of the Intendant that he has paid the following duties:—

	Reals Vellon.
For a privilege of 5 years	1000
——————— 10 years	3000
——————— 15 years	6000
For a privilege of introduction or importation .	3000

and, in addition, 80 reals are paid for the costs of issuing the royal patent.

The documents sealed up in the boxes or packets are remitted to the Royal Conservatory of Arts, and they are not opened except in case of litigation, and by virtue of the official order of a competent judge.

The titles of the grants are published in the Gazette.

A register is kept at the Royal Conservatory of Arts, expressing the dates, the names and residences of the parties interested, the object of the privilege, and the term of its duration; which register is open for inspection.

The Property in an Invention (*a*).— The possessor of the privilege has the exclusive property in that part of his subject which he has declared to be new, from the day of presentation of his petition to the Intendant; but the duration of the *privilege* is reckoned from the date of the patent.

The right may be transferred, given, sold or exchanged, or left by will, like any other *personal* property.

The *transfer* must be by a *public* deed, stating whether it is for the use of the invention in the whole or

only in a part of the kingdom; whether it is absolute or with a reservation of part; whether it is with the power of again transferring; and whether any transfer has already been made to any person of a part of it. It must be presented to the Intendant to be *registered* within thirty days after its execution.

Legal Proceedings (*a*).—The possessor of a privilege obtained under any title whatever may cite all persons usurping his right before an Intendant, from whom an appeal lies to the Council of State. The offender may be condemned to the confiscation of all the machines, apparatus, utensils, and works of art made by him; and to the payment (as a fine) of three times the value of the same, for the benefit of the possessor of the privilege.

When void and how cancelled (*b*).—The patent is declared to be void—

1. When the time is elapsed.
2. When the party does not apply for it within three months from the time he presented his petition.
3. When the patent has not been put in force for a year and a day after the date thereof.
4. When the patentee abandons his right by not using it for a year and a day.
5. When the subject has been used in any part of the kingdom, or described in printed books, or in engravings, pictures, models, plans or descriptions, contained in the *Royal Conservatory of Arts*; or when the subject has been used in a foreign country and the

(*a*) See ante, ch. viii. (*b*) See ante, ch. ix.

patentee has presented it as new and of his own invention.

When the time of the grant has expired, the *Council of State* declare the cessation; but in all other cases of cessation the competent judge proceeds at the suit of any party to try the fact, and then the sealed boxes or packets are opened, and the facts published in the *Gazette*.

The Austrian Law.

The Inventor (*a*).—The privilege is granted to a native or foreigner; and he may also take out a privilege in a foreign country.

The Manufacture (*b*).—All new discoveries, inventions, and improvements, in every branch of industry, are entitled to an exclusive privilege in the Austrian monarchy. The following enumeration of subjects for patents is given to prevent disputes:

1. Every new finding out of a process in industry, which, although practised in former times, has been since entirely lost, or which, although still practised in foreign countries, is unknown in the monarchy, shall be held a discovery.

2. Every production of a new object by new means, or of a new object by means already known, or the production of an object already known, by means different from those which have hitherto been used for that object, shall be held an invention.

3. Every addition of a preparation, arrangement, or method of working to a process, already known or

(*a*) See article ii. (*b*) See article iii.

privileged, by which more complete *success* or greater economy shall be attained in the result of that process, or in its mode of operation and application, shall be held to be an improvement.

4. Every discovery, invention, improvement, or change, shall be held as new, if it is not known in the monarchy, either in practice or by a description of it contained in a work publicly printed. But the novelty of a discovery, invention, or improvement, shall not be called in question, on account of its being described in a work publicly printed, unless that description is so accurate and clear that any person acquainted with the subject can, by means of that description, manufacture the object, or practise the process, for which the privilege has been granted.

The Specification (a).— The inventor must send in, at the same time that he presents his petition, a sealed parcel containing an accurate description of his discovery, invention, or improvement, in which the following qualifications are required:

1. The description must be written in the German language, or in the language used for business in the province from which the petition is presented.

2. It must be drawn up so clearly that every person who understands the subject may be able to manufacture the object, by means of the description, without being obliged to engage any further inventions, additions, or improvements.

3. That which is new, and which consequently constitutes the object of the privilege, must be accurately distinguished and set forth in the description.

4. The discovery, invention, or improvement must be clearly and distinctly described, and without any ambiguities that can mislead, or that are contrary to the object stated.

5. Nothing must be kept secret, either in the materials or the method of execution; therefore more expensive means, or means not producing an entirely similar effect, must not be described; nor must any manipulations which are essential to the success of the operation be concealed. If it is practicable, *drawings* and *models* are to be added, for the better understanding of the description; but these are not strictly required, if the object can be made sufficiently clear by the description alone, according to the requisites stated.

Practice of obtaining Privilege (*a*).—A petition is first presented to the *direction of the circle* in which the inventor resides, wherein he must state the substance of his invention, the number of years for which he desires to obtain the privilege, and with it a full description of the invention sealed up. He must at the same time deposit one-half of the duty payable for the patent. The direction of the circle will give a receipt for the petition, the money, and the description; and within three days forward the money and documents (with the seal unbroken) to the government of the province, who will not inquire into the novelty or utility of the invention, but will report within eight days to the Imperial Government whether it is hurtful in any public view, or contrary to the laws of the

(*a*) See ante, ch. v.

country, and send the papers to the Imperial Board of Commerce. A representation is made by that board, upon which the patent is made out and delivered to the inventor.

The duties upon privileges are to be paid in proportion to the time granted for their duration. For each of the first five years the tax is ten florins convention money, for the 6th year fifteen florins, with an increase of five florins upon each year, making for the 15th year the sum of 60 florins, and for the whole of the longest term 425 florins convention money. One half of the duty for the whole term is paid on the receipt of the petition, and the other half is paid at the beginning of each year, in as many yearly rates as the years for which the privilege was taken, under pain of its being annulled. Except the above tax, the patentee has not any fees or expenses to pay, but the patent deeds (three in number) are granted *ex officio*, like all other decrees.

The Chief Registrar of the Imperial Board of Commerce is bound to *register* all the grants of privileges, and all *transfers* of them.

The Property in an Invention (*a*).—The *priority* of the invention takes effect from the hour and day of the receipt of the petition. Although the *term* of the privilege commences from the date of the patent, yet the inventor is protected from the time of the receipt of his petition.

The patentee has the exclusive privilege over the whole monarchy. He may take such partners as he may choose, in order to increase the profits of his in-

(*a*) See ante, ch. vii.

vention to any scale; he may dispose of the privilege, bequeath it, let it out, or assign it away at pleasure.

But a patent for an improvement gives only a property in the improvement itself.

To give encouragement for the trial of *experiments*, one who has originally taken a privilege for a less term than fifteen years, may, before the expiration of that privilege, obtain a prolongation thereof to a term of fifteen years, on condition of paying for the prolongation of the privilege after the usual rate.

Legal Proceedings(a).—Infringements are visited with a penalty of 100 ducats in specie, of which one half goes to the patentee, and the other half to the poor of the place where the judgment is given, besides the confiscation of the objects imitated.

When a privileged person believes himself to be aggrieved, he can require the judge of the place to put a stop to the further imitation of the object of his privilege, and also require the immediate seizure of the articles so imitated, whether they are in the possession of the imitator himself or of a third person; or whether they have been brought in from foreign countries.

The questions of infringement of compensation or damages — of the application of the legal penalty, &c. rest with the ordinary judges.

When void, and how cancelled(b).—The privilege becomes void,

1. If the accurate description of the discovery, invention, or improvement, for which the privilege was

(a) See ante, ch. viii. (b) See ante, ch. ix.

petitioned, is wanting in the requisites of a new manufacture above stated, or in only one of those requisites.

2. If any one proves legally, that the privileged discovery, invention, or improvement, could not be considered new in the monarchy, previous to the date of the official certificate.

3. If the possessor of a privilege in force for a discovery, invention, or improvement, proves that the privilege subsequently granted is identically the same as his own discovery, invention, or improvement, which was regularly described and privileged at an earlier date.

4. If the privileged person has not began to practise his discovery, invention, or improvement, within the term of one year from the delivery of his privilege whether he is a native or foreigner.

5. If he discontinues that practice for the space of a year, during the term of the privilege, without showing sufficient grounds for the same.

6. If the second half of the tax is not paid in the above stated annual rates.

The questions, whether the privilege ought to be annulled on public grounds, or because it has been neglected, or the possessor has not fulfilled the conditions of the grant, are decided by the political authorities, with the reservation of appeal to the higher authorities.

The Belgian Law.

Laws were promulgated by the King of the Netherlands on the 25th January, 1817, which have some peculiarities about them.

The Inventor (*a*).—Patents are granted to those who, in the kingdom, make an invention, and also to those who first introduce or practise in the kingdom an invention made in foreign parts.

The Manufacture (*b*).—The subject of a patent may be an invention or essential improvement in any branch of arts or manufactures, domestic or *foreign*, provided it has not been put in operation or exercised by another person in the kingdom before the grant of the patent. But changes of form, or of proportions, or ornaments, are not to be considered as improvements.

The possession of the improvement does not give any right to the original manufacturer, nor the ownership of the manufacture any power over the improvement.

The Specification (*c*).—The inventor must send with his petition a sealed packet containing an exact and detailed description, signed by himself, of the object or the secret for which the patent is solicited, together with the necessary plans and drawings.

If he *fraudulently* omit in the description to mention any part of his secret, or shall state it falsely, or if the object has been already described in any work printed or published, then the patent becomes void.

The Practice of obtaining the Patent (*d*).—A petition to the King must be deposited with the *Recorder of the States* of the province, containing the object of the invention in general terms, with the name and place

(*a*) See ante, chap. ii. (*b*) Ibid. chap. iii. (*c*) Ibid. chap. iv.
(*d*) Ibid. chap. v.

of residence of the inventor, as well as the time for which he wishes to obtain a patent, and the time for which the same object may have received *a protection in a foreign* country.

The specification or description of the invention, signed by himself and sealed up, must accompany the petition; which is not to be published until the expiration of the term of the patent; and not even then if th government, for important reasons, should think it necessary to defer the publication.

The Recorder of the States makes an indorsement on the sealed packet, and sends it, within ten days, to the Commissary General of Instruction of Arts and Sciences; who presents the same to the King with his opinion thereon, and his majesty either grants or refuses the patent.

When the King thinks fit to refuse the grant, or to refer it to the opinion either of the Royal Institute of the Netherlands, or of the Royal Academy of Sciences and Literature of Brussels, a notice thereof is given to the petitioner.

The patent for an invention contains the description of the invention, but it does not guarantee the priority of the invention; and a patent of importation contains a further clause, that the objects mentioned therein shall be manufactured in the kingdom.

If a party wish for a patent for an improvement or for a prolongation of a term, he must apply to the Commissary General, who will obtain the King's signature to it.

A Register is kept at the office of the Commissary General of all the patents granted, and of the transfers

and assignments thereof; and he who takes a patent by right of succession must register his name before he attempts to use the invention; and notice of all patents are given in the official journals.

The Duties to be paid for patents are regulated according to the duration of the patent or the importance of the invention, in the following manner:

	Francs.
For a patent for five years	150
ten . . .	300 to 400

according to the importance of the invention or improvement.

	Francs.
For a patent for fifteen years. . .	600 to 750
For the transfer, or for the acquisition by right of succession of a patent	9

The Minister of Finance keeps a separate account of the taxes paid by those who obtain patents for inventions, and remits the same to the Commissary General, who proposes to the King the best manner in which the money can be employed *in rewards* for the encouragement of the arts, and of the national manufactures.

The Commissary General forwards the patents to the Governor of the Province in which the petitioner resides, stating to him the sums to be paid for the grant, who remits the same to the inventor when he shows that he has paid the duty.

When a patent is declared to be void, the duty paid for the patent is refunded in proportion to the time which the patent has to run.

The Property in them (*a*).—Patents are granted for five, ten, or fifteen years; and they may be prolonged from five or ten, to fifteen years.. But patents for the introduction or application of inventions or improvements made in foreign countries, and for which inventors have obtained patents in those countries, are not granted for a longer time than that during which the *exclusive right in such foreign countries* for those objects shall last; and they contain an express clause that the objects shall be manufactured in the kingdom.

The patentee may by himself or his *agents* make and sell the invention, or he may cause them to be made and sold by others, whom he shall authorise so to do. He may *assign* his right either wholly or in part with the king's authority. The patent follows, as a matter of course, the law of succession to personal property: but it cannot be enjoyed by any one until he has registered his right to it.

Legal Proceedings (*b*).—A patentee may cite a person before the courts of law who infringes his exclusive right, in order to obtain *the confiscation*, for his own advantage, of the objects which have been made but not sold, and *for the price* of those already sold; and also for *damages* for the wrong done to him.

When void, and how cancelled (*c*).—The patent is void if the specification is not given as above stated. It also becomes void if the patentee *does not use* his invention within the space of two years from the date of his patent, unless there have been strong reasons for that delay; of which reasons *the government* is the

(*a*) See ante, chap. vii. (*b*) Ibid. chap. viii. (*c*) Ibid. chap. ix.

judge. A patentee invalidates his grant if he *subsequently* obtains a patent for the same invention in a foreign country.

If it should appear that the invention is, in its nature or in its application, dangerous to the security of the kingdom or its inhabitants, it may be ordered to be cancelled.

At the expiration of the patent, or after it has been declared to be void, the Commissary General of Instruction makes public the discoveries and inventions which have been protected and concealed, unless it be deemed advisable not to do so, for political or commercial reasons, and then he reports to the King, who decides as he thinks fit.

The French Law.

The laws respecting patents for inventions granted in France, were passed on the 7th January, 1791; the 26th May, 1791; the 8th October, 1798; the 27th September, 1800, the 25th November, 1806; the 25th January, 1807; and the 13th August, 1810.

The Inventor (*a*).—The National Assembly stated in their decree, that *every new idea*, whereof the manifestation or the developement may become useful to society, *belongs originally to him who has conceived it*, and that it would be to attack the rights of man in their essence, not to regard a discovery in industry as the property of the author.

Patents are granted for five, ten, or fifteen years, according to the choice of the inventor, for any disco-

(*a*) See ante, chap. ii.

very or new invention in all kinds of industry. The terms of five years and ten years may be extended by a subsequent patent, but the term of fifteen years can only be prolonged by a decree of the legislative body.

Whoever brings into France a *foreign discovery* becomes the inventor of it, and may have a patent for one of the terms of years above mentioned.

The Manufacture (*a*).—Every discovery or invention in all kinds of industry, and the means of *adding* to any fabrication whatsoever a new degree of perfection, is regarded as an invention. But discoveries already pointed out and described in works printed and published, cannot be the subject of patents.

A petition for a patent will not be received if it contain *more than one* principal object, with the details that may relate to it.

If an inventor wishes to make any change in the object stated in his first petition, he is permitted to do it; and any improvement of a manufacture may be the subject of a patent.

The Specification (*b*).—The patent is forfeited if the inventor conceal his real means of execution; or if he uses any secret means which were not detailed in his description of the invention. That description must be an exact account of the principles and the means and processes which constitute the discovery, and must be accompanied with such plans, sections, drawings, and models, which may be required to explain it.

When the Legislature decrees that the description of the invention shall be kept a secret, three Com-

(*a*) See ante, chap. iii.

(*b*) See ante, chap. iv.

missioners are appointed to examine the *correctness of the description*, after a view of the means and processes, without the author ceasing on that account to be responsible for the correctness of the specification.

The Practice of obtaining the Patent (*a*).—An office is established at Paris, under the name of "The Directory of Patents of Inventions." The expenses of the establishment are taken solely from the tax upon patents for inventions; and the surplus of the amount beyond those expenses is distributed in rewards for national industry.

The inventor must apply to the Secretary of the Directory in his department, and there present a petition to the King, declaring in writing if the object that he presents is of a new invention of improvement, or only of importation. He must at that time deposit *in a sealed packet* an exact description of the means which constitute the discovery, together (if necessary) with plans, sections, drawings, and models, in order that the said packet may be opened at the time when the inventor receives his title of his property.

The petitioner must make two copies of the list of papers in the sealed packet. He is entitled to have information given to him of all subjects for which patents have been obtained, in order that he may judge whether he will persist in his demand or not.

On the back of the cover of this packet is written the date of the deposit of the packet, a receipt for the amount of the tax, or an engagement to pay it; and the Directories of Departments must forward the

(*a*) See ante, chap. v.

packets to the Directory of Patents of Inventions during the same week in which they have been presented.

The Directory of Patents, after registering the packet, open the seal, and deliver out a patent containing the description of the invention under their own seal. At the same time a proclamation by the King, relative to the patent, is addressed to all the tribunals and departments in the kingdom.

A prolongation of the term of a patent may be made by the legislature.

A register is kept at the directory of each department, and also at the Directory of Patents for Inventions, of the patents granted and the proclamations issued, and the prolongations made of the terms of any patents, and also of all transfers of the right.

Any citizen may inspect the catalogue of new inventions at the office of the Secretary of his department, and any *resident* citizen is at liberty to examine the specifications of the patents actually in force at the Directory of Patents, unless the *legislature* has decreed that the discovery shall be kept secret.

Commissioners examine the specification, when it is ordered to be concealed; and if they are satisfied with it, they re-seal the packet.

The patentee being at liberty to make changes in the object mentioned in his first petition, he may take out successive patents for those changes, or put them all into one patent.

The duties collected from an inventor may be paid in two sums—one half on presenting his petition, and

the remainder within six months. If the latter sum is not paid within that time, the patent becomes void.

The following scales exhibit the duties to be paid by patentees.

1. A scale of the taxes to be paid to the Directory for inventions.

	Livres.
Tax on a patent for five years . . .	300
Tax on a patent for ten years . . .	800
Tax on a patent for fifteen years . . .	1500
Fee for passing the patent	50
Certificate of improvement, change or addition	24
Tax for the prolongation of a patent . .	600
Registry of a patent of prolongation . .	12
Registry of the conveyance of a patent, wholly or in part	18
For the search and communication of a description	12

2. A scale of the taxes to be paid to the Secretary of the department.

	Livres.
For the attestation of the deposit of a description, or of any improvement, change or addition, and of the papers relating thereto, all costs included	12
For the Registry of the Conveyance of a Patent, wholly or in part, all costs included .	12
For the communication of the catalogue of inventions, and search fees . . .	3

The possessor of a patent for invention must also pay the tax of annual patents levied upon all professions in the useful arts and trades.

The Property in Patents (*a*).—The inventor may have a patent for 5, 10, or 15 years, or for such longer periods as the legislature may grant; and the exercise of the right commences from the date of the certificate of the petition.

It is *personal* property. He may form establishments through the kingdom, and he may authorise other persons to use his means and processes: and he may form any association he chooses for the exercise of his right, under an order from the government to that effect.

He may *transfer* it either wholly or in part.

Legal Proceedings.—The government, in granting a patent, does not guarantee the priority, the merit, or success of the invention.

A patentee may proceed against an infringer before a Judge, who will hear the parties and their witnesses, and judgment will be executed provisionally, notwithstanding any appeal from it.

In a contest between two patentees whose patents are for the same object, if the similarity is declared complete, the patent bearing the earliest date shall alone be valid, but if there is a dissimilarity in some parts, the patent of the latest date may be converted (without any new tax) into a patent for an improvement thereof.

But *the priority* of invention, in case of a dispute between two patentees for the same object, is adjudged for him who first deposited his papers as above stated.

When Patent void and how cancelled (*b*).—The patent

(*a*) See ante, chap. vii.

(*b*) See ante, chap. ix.

becomes void if the inventor be convicted of having, in his description, *concealed his real means of execution*, or of having used in his manufacture *secret means* which were not detailed in his description; and the patent is invalid if the inventor be convicted of having obtained a patent for discoveries already pointed out and described in works printed and published; and also if the inventor shall not in the space of *two years*, reckoning from the date of his patent, have put his discovery in practice, or shall not have given sufficient reasons to justify his inaction.

And also if the inventor, having obtained a patent in France, shall be convicted of having taken one for the same object in any foreign country; and as every person acquiring the right of exercising a discovery secured by a patent is subject to the same regulations as the inventor, if he infringe them, the patent is to be revoked, the discovery published, and the use thereof to be open to the whole kingdom.

When the term has expired or the patent has become void, the Minister for the Interior takes care that it be immediately published.

AN

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TO

THE PRACTICAL TREATISE,

AND ALSO TO

THE SUPPLEMENT.

The Arabic figures refer to the Supplement, thus, *sup.* 5.

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LONDON:
C. ROWORTH AND SONS, BELL YARD,
TEMPLE BAR.

A

SECOND SUPPLEMENT

TO

THE TREATISE ON

PATENTS FOR INVENTIONS,

CONTAINING

LORD BROUGHAM'S ACT,

WITH NOTES THEREON:

AND

The Practice

BEFORE

THE PRIVY COUNCIL:

ALSO CONTAINING

ALL THE CASES DECIDED TO THE PRESENT TIME.

By RICHARD GODSON, Esq.

BARRISTER AT LAW.

LONDON:

SAUNDERS AND BENNING, LAW BOOKSELLERS,

43, FLEET STREET.

1835.

LONDON:

C. ROWORTH AND SONS, BELL YARD,
TEMPLE BAR.

TO

THE RIGHT HONOURABLE

LORD BROUGHAM AND VAUX.

My Lord,

I take the liberty of Dedicating the following pages to Your Lordship as the best mode in which I can express *my thanks* for the Act of Parliament " to amend the Law touching Letters Patent for Inventions," which you, in the last Session, carried through parliament.

Your Lordship undertook no ordinary task, met as you were by the great difficulties of the subject, surrounded by interested parties with open or secret opposition, and oppressed as you were by the malignity of envious persons, who never cease to misrepresent every exertion you make for the advancement of learning and the amendment of the laws.

It would be presumptuous in me in a Dedication to attempt a panegyric upon Your Lordship's talents and public services; but I may be pardoned for entreating that you will in the next session of parliament exercise your talents, apply

your experience, and exert your influence, to pass another Act, to complete the task which you have so well begun.

Your meritorious exertions on behalf of the inventive genius of the artist have been the subject of severe animadversion and false accusation, but *the Public* are thankful for your services, and the mean attempt has recoiled upon your revilers. I earnestly hope that Your Lordship will in the next session of parliament continue your labours, and bring your knowledge, both legal and scientific, to bear upon this subject.

I am,

My Lord,

Your Lordship's

Obedient Servant,

R. GODSON.

TEMPLE, November, 1835.

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PREFACE.

A SECOND SUPPLEMENT has been preferred to a New Edition, in order that the Purchasers of the *original Treatise*, and of the *Supplement* published in October, 1832, may possess the whole law to the present time at the least possible expense.

SECOND SUPPLEMENT

TO

PATENTS FOR INVENTIONS.

Addendum to Chap. I.

Introduction.—Of a Patent generally.

The Act of Parliament 5 & 6 Will. 4, c. 83, "to amend the Law touching Letters Patent for Inventions" is divided into seven sections, and the contents of those sections may be arranged to correspond with the chapters in the Practical Treatise on the Law of Patents for Inventions; thus—

1st. *Addendum to Chapter III.*—The mode of proceeding where the patentee is proved not to be the first inventor. (*a*)

2d. *Addendum to Chapter IV.*—Any person having obtained letters patent for any invention may enter a disclaimer of any part of his title or specification, or a memorandum of any alteration therein, which, when filed, is to be deemed part of such specification. (*b*)

3d. *Addendum to Chapter V.*—The mode of proceeding in case of an application for the prolongation of the term of a patent. (*c*)

4th. *Addendum to Chapter VII.*—A penalty is given against a party using the name, &c. of a patentee. (*d*)

(*a*) Sect. 2. (*b*) Sect. 1. (*c*) Sect. 4. (*d*) Sect. 7.

5th. *Addendum to Chapter VIII.*— In an action against a person for infringing a patent, the defendant must give notice of the objections he intends to take at the trial; and the costs are to be taxed with regard to those objections, and not as to the general result of the trial. After a trial or decree the Court may grant a certificate, which, being given in evidence in future actions, will entitle the patentee upon obtaining a verdict to receive treble costs, unless the judge on the second trial otherwise order.(*a*)

Addendum to Chap. III.

Of a New Manufacture, or the Subject of a Patent.(*b*)

It often happened in the course of a trial that the only question discussed, was, whether or not some person besides the patentee had invented the subject of the patent. In the old cases, slight proof of a prior using of the thing invented invalidated the patent, although the patentee was acknowledged to be the first person who had made any beneficial use of it. That law was gradually modified, and in the cases of *Lewis* v. *Marling*, (*c*) and *Jones* v. *Pearce*, (*d*) it was put upon an intelligible basis.

(*a*) Sect. 3, 5, and 6.
(*b*) See Practical Treatise, p. 57; Supplement, p. 6.
(*c*) Supplement, p. 6. (*d*) Ibid. p. 10.

A legislative remedy for the evil of varying decisions upon that point is given in section 2; as follows:—

"That if in any suit or action it shall be proved or specially *found by the verdict of a jury* that any person who shall have obtained letters patent for any invention or supposed invention was not the first inventor thereof, or of some part thereof, by reason of some other person or persons having invented or used the same, or some part thereof, before the date of such letters patent; or if such *patentee or his assigns shall discover* that some other person had, unknown to such patentee, invented or used the same, or some part thereof, before the date of such letters patent, it shall and may be lawful for such patentee or his assigns to petition his Majesty *in Council to confirm* the said letters patent, or to grant new letters-patent, the matter of which petition shall be heard before the judicial committee of the privy council; and such committee upon *examining the said matter*, and being satisfied that such patentee believed himself to be the first and original inventor, and being satisfied *that such invention or part thereof had not been publicly and generally used before the date of such first letters-patent*, may report to his Majesty their opinion that the prayer of such petition ought to be complied with, whereupon his Majesty may, if he think fit, grant such prayer; and the said letters patent shall be available in law and equity to give to such petitioner the sole right of using, making, and vending such invention as against all persons whatsoever, any law, usage, or custom to the contrary thereof notwithstanding: *provided*, that any person opposing such petition shall be entitled to be heard before the said judicial committee: *provided*, also, that

any person, party to any former suit or action touching such first letters-patent, shall be entitled to have notice of such petition before presenting the same."

"*Such committee upon examining the said matter.*"—The rules promulgated by the judicial committee of the privy council are hereafter given. Their decision will have operation from the date of the verdict, which, being special, will not have any judgment pronounced upon it until after the decision of the privy council. A party intending to apply to the privy council should obtain an order of the Court to stay proceedings upon the verdict until the privy council had examined the matter.

"*That such invention or part thereof had not been publicly and generally used before the date of the first letters patent.*"—These are the principal words of the section. The privy council are not to give relief if the subject of the patent has been publicly and generally used. It often happened that a patent was invalidated because some one person, at a part of the kingdom distant from the patentee, had performed the same thing and laid it by, ten, twenty, or thirty years before the date of the patent.

The following case may be added to those in which the Court has decided what is *not the Subject* of a patent:—

A patent was taken out for improvements in making buttons. The specification stated the improvement to consist in the substitution of a flexible material for metal shanks, and it described the mode in which this material might be fixed to the intended button, and

made to project from it in the necessary condition for use, by the help, among other things, of a metal collet or ring with teeth. Neither the construction of the button, nor the application of a flexible shank, was new; the use of the toothed ring, as described in the specification was so, but this was not stated to be the subject matter of the invention; and it appeared by the specification that the effect produced by it might be brought about in other modes, which the plaintiff had also used: the Court held, that the patent was not maintainable, since the invention consisted only in combining two things which were not new, and the use of the toothed ring in forming the flexible shank, though new, was not the object of the invention, but only a mode, among others which were already known, of carrying it into effect.(*a*)

Addendum to Chap. IV.

Of the Specification.(*b*)

It is a technical but unjust rule of law, that if the inventor claims anything in [illegible] *title* to his patent, or in the specification, which is not *new*, or has been before *used*, then the whole patent becomes void. It has also been contended, that every part should be useful as well as new; but that was overruled by the judges in the case of *Lewis* v. *Marling*.(*c*)

(*a*) *Saunders* v. *Aston*, 3 B. & Adol. Rep. 881; and 10 vol. Law Journal, 265. See *Morgan* v. *Seaward*, Repertory of Patent Inventions for November and December, 1835.

(*b*) See Practical Treatise, p. 100; Supplement, p. 27.

(*c*) Supplement, p. 27.

In the 1st section that law has been altered in the following words:—

"Any person who, as grantee, assignee, or otherwise, hath obtained, or who shall hereafter obtain letters patent, for the sole making, exercising, vending, or using of any invention, may, if he think fit, enter with the clerk of the patents of England, Scotland, or Ireland, respectively, as the case may be, (having first obtained the leave of his Majesty's attorney general or solicitor general in case of an English patent, of the lord advocate or solicitor general of Scotland in the case of a Scotch patent, or of his Majesty's attorney general or solicitor general for Ireland in the case of an Irish patent, certified by his fiat and signature,) a *disclaimer of any part of either the title of the invention or of the specification, stating the reason for such disclaimer*, or may, with such leave as aforesaid, enter a memorandum of *any alteration in the said title or specification*, not being such disclaimer or such alteration as shall *extend the exclusive right* granted by the said letters patent; and such disclaimer or memorandum of alteration, being filed by the said clerk of the patents, and enrolled with the specification, shall be deemed and taken to be part of such letters patent or such specification in all Courts whatever: *provided* always, that any person may enter a caveat, *in like manner as caveats are now used to be entered*, against such disclaimer or alteration; which caveat being so entered shall give the party entering the same a right to have notice of the application being heard by the attorney general, or solicitor general, or lord advocate respectively: *provided also*, that no such disclaimer or alteration shall be receivable in evidence in any action or suit (save and except in any proceeding by scire facias)

pending at the time when such disclaimer or alteration was enrolled, but in every such action or suit the original title and specification alone shall be given in evidence, and deemed and taken to be the title and specification of the invention for which the letters patent have been or shall have been granted: *provided also*, that it shall be lawful for the attorney general, or solicitor general, or lord advocate, before granting such fiat, to require the party applying for the same to *advertise his disclaimer* or alteration in such manner as to such attorney general, or solicitor general, or lord advocate shall seem right, and shall, if he so require such advertisement, certify in his fiat that the same has been duly made."

"*In like manner as caveats are now used to be entered.*"—This clause is very important and was much wanted. It must be remarked that the *title* as well as the *specification* may be altered. Some persons have thought that this clause is not clearly worded. Any *willing* Attorney General may easily carry it into practice.

The late cases respecting *the Title* and the specification are as follows:—

An invention for giving paper, by the application of a certain composition, such a surface as renders the lines of copper and other plate printing more clear and distinct, may properly be described in the title of a patent as an improvement in copper and other plate printing.(*a*)

A patentee summed up his invention thus: "My

(*a*) *Sturz* v. *De la Rue and others*, 5 Russell's Rep. 322.

invention is the application of a self-adjusting leverage to the back and seat of a chair, whereby the weight on the seat acts as a counterbalance to the pressure against the back of such chair, as above described:" the Court held, that the patent was valid; for without assuming to appropriate the principle of the lever, it claimed the invention of means by which that principle was applied to a chair in a new manner. (*a*)

Another case (*b*) on the same patent is now pending before the Court of King's Bench, in which the *novelty* of the invention is impeached.

In a case for invading plaintiff's patent right to certain machinery for drying calicoes, &c. where the specification, after setting forth the mode in which the cloth was to be extended for the purpose of drying, proceeded to state that it might be taken up again by the same machinery; the jury having found that the invention was new and useful on the whole, but that the machine was not useful in some cases for taking up goods, the Court refused to set aside the verdict for the plaintiff and enter a nonsuit. (*c*)

In another case, one of the ingredients was a white substance, imported from Germany, and which could be purchased at one or two colour shops in London; the only description or denomination given to it in the specification was "the purest and finest chemical white lead;" but there was no article known by that denomination in the trade, or in the shops where white lead is usually sold; and the finest white lead which could be obtained would not answer the

(*a*) *Minter* v. *Wells and another*, 5 Tyrwhitt's Rep. 163.
(*b*) *Minter* v. *Mower*, MS.
(*c*) *Haworth* v. *Hardcastle and others*, 1 Bing. N. C. 182.

purpose: the Court held, that the specification was insufficient. (*a*)

The great accuracy required in the specification is exemplified in the following case:—A patent was granted for an invention of "certain improvements in extracting sugar or syrups from cane juice and other substances containing sugar." The specification stated the invention to consist "in a means of discolouring syrups of every description by means of charcoal produced by the distillation of bituminous schistus, or mixed with animal charcoal, and even of animal charcoal alone." It then stated that the "discolouration" was to be produced by means of a filter made of the charcoal, and that there was "*nothing particular in the carbonization of the bituminous schistus,*" only it is convenient before the carbonization to separate the sulphurets of iron which are mixed with it. The specification said nothing as to any previous operation on the syrup before it was admitted to the filter; but it did state that syrup in a proper state might be obtained by a mixture of sugar and water. In an action for the infringement of the patent, the defendant pleaded that the plaintiff did not by any instrument in writing describe and ascertain the nature of his said invention, and in what manner the same was to be performed; and also that the plaintiff did not cause any such instrument to be enrolled in Chancery: the Court held, that the plaintiff sufficiently specified his invention, upon proof that it was applicable with advantage to the syrup after it had undergone a certain degree of heat, though it failed when applied to the first drawings of the syrup,

(*a*) *Sturz* v. *De la Rue and others*, 5 Russell's Rep. 322.

and that a "discolouration" of such syrup, and of syrup of sugar and water, warranted the title of improvements "in extracting sugar or syrup from cane juice:" the Court held, that it was necessary that the plaintiff should prove bituminous schistus would answer, that the presence of iron in it would not be injurious, and that if it would, it might be removed by means known to persons ordinarily acquainted with the subject; that the schistus might be purchased in a proper state in the market as an article of commerce, or that it might otherwise, without any secret or unknown means, be obtained in a fit state.(*a*)

Qu. Whether an allegation that the patentee has specified, is not supported by proof that he has specified all that he has invented, though the invention be not so large as the title would imply. (*a*)

Addendum to Chap. V.

Of the Practice of obtaining Letters Patent. (*b*)

By the 21 Jac 1, c. 19, the King is restricted in making grants of letters patent to fourteen years duration. The legislature sometimes interfered to prolong that term, but the patentee was put to great expense.

In the 4th section it is now enacted, "that if any person who now hath or shall hereafter obtain

(*a*) *Derosne v. Fairie and others*, 1 The New Term Rep. Exch. 1835, p. 109. See also 5 Tyrwhitt's Rep. 393.

(*b*) See the Practical Treatise, p. 137; Supplement, p. 40.

any letters patent as aforesaid shall *advertise* in the *London Gazette* three times, and in three *London* papers, and three times in some country paper, published in the town where or near to which he carried on any manufacture of any thing made according to his specification, or near to or in which he resides, in case he carried on no such manufacture, or published in the county where he carries on such manufacture or where he lives, in case there shall not be any paper published in such town, that he intends to apply to his Majesty in Council *for a prolongation of his term* of sole using and vending his invention, and shall petition his Majesty in Council to that effect, it shall be lawful for any person to enter a *caveat at the Council Office*; and if his Majesty shall refer the consideration of such petition to the judicial committee of the privy council, and notice shall first be by him given to any person or persons who shall have entered such caveat, the petitioner shall be *heard by his counsel and witnesses* to prove his case, and the persons entering caveats shall likewise be heard by their counsel and witnesses; whereupon, and upon hearing and inquiring of the whole matter, the judicial committee may report to his Majesty that a further extension of the term in the said letters patent should be granted, *not exceeding seven years*; and his Majesty is hereby authorized and empowered, if he shall think fit, to grant new letters patent for the said invention for a term not exceeding seven years after the expiration of the first term, any law, custom, or usage to the contrary in anywise notwithstanding: *provided*, that no such extension shall be granted if the application by petition shall not be made and *prosecuted with effect* before the expiration of the term originally granted in such letters patent."

To carry this very important section into practice, the Judicial Committee of the Privy Council have promulgated the following rules:—

"*Rules to be observed in Proceedings before the Judicial Committee of the Privy Council under the Act of the 5 & 6 Will. IV., intituled 'An Act to Amend the Law touching Letters Patent for Inventions.' Cap.* 83.

I.—"A party intending to apply by petition under section 2 of the said Act, shall give public notice by advertising in the London Gazette three times, and in three London papers, and three times in some country paper, published in the town where or near to which he carries on any manufacture of any thing made according to his specification, or near to or in which he resides, in case he carries on no such manufacture, or published in the county where he carries on such manufacture, or where he lives, in case there shall not be any paper published in such town, that he intends to petition his Majesty under the said section, and shall in such advertisements state the object of such petition, and give notice of the day on which he intends to apply for a time to be fixed for hearing the matter of his petition, (which day shall not be less than four weeks from the date of the publication of the last of the advertisements to be inserted in the London Gazette,) and that on or before such day notice must be given of any opposition intended to be made to the petition; and any person intending to oppose the said application, shall lodge notice to that effect at the Council Office on or before such day so named in the said advertisements; and having lodged such notice, shall be entitled to have from the petitioner four weeks' notice of the time appointed for the hearing.

II.—" A party intending to apply by petition under section 4 of the said Act, shall, in the advertisements directed to be published by the said section, give notice of the day on which he intends to apply for a time to be fixed for hearing the matter of his petition, (which day shall not be less than four weeks from the date of the publication of the last of the advertisements to be inserted in the London Gazette,) and that on or before such day caveats must be entered; and any person intending to enter a caveat, shall enter the same at the Council Office on or before such day so named in the said advertisements; and, having entered such caveat, shall be entitled to have from the petitioner four weeks' notice of the time appointed for the hearing.

III.—" Petitions under sections 2 and 4 of the said Act, must be presented within one week from the insertion of the last of the advertisements required to be published in the London Gazette.

IV.—" All petitions must be accompanied with affidavits of advertisements, having been inserted according to the provisions of sect. 4 of the said Act, and the 1st and 2d of these Rules; and the matters in such affidavits may be disputed by the parties opposing, upon the hearing of the petitions.

V.—" All persons entering caveats under section 4 of the said Act, and all parties to any former suit or action touching letters patent, in respect of which petitions shall have been presented under section 2 of the said Act, and all persons lodging notices of opposition under the 1st of these Rules, shall respectively be entitled to be served with copies of petitions presented under the said sections; and no application to fix a time

for hearing, shall be made without affidavit of such service.

VI.—"All parties served with petitions shall lodge at the Council Office, within a fortnight after such service, notice of the grounds of their objections to the granting of the prayers of such petitions.

VII.—"Parties may have copies of all papers, lodged in respect of any application under the said Act, at their own expense.

VIII.—"The master of the high Court of Chancery, or other officer to whom it may be referred to tax the costs incurred in the matter of any petition presented under the said Act, shall allow or disallow, in his discretion, all payments made to persons of science or skill examined as witnesses to matters of opinion chiefly.

"COUNCIL OFFICE, WHITEHALL,
18th November, 1835."

ADDENDUM TO CHAP. VII.

OF THE PROPERTY IN AN INVENTION. (*a*)

FOR the protection of patentees, the New Act gives a penalty of £50 against a party using the name, &c. of a patentee. In other respects the law is not altered.

In the 7th section it is enacted, "That if any person shall write, paint, or print, or mould, cast, or

(*a*) See the Practical Treatise, p. 160; Supplement, p. 56.

carve, or engrave or stamp, upon any thing made, used, or sold by him, for the sole making or selling of which he hath not or shall not have obtained letters patent, the name, or any imitation of the name, of any other person who hath or shall have obtained letters patent for the sole making and vending of such thing, without leave in writing of such patentee or his assigns, or if any person shall upon such thing, not having been purchased from the patentee or some person who purchased it from or under such patentee, or not having had the license or consent in writing of such patentee or his assigns, write, paint, print, mould, cast, carve, engrave, stamp, or otherwise mark the word 'Patent,' the words 'Letters Patent,' or the words 'By the King's Patent,' or any words of the like kind, meaning, or import, with a view of imitating or counterfeiting the stamp, mark, or other device of the patentee, or shall in any other manner imitate or counterfeit the stamp or mark, or other device of the patentee, he shall for every such offence be liable to a penalty of £50, to be recovered by action of debt, bill, plaint, process or information in any of his Majesty's courts of record at Westminster or in Ireland, or in the Court of Session in Scotland, one-half to his Majesty, his heirs and successors, and the other to any person who shall sue for the same: provided always, that nothing herein contained shall be construed to extend to subject any person to any penalty in respect of stamping, or in any way marking the word 'Patent' upon any thing made, for the sole making or vending of which a patent before obtained shall have expired.'

It is to be regretted that this clause did not give a penalty to be paid by all persons who mark the word

"Patent" on articles which they know never were the subject of a patent. In the courts of equity a manufacturer was always restrained from using the letters and figures which a patentee was in the habit of using. (*a*)

Respecting the Property in a Patent the following case has been decided.

The declaration in covenant alleged a deed, by which the plaintiff granted to the defendant a license to use certain looms. In that deed it was recited that the plaintiff had invented certain improvements, &c. in power looms, and had obtained letters patent, and caused a specification to be inrolled:—the Court held that the defendant was estopped from pleading, that the plaintiff was not the inventor; that it was not a new invention; and that no specification had been inrolled. (*b*)

Addendum to Chap. VIII.

Of the Infringement of a Patent, and the Remedies for that Injury. (*c*)

When a patentee felt himself aggrieved, and brought an action on his patent against an infringer, he was kept in great doubt and anxiety as to the defence which would be made. It continually occurred that the in-

(*a*) *Ransome* v. *Bentall*, Law Journal, vol. xii. page 161.
(*b*) *Bowman* v. *Taylor and another*, Law Journal, vol. xiii. p. 58.
(*c*) See the Practical Treatise, p. 173; Supplement, p. 63.

genuity of counsel suggested objections, which, if known before hand to the patentee, would have been removed by evidence.

The New Rules for pleas in actions in some measure gave a remedy, by requiring the defendant to plead all his defences. It was held, by several judges at chambers, that the defendant might plead in general words that the specification was insufficient, and then make any objection to its validity; without putting the patentee on his guard against the objections.

For remedy thereof it is, by the 5th section, enacted, " That in any action brought against any person for infringing any letters patent, the defendant, on pleading thereto, shall give to the plaintiff, and in any scire facias to repeal such letters patent, the plaintiff shall file with his declaration, a notice of any objections on which he means to rely at the trial of such action, and no objection shall be allowed to be made in behalf of such defendant or plaintiff respectively at such trial, unless he prove the objections stated in such notice: provided always, that it shall and may be lawful for any judge at chambers, on summons served by such defendant or plaintiff on such plaintiff or defendant respectively to show cause why he should not be allowed to offer other objections whereof notice shall not have been given as aforesaid, to give leave to offer such objections on such terms as to such judge shall seem fit."

On the subject of costs a great improvement is made, by section 6 it is enacted, " That in any action brought for infringing the right granted by any letters patent, in taxing the costs thereof regard shall be had to the part of such case which has been proved at the trial, which shall be certified by the judge before whom the

same shall be had, and the costs of each part of the case shall be given according as either party has succeeded or failed therein, regard being had to the notice of objections, as well as the counts in the declaration, and without regard to the general result of the trial."

Although a patentee was defeated in an action which proved his patent to be invalid, still he might continue to bring actions at law; and, on the other hand, although he had supported his patent, and proved its validity at a very great expense, yet the infringers might go on and put him to a continual outlay, which in some cases has caused his ruin.

A very important improvement is introduced in these words. By section 3 it is enacted, "That if any action at law, or any suit in equity, for an account, shall be brought in respect of any alleged infringement of such letters patent heretofore or hereafter granted, or any scire facias to repeal such letters patent, and if a verdict shall pass for the patentee or his assigns, or if a final decree or decretal order shall be made for him or them, upon the merits of the suit, it shall be lawful for the judge, before whom such action shall be tried, to certify on the record, or the judge who shall make such decree or order, to give a certificate under his hand, that the validity of the patent came in question before him, which record or certificate being given in evidence in any other suit or action whatever touching such patent, if a verdict shall pass, or decree or decretal order be made, in favour of such patentee or his assigns, he or they shall receive treble costs in such suit or action, to be taxed at *three times the taxed costs*, unless the judge making such second or other decree or order,

or trying such second or other action, shall certify that he ought not to have such treble costs."

This is some check to a profusion of actions. At the present moment a patentee has brought nearly forty actions on a patent which is likely to be declared void.

The following cases have been decided respecting the remedies for an infringement of a patent.

Pending a rule nisi for a new trial, in an action for invasion of plaintiff's patent right, defendant sued out a sci. fa. to try the same right. The Court refused to postpone the proceeding on the rule for the new trial, until a decision should have been obtained on the scire facias.(*a*)

Although a patent has expired, the Court will grant an injunction to restrain the sale of articles manufactured in fraud of that patent previous to its expiration.(*b*)

On an application for an injunction to restrain the infringement of a patent, the party must swear, that, at the time of making the application, he believes that, at the date of the patent, the invention was new, or had not been previously known or used in this kingdom.(*c*)

The specification of an invention being in doubtful terms, a demurrer to a bill for the infringement of a patent, ordered to stand over till an action should have been brought to try the validity of the patent.(*d*)

(*a*) *Haworth* v. *Hardcastle*, 10 Bing. Rep. 551.

(*b*) *Crossley* v. *The Derby Gas Light Company*, Law Journal, vol. xiii. p. 25.

(*c*) *Sturz* v. *De La Rue and others*, 5 Russell's Rep. 322.

(*d*) *Kay* v. *Marshal*, Law Journal, vol. xiii. p. 258.

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