A

PRACTICAL TREATISE

ON

The Law

OF

PATENTS FOR INVENTIONS

AND OF

COPYRIGHT:

ILLUSTRATED BY

NOTES OF THE PRINCIPAL CASES;

WITH AN ABSTRACT OF THE

LAWS IN FORCE IN FOREIGN COUNTRIES.

Second Edition,

TO WHICH IS ADDED,

A SUPPLEMENT,

CONTAINING THE LAW TO THE PRESENT TIME.

BY

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TO

THE RIGHT HONORABLE

LORD BROUGHAM AND VAUX,

LATELY

LORD HIGH CHANCELLOR

OF

GREAT BRITAIN,

A SUCCESSFUL CULTIVATOR

OF THE SCIENCES, LITERATURE, AND THE ARTS,

AND

A POWERFUL PROTECTOR

OF SCIENTIFIC MEN, SCHOLARS, AND ARTISTS,

THIS TREATISE,

EXPLANATORY OF THE LAWS UNDER WHICH

INVENTORS, SCHOLARS, AND ARTISTS,

ENJOY THE FRUITS OF THEIR GENIUS,

IS, WITH THE GREATEST RESPECT,

DEDICATED BY

THE AUTHOR.

PREFACE

TO THE

SECOND EDITION.

THIS Book has been long out of print, and *Supplements* were at two several times published, with the view of saving expense to the purchasers of the original Work.

For this edition—the Text has been carefully examined, and the Notes enlarged,—the cases lately decided have been collected and analysed, the new Acts of Parliament set forth and explained, and the Index much extended.

The improvements effected in the Law, by which *Patents for Inventions* are better secured to scientific men, call for thanks from all men to LORD BROUGHAM for the Acts of Parliament which he introduced, and to the LEARNED JUDGES for the wise decisions favourable to Inventors to which they have arrived.

Of the alterations attempted in the Laws giving a *Copyright* to Scholars, it may be said, that whilst BOOKS in general are amply protected, yet instances arise for which sufficient time is not allowed to Authors to secure an adequate reward. For such cases, an act, similar to the one under which the terms of Letters Patent are prolonged, appears to be the most just.

A Bill has also been introduced into Parliament, to extend the time of the Copyright in *Patterns* printed on Linens, &c. It is to be lamented, that when alterations are made in the *Statute Law*, that the whole subject is not always re-embodied in the new Act. Thus to protect *Patterns*, there will be, besides the new Statute, four acts,—the 27 Geo. III. c. 38; the 34 Geo. III. c. 23; the 2 Vict. c. 13, and the 2 Vict. c. 17. The time of protection varies in three different ways: for patterns *printed on* articles as calicoes, three months: for patterns *worked in* articles as carpets, twelve months: and for patterns or ornaments *placed on* articles as vases, three years. Less complication would, undoubtedly, be more convenient.

R. G.

Inner Temple,
25th March, 1840.

PREFACE

TO THE

FIRST EDITION.

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 development 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.

R. G.

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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 uncontrolled 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, on that principle, 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 by 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 the 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.

Monopolies in England.

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.

The Metropolis, and most of our cities and corporate towns, are indebted to King John for their commercial pre-eminence arising from endowments by him, 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 the 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 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 the 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 insur-

mountable barrier against every attempt to introduce 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 *'egrater*. (*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.

Monopolies by act of parliament.

The Statute of James just referred to is merely *declaratory* of the common 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*.

(*a*) Forestel, faristel, foristellum, foristellarius, is derived from two Saxon words, viz. *far* or *fare* (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.

It can be made, when thereby, no other 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 COPYRIGHT 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 inves-

(*d*) Hawk. I. 470.

tigation, it is conceived, necessarily leads to the inquiry into monopolies, when made

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 a *Copyright* 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:—

I. *Grants that were valid at common law.*
II. *Those that were bad at common law.*
III. *Those that by statute law are permitted to be made.*

I. GRANTS VALID AT COMMON LAW.

IT is clear, that at common law the Queen 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 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 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 sieve, 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 Queen may also grant to particular persons the *sole use of some particular employments* (as of

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

printing the Holy Scriptures, and law books, &c.) 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 Queen by her 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 license under the great seal, whereby it was directed that he alone, in

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

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

London, should enjoy the privilege of selling sweet wines.

And the grant of the sole ingrossing of wills (*i*) and inventories in a spiritual court, also of the sole making of bills, pleas, and writs, in a court of law, to a particular person, were 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

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, empowering 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, licenses, 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 licenses, &c., and all proclamations, &c., and all

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.

(*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.

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 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 indiscriminately 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 inquiry. (*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.

The principles of law, which govern these Monopolies, were elucidated in the first edition of this work, but it is thought better not to reprint them, as the subject belongs rather to a Commercial Treatise.

(*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.

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 alluded to 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 the statute law. From that source the LAW OF PATENTS FOR INVENTIONS springs. It is a branch of the jurisprudence, 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 Jas.

But the law of patents for inventions, as it lately stood, rested entirely 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,

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

(*b*) 21 Jac. 1, c. 3, ante 14.

(*c*) Post, chap. 3.

(*d*) Post, chap. 2.

or grant of such privilege thereafter to 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."

Encouragement of artists.

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 with one blow to put an end to the licentious and grievous monopolies, and to hold out encouragement to the ingenious artist.

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—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,—seems to be 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.

Policy of stat. 21 Jac.

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 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, were utterly to cease and become void.

(*e*) Post, chap. 6.

(*f*) Post, chap. 4.

By thus obtaining an exact statement (*g*) of the nature and use of the invention, the public 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 accurately defined by the statute of James, and it is clearly stated that 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 Sovereign. It emanates from Her Majesty as *the Patron of Arts and Sciences* at the humble request of her subject; and it is as a gracious favour that she extends this royal protection to the inventor.

Only one parliamentary attempt to improve upon the statute of King James has been successful. Lord Brougham, with great skill, managed to carry through the legislature "An Act to amend the law touching Letters Patent for Inventions,"

(*g*) The description must be very correct. Even an inadvertent omission would, it appears, (post, ch. 4,) invalidate 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 5 & 6 Wm. 4, c. 83, which being a great boon to inventors, will be afterwards fully explained.

The grants of Queen 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 charters, or letters. (*i*) These letters are either open, and thence called *Literæ Patentes*, being addressed to all Her Majesty's subjects; or else close, *Literæ clausæ*, addressed to particular persons. It is by the *Literæ Patentes*, or 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 Queen'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 bear-

(*h*) Dr. and Stud. B. I. d. 8.
(*i*) 2 Bla. Com. 346.
(*k*) Post, chap. 5.
(*l*) Ante, 20.

ings 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 Her Majesty, of her special grace, certain knowledge, and mere 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 Queen'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

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

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

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

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

non-observance of which will render it void. (*q*) If it should appear to the Queen, 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 trust of it, to or for any number of persons exceeding the number of twelve (formerly five) or those twelve 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; and assigns, created by operation of law; 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.

(*q*) See post, chap. 9.
(*r*) See post, chap. 7.
(*s*) See post, chap. 6.

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 examined 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 inquiry 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.

In the case of *Hill* v. *Thompson* (*b*) 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*, (*c*) 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 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

(*b*) 8 Taunt. 395. S. C. 2 B. Moore, 456.
(*c*) 1 Car. & P. 558.

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 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 (*d*) 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 was held 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

(*d*) *Lewis* v. *Marling*, 10 B. & C. 22. And S. C. 4 Car. & P. 52. *Jones* v. *Pearce*, MS. and see post.

into public use. They must also be original inventors of them, without any assistance from inspection or knowledge of the other machines.

If the principle of the invention be taken from a *scientific work*, (*e*) 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 (*f*) 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 case of the *King* v. *Arkwright*, (*g*)

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

(*f*) Dav. Pat. Cas. 429. Evans St. 607.

(*g*) 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. 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

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 not 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, (*h*) that he was not the inventor of the

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.

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

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*, (*i*) 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 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 Hall having first made the discovery in his own closet, but never made it public, and on that ground Dolland's patent was confirmed.

(*i*) Chitty, Jun. Prœr. of Crown, 182, n.

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, (*k*) a patent, granted for something which had been practised beyond the sea, was held to be good and valid.

This construction has continued to be put upon that clause, and subsequent practice has confirmed it.

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.

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 not be set forth. It has been doubted whether the patent

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

can be supported if the inventor, the foreigner, retaining any interest in the patent, be an alien enemy. (*m*)

Observations.—The law respecting the person to be considered the *first inventor* (*n*) does not

(*m*) *Bloxam* v. *Elsee*, 1 Car. & P. 558.

(*n*) 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

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 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.

difficulties of detail that occur in their business, and are perpetually making trifling inventions which they require for immediate application."

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 the great variety of things which 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 "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

(*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.

rendering the description of a manufacture concise 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.

Definition of a new manufacture.

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

(*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.

must, by the words of the act, not have been *used.* It must be *vendible;* or, not being required 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.

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. (*d*)

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

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. (*g*) There was not any thing particularized which was a novelty.

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

(*d*) Ante, 29. *Rex* v. *Arkwright*, printed case, 182. Dav. Pat. Cas. 129. 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, *Minter* v. *Wells*, 5 Tyr. 163.

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

(*f*) Ante, 29. Tennant's patent. Dav. Pat. Cas. 429.

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

(*h*) *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

which his invention consisted, that turned out to be old, and did not set forth any instrument, or any new particular mode of applying that principle, although some machinery had been invented. 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. (*i*)

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. 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. (*j*)

When the objects of two grants are substantially the same, they may both be valid, if the modes 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 contracting 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.

(*i*) The same point was decided in *Saunders* v. *Aston*, 3 B. & Ad. 881. See S. C. post.

(*j*) *Hare* v. *Harford* and *Taylor*, C. P., 14 July, 1803. This case has been doubted. 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

of attaining the desired effect are essentially different. (*k*)

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

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. (*m*) 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

intended to do so. And see *Manton* v. *Parker*, Dav. Pat. Cas. 330. But it appears to be confirmed by *Minter* v. *Mower*, 6 A. & E. 755, The jury found that a person (not the patentee,) found out the principle, but not the practical purpose to which it was then applied, and that the patentee (plaintiff) had discovered such practical purpose; and the Court ordered a nonsuit to be entered: see S. C. post.

(*k*) *Huddart* v. *Grimshaw*, Dav. Pat. Cas. 290. And see *Russell* v. *Cowley*, 1 C. M. & R. 864. A patent claimed the invention of manufacturing tubes, by drawing them through rollers, using a maundril in the course of the operation. A later patent claimed the invention of manufacturing tubes by drawing them through fixed dies or holes, but the specification was silent as to the use of the maundril. The Court held that they would infer that the maundril was not to be used, and that the latter patent was good.

(*l*) 21 Jac. I. c. 3, s. 6.

(*m*) Ante, p. 31. And see 2 Hen. Bla. 487.

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 (*n*) 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 made an actual use of it, then a patent, afterwards obtained by any one of them, is void. This happened to Mr. Tennant, (*o*) whose grant was declared to be invalid, because a bleacher, who had not divulged the secret to any other person but to 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 (*p*) 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

(*n*) Ante, p. 29, in note, printed case, 50, 182, 861. Dav. Pat. Cas. 129, 139, and see 2 B. Moore, 452.

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

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

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

However, the case of *Lewis* v. *Marling*, (*r*) decided that the use must have been a public use, unless it could be shewn 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, for shearing or cropping woollen and other cloths. They

(*q*) See *Wood* v. *Zimmer*, 1 Holt, N. P. C. 60, and see *Cornish* v. *Keene*, 3 Bing. New Cases, 570.

(*r*) 10 Barn. & Cress. 22. See the same case at Nisi Prius, 4 C. & P. p. 52.

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 shewn 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, (*s*)

(*s*) It was proved at the trial that he used it nearly six months. MSS.

but he did not think it answered, and soon discontinued the use of it.

For the defendant it was contended that this evidence 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) (*t*) 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

(*t*) See post.

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 to list. I told the jury, that if it could be shown that the plaintiffs had seen the model or specification, that might be an answer to 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, (*u*) that a knowledge 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*, (*v*) 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.

(*u*) When that model was produced, to four counsel in consultation, (of whom one is now a judge and two are Queen'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."

(*v*) MS. July, 1832. And see *Morgan* v. *Seaward*, E. T. 1837. Before the date of a patent, a person, by the instructions of the patentee, and under an injunction of secrecy, made a pair of wheels on the principle mentioned in the patent for another person: which when made, were not exposed to view at the factory, but were shortly sent abroad for the use of a company, whose shareholders lived in England. The Court held that this publication did not deprive the invention of its novelty.

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 where 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, (*w*) 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 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

(*w*) A gentleman of great genius for mechanical discoveries, who died in early life much lamented.

the invention was not pursued. The carts after frequent repairs were thrown aside.

There was not any evidence to shew that Jones had ever seen or heard of the wheels made by Strutt.

Mr. *Justice Patteson*, who tried the cause, thus addressed the jury. 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 opinion 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. That verdict was not disturbed.

Used by himself 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, (*y*) because the inventor had, for four

(*y*) *Wood* v. *Zimmer*, 1 Holt, Rep. N. P. 58. (And see *Kay* v. *Marshall*, 5 Bingham's New Cases, 592.) 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

months prior to the sealing of the grant, sold the article under a different name, was, in consequence thereof, declared to be void.

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. (*z*) 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 retain the monopoly, and make and sell his invention publicly, and thus gather

(*z*) See Vol. 2, 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.

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.

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. (*a*) 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. (*b*)

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?

(*a*) See *Hill* v. *Thompson*, 2 B. Moore, 457. A bill was introduced into Parliament in a late session to protect persons making experiments. It was thrown out on the second reading.

(*b*) See *Severne* v. *Olive*, 3 B. & B. 72.

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 together.

Heath, J., said, (*c*) "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 of man.*" An opinion that strongly impresses the idea of its being something *vendible.* (*d*)

And in the *King* v. *Wheeler*, (*e*) 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,

(*c*) 2 Hen. Bla. 482.
(*d*) 8 T. R. 99.
(*e*) 2 Barn. & Ald. 349, 350.

or in some other useful purpose, as a stocking frame, or a steam engine for raising water from mines. (*f*)

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. (*g*)

(*f*) See S. C. post, as to methods, &c.

(*g*) *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 spinning 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 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 admitted by several it could do without, that appeared from the experiment made. They

In the case of *Bloxam* v. *Elsee*, the most important issue was left to the jury by the Chief Justice, whether the machine for which the patent was granted was capable of producing useful paper. The jury found that it was capable. (*g*)

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, (*h*) in 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

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.

(*g*) 6 Barn. & Cress. 173.

(*h*) *Huddart* v. *Grimshaw*, Dav. Pat. Cas. 297, 298.

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. (*i*)

(*i*) *Walker* v. *Congreve*, Eq. July, 1816. (And see *Russell* v. *Cewell*, 1 C. M. & R. 864.) 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 monopolies? Well, but said the patentee, my barrel is strengthened with *hoops*. And was it a new thing displaying great ingenuity to strengthen 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*.

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*, (*k*) 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*, (*l*) and was much con-

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

(*l*) 4 Barn. & Ald. 455. 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 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 pickaxe, 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.

sidered lately in the case of *Haworth* v. *Hardcastle*; (*l*) in that case the jury 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.

II. A MACHINE OR INSTRUMENT.

Peculiar quality.

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. (*m*)

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 the public at a much cheaper rate. The community

(*l*) 1 Bing. N. C. 182. See S. C. post.

(*m*) *Boulton* v. *Bull*, 2 Hen. Bla. 492, (and see *Brown* v. *Moore*, Eq. Nov. 1815. And *The King* v. *Wheeler*, 2 B. & A. 345.) 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.

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.

The cases of *Minter* v. *Wells*, (*l*) and *Minter* v. *Mower*, (*m*) illustrate that position.

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, (*n*) it was decided, that if the substance were *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; (*o*) 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. (*p*)

(*l*) 5 Tyrwhitt, 163. (*m*) 6 Adol. & E. 735.
(*n*) 3 Inst. 184.
(*o*) In *Morris* v. *Branson*, Bull, N. P. 76.
(*p*) 2 Hen. Bla. 463.

If the grant extend to the whole, it will be 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, (*q*) 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. (*r*)

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

(*r*) *Huddart* v. *Grimshaw*, Dav. Pat. Cas. 265. See *Saunders* v. *Aston*, 3 B. & A. 881; and also see *Hill* v. *Thompson*, 2 B. Moore, 451, and ante, 54. 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

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

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 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.

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 the addition, and was valid. (*s*) 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. (*t*)

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. (*u*) 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. (*v*) 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. (*w*)

Peculiar quality.

The general quality most peculiar to an addition, is, that it must be *useful*. It must be a *real substantial improvement*. (*x*) If the manufacture in its new state merely answer as well

(*s*) 11 East, 109. (*t*) 14 Ves. 133, 4, 5.

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

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

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

(*x*) See ante, p. 54. as to the *utility* of the invention.

as it did before, the alteration is not such an invention as is worthy of a patent. (*y*) 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 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. (*z*)

IV. A COMBINATION OR ARRANGEMENT OF THINGS ALREADY KNOWN.

A combination or arrangement 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

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

(*z*) Printed Cas. 185. Dav. Pat. Cas. 138. See ante, p. 29, n.

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 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. (*a*)

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

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

(*b*) *Bevill* 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

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

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 beginning 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 Browne'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?

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. (*c*)

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 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. (*d*)

The case of *Lewis* v. *Davis* (*e*) is very important in shewing 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 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

(*c*) 2 Hen. Bla. 487. Dav. Pat. Cas. 267, 8, 9.
(*d*) 3 Meriv. 629. (*e*) 3 Car. & Pay. 502.

that it was granted for a machine with rotatory cutters, which were used 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 mens' hands, which operation was performed from list to list: that a 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 shewn 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, claimed by the plaintiffs, but had combined the rotatory cutter, which was old, with other mechanical contrivances.

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.

Another case to illustrate a combination of parts, is *Cornish* v. *Keene*. (*f*) The patent was

(*f*) 3 Bing. N. C. 570. Tindal, C. J., observed,—Now the first objection made to the patent so described, is, that the invention is not the subject matter of a patent. That it is neither a new manufacture, nor an improvement of any old manufacture; but is merely the application of a known material, in a known manner, to a purpose known before.

The question, therefore, as to this point is, does it come under the description of "any manner of new manufacture" which are the terms employed in the statute of James. That it is a manufacture, can admit of no doubt; it is a vendible article, produced by the art and hand of man; and of all the instances that would occur to the mind when inquiring into the meaning of the terms employed in the statute, perhaps the very readiest, would be that of some fabric or texture of cloth. Whether it is new or not, or whether it is an improvement of an old manufacture, was one of the questions for the jury upon the evidence before them; but that it came within the description of a manufacture, and so far is an invention which may be protected by a patent, we feel no doubt whatever. The materials indeed are old, and have been used before; but the combination is alleged to be, and if the jury are right in their finding, is new, and the result or production is equally so. The use of elastic threads or strands of Indian rubber, previously covered by filaments wound round them, was known before; the use of yarns of cotton or other non-elastic material was also known before; but the placing them alternately side by side together as a warp, and combining them by the means

taken out, and held good by the Court, "For an improvement or improvements, in the making or manufacturing of elastic goods or fabrics, applicable to various useful purposes," and the patentee in his specification, which was enrolled in July, 1833, described his invention in general terms to be designed for the production of an elastic web-cloth, or other manufactured fabric for bandages, and for such articles of dress as the same might be applicable to. He then described more particularly three distinct objects which he proposed. The third object proposed by the patentee was, "to produce cloth from cotton, flax, or other suitable material, not capable of felting, in which should be interwoven elastic cords or strands of Indian-rubber, coated, or wound round with filamentous material." He afterwards described the mode of effecting the third object to be, "by introducing into the fabric, threads or strands of Indian-rubber, which have been previously covered by winding filaments tightly round them, through the agency of an ordinary covering machine or otherwise; these strands of Indian-rubber being applied as warp or weft, or as both, according to the direction of of a weft, when in extreme tension and deprived of their elasticity, appears to be new; and the result, namely, a cloth, in which the non-elastic threads form a limit, up to which the elastic threads may be stretched, but beyond which they cannot, and, therefore, cannot easily be broken, appears a production altogether new. It is a manufacture, at once ingenious and simple. It is a web combining the two qualities of great elasticity, and a limit thereto.

the elasticity required. That by thus combining the strands of Indian-rubber with yarns of cotton, flax, or other non-elastic material, he was enabled to produce a cloth which should afford any degree of elastic pressure, according to the proportion of the elastic and non-elastic material." He added, "that the strands of Indian-rubber were, in the first instance, stretched to their utmost tension, and rendered not elastic, as described in a former specification to another patent; and being in that state introduced in the fabric, they acquired their elasticity by the application of heat after the fabric was made."

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. (*g*)

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. (*h*) It must also be a substantial and *beneficial* alteration. A slight variation or transposition of parts will not sustain the patent.

Thus in *Saunders* v. *Aston*, (*i*) Lord Tenterden said, "It is stated early in the plaintiff's specification, that his improvements consist in 'the substitution of a flexible material, in the place of metal shanks on buttons.' Before this patent was obtained, the plaintiff had obtained another,

(*g*) Post, 84.

(*h*) *Huddart* v. *Grimshaw*, Dav. Pat. Cas. 278.

(*i*) 3 B. & A. 881.

for a mode of manufacturing buttons with metal shanks. Flexible shanks had been known long before. The present specification describes the mode of substituting one for the other. A great part of it merely repeats the process employed under the former patent, when metal shanks were used; and with regard to the modes of putting on the flexible shank, there was evidence that such shanks had been put on buttons for many years before, in several of the ways described by the plaintiff. It has been ingeniously contended that there was a novelty, at least in the application of the toothed collet to the production of a flexible shank, under the present patent. But the collet itself is not new; and although it is said in one part of the specification, that the teeth of the collet, when it is pressed down, 'materially serve to hold the materials forming the intended button firmly together,' the teeth being bent by coming in contact with the plate which bears the flexible substitute for metal shanks, yet it does not any where appear from the specification, that the patentee relies upon this collet as the material part of his invention. He declares that his invention consists in the substitution of a soft material for the metal shank; but he does not say a substitution by the special aid of this collet. And even assuming that the collet, where it is described as part of the machinery, is meant to be represented as the important part, then, indeed, if there were no other mode in which the object of the present invention could be accomplished, those in which the collet is so used, the patent

might, perhaps, be sustained; but it appears in evidence that this is not so. I think, therefore, the plaintiff is not entitled to recover." (*i*)

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 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

(*i*) In *R. v. Fussell*, the patent was held by Lord Tenterden to be void, because the only alteration was using steam instead of hot water. MSS.

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 a 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 (*i*) 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? (*j*)

(*i*) 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*, 2 Barn. & Ald. 345, and *Hill* v. *Thompson*, 2 B. Moore, 451.

(*j*) Ante, 52.

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. (*k*)

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. (*l*) In the case of *R.* v. *Cutler*, (*m*) it was remarked, by Ellenborough, C. J., that if the patentee had claimed a grant for his new in-

(*k*) 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 if 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 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.

(*l*) 2 Hen. Bla. 486. See *Brunton* v. *Hawkes*, 4 B. & A. 455.

(*m*) *The King* v. *Cutler*, 1 Stark. Rep. 354. Ante, 38.

strument, 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*, (*n*) Abbott, C. J., observed:—"Or it may perhaps, extend also 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 or more expeditious manner, or of a better or more useful kind. But no merely philosophical or abstract principle can answer to the word manufactures. 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 this word. A person, therefore, who applies to the crown for a patent, may represent himself to be the inventor of some new thing, or of some new engine or instrument. And in the latter case, he may represent himself to be the inventor of a new method of accomplishing that object, which is to be accomplished by his new engine or instrument, as was the case of Watt's patent, in which he represented himself to be the inventor

(*n*) 2 Barn. & Ald. 350.

of a new method of lessening the consumption of steam and fuel in fire-engines, and by his specification he described certain parts to be used in the construction of fire-engines. Or, supposing a new process to be the lawful subject of a patent, he may represent himself to be the inventor of a new process, in which case it should seem, that the word 'method' may be properly used as synonymous with 'process.'"

Hence it may fairly be concluded, that neither a principle, nor the application or practice of principle, can be the subject of a patent. How far the first discoverer of a principle should be protected in a monopoly of that principle, and not be confined to the means by which he brought it into use, is a question of great difficulty; but it seems to be very dangerous to give, by legislative enactment, the monopoly of the first principles of science.

The case of *Hullett* v. *Hague*, (*o*) 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 the 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 state-

(*o*) 2 Barn. & Ad. 379.

ment of the specifications. *Hullett* was the assignee of *Knelle*r 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. Knelle*r, 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 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 ap-

plied 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 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 low temperature than usual by the means hereinbefore 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 describe 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 syrup, 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 tem-

perature 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 patent 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,—Knight and Kirk's patent 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."

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., (*p*) 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 produced. He thought it could not be for the making the plates of iron, which, when disposed in a particular manner, produced the effect;

(*p*) 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."

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, of many who delivered opinions on Watt's patent, 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 (*q*).

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, (*r*) 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, (*s*) 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

(*q*) Ante, 74.

(*r*) 2 Hen. Bla. 470. Dav. Pat. Cas. 172.

(*s*) The *King* v. *Wheeler*, 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. (*t*)

(*t*) Ante, 36; 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

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, (*u*) and therefore it seems reasonable to infer that a mere process or methed cannot be the subject of a patent.

But, supposing it possible that a new method of operating with the hands 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. (*v*)

manufacture; and whether the manufacture be 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.

(*u*) 2 Hen. Bla. 484. (*v*) Ante, 52.

To permit a new method to be a manufacture within the meaning of the statute of James 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. (*w*)

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. (*x*) But suppose, that in *thus* using the machine some *apparently* inconsiderable alteration is made, that would be sufficient to support a patent; (*y*) 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 enume-

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

(*x*) Ante, 36. (*y*) Ante, 54.

rated 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 fellows. 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; 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 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 experi-

ments, 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. (*z*)

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. (*a*) 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

(*z*) Post.

(*a*) 2 Hen. Bla. 463. 8 T. R. 101. 2 Barn. & Ald. 350. See Evans's Statutes, 607.

a substance, machine, improvement, or combination.

Watt's patent.

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.

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. (*b*)

Rooke, J. (*c*) 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. (*d*) The principal objection

(*b*) 2 Hen. Bla. 492. (*c*) 2 Hen. Bla. 478.
(*d*) 8 T. R. 98.

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 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. (*e*) I do not consider it as a patent

(*e*) *Hornblower* v. *Boulton*, 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 doue by a manufacture, and the mode of making that manufacture is described, it then

for the old engine, but only for an addition to, or improvement of the old engine.

Lawrence, J. (*f*) The word "engine" may

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.

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

signify *device*, and that Watt meant to use it 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., (*g*) observed, No doubt the inventor *might have had* a patent for his *machinery*, but could not have one for a method.

facture," and unless such devices did fall within that description, no addition or improvement could be the subject of a patent.

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

And Buller, J., (*h*) said, 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 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 were 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

(*h*) 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.

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; 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 machine, 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 inquiry, an inventor under similar circumstances, had much better take out his patent for an improvement.

The opinions of the Court of Exchequer, in *Minter* v. *Wells* (*i*) are important on this point, although the merits of that patent were afterwards decided in *Minter* v. *Mower.* (*j*)

Lord Lyndhurst said,—Every invention of a machine, necessarily includes the application of some principle, and in this instance, the application of the principle of a lever to the back and seat of a chair, is the machine, the invention of which is claimed by the plaintiff. He has not summed up the extent of his invention, so as to include in it the principle of the lever, but merely the invention of applying it, in the manner specified. The claim is not leverage only, but self-adjusting leverage; nor that only, but the appli-

(*i*) 5 Tyr. 163. (*j*) 6 A. & E. 735.

cation of it in the manner described. He says, "I claim the application of a self-adjusting leverage, applied 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." That back and seat are so placed and contrived that the pressure on the back is varied and counterbalanced by that on the seat. Any machine applying a self-adjusting lever to the back and seat of a chair, by which the effect of one counterbalancing the other is produced, would be an infringement of this patent: for the claim is for a self-adjusting lever, as applied to the back and seat of a chair, in whatever shape or form it may be made. Mr. B. Parke said,—What is claimed as an invention is not the principle of the lever, but merely the mechanical contrivance by which the principle is combined with, and made applicable to, the construction of a chair adjusting itself in a manner regulated by the mere act of sitting in it. The plaintiff only claims the combination, and that is admitted to be new. (*k*)

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,

(*k*) *Minter* v. *Wells* and *Another*, 5 Tyrwhitt's Rep. 165.

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* (*l*) comes within the description of a manufacture only when it gives to the community some substance, (*m*) or compound article, *new* and *unused*, *vendible* and *beneficial*. (*n*) Of this description are MEDICINES, a fruitful source of patents. They partake of the nature of a substance, 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

(*l*) 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. & 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 inquiry.

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

(*n*) Ante, 37.

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 (*o*) 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.

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

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

that if a new substance is really produced, by the chemical process, the grant, by the same reasoning that a method may be claimed when the object is a machine, will be valid. (*p*)

There should be a body of laws framed expressly for discoveries in chemistry, because the rules which apply to the inventor of a machine, do not adapt themselves readily to the discoverer of a chemical truth.

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. (*q*)

The *foreign article*, if it have the requisite qualities (*r*) 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. (*s*)

From the decision in *Edgeberry* v. *Stephens* it might be inferred, that if an Englishman publish an invention whilst abroad, he is nevertheless

(*p*) Ante, 96.
(*q*) *Edgeberry* v. *Stephens*, 2 Salk. 477.
(*r*) Ante, 37. (*s*) Ante, 31.

entitled to a patent for it, if he apply for one before it is known in this country.

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 would be taken simply for the improvement, be it a single piece or combination, is a question for the judgment of the inventor.

But a very slight combination of mechanical means, which form an instrument that is new and useful will support a patent.

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.

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

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 Eldon called it, should be too much in favour of the

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.

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 the grant: because, if the petitioner had repre-

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

(*c*) 3 T. R. 95; and see 2 Hen. Bla. 478.

sented 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 ineffectual, even to the extent to which he would be other-

(*d*) *Rex* v. *Wheeler*, 2 Barn. & 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.

wise 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*, 8 Taunt. 375. 3 Meriv. 629. See S. C. in 2 B. Moore, 454; and 1 Holt, N. P. C. 636. *Gibbs* v. *Cole*, 3 P. Wms. 255.

(*g*) *George* v. *Beaumont* and *Others*, Eq. MSS.; and see 2 Hen. Bla. 489.

(*h*) *Cochrane* v. *Smethurst*, K. B. 1 Stark. 205. 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. & Ald. 350. 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 grant fails, and the grant consequently becomes void; and this will not be the less true

An invention for giving paper, by the application of a certain composition, such a surface as rendered 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. (*k*)

A patentee summed up his invention thus: "My 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. (*l*)

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

if it should happen that the patentee has invented some other 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*) *Sturz* v. *De la Rue* and *Others*, 5 Russell's Rep. 322.

(*l*) *Minter* v. *Wells* and *Another*, 5 Tyrwhitt's Rep. 163.

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 a new apparatus, was held to be bad for not claiming the new instrument as the thing invented. (*m*)

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*, (*n*) 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

(*m*) *King* v. *Cutler*, 1 Stark. N. P. C. 354. Ante, 38.

(*n*) 6 Barn. & Cress. 169, 178. It has been the happiness of the author of this Treatise to assist, as a member of Parliament, in obtaining for Messrs. Fourdrinier a public reward of 15,000*l.* for their services, a reward well merited.

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, shewed 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.

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 shew that whatever was done, was 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 shews 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. (*o*)

A patent was granted (*p*) for "certain improvements in extracting sugar and syrups from cane juice and other substances containing sugar, and in refining sugar and syrups." The specification stated a method of depriving syrups of every description of colour, 'by filtering them through charcoal, produced by the distillation of bituminous schistus, and used alone or mixed with animal charcoal, or even through animal charcoal alone, when placed in thick beds. It was alleged that the title had claimed a larger invention than was disclosed by the specification; but the Court held, that the specifi-

(*o*) It appeared afterwards to the Committee of the House of Commons, that if Mr. Fourdrinier had been present in Court, he would have explained that one machine for a wide breadth might easily and readily have been adapted to different breadths of papers of less width each.

(*p*) *Derosne* v. *Fairrie*, 5 Tyr. 393.

cation sufficiently described both branches of the invention recited in the title of the patent, *viz.*, the refining sugar, by melting it after it had granulated, and applying the patent process to it when thus brought into a syrup; and also the refiuing the syrup as extracted from the cane juice, before it had been so far subjected to the action of fire as to granulate and become sugar.

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 descriptions of each subject, will hereafter be investigated, such mistakes as are likely to be fallen into by persons attempting to describe particular 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. (*q*)

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

Thus in *Crosley* v. *Beverley*, (*r*) at nisi prius, in which case, the patent was granted for an improved gas apparatus, no direction having been 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."

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 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

1. The terms are *ambiguous.*
2. Necessary *descriptions are omitted.*
3. Parts claimed are *not original.*
4. Things are put in to *mislead.*

(*r*) 3 Car. & P. 513.

5. The *drawings* are incorrect.
6. *One of different ways*, or different ingredients named, fails.
7. *One of several effects specified* is not produced.
8. 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.

Taking the title, patent, and specification of *Campion's* letters patent (*s*) together, 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 thread of the sail-cloth which had been improved. For that ambiguity the patent was declared to be void.

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

(*s*) *Campion* v. *Benyon*, 3 B. & B. 5.
(*t*) *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.

For those reasons the patent was declared to be void.

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; (*u*) but if a word be not used in its common acceptation, then it should be explained. Thus, in *Wheeler*'s

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

specification, (*v*) it appeared, 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.

In another case, (*w*) 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 that could be obtained would not answer the purpose. The specification was held to be insufficient.

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

(*v*) *King* v. *Wheeler*, 2 Barn. & Ald. 349. Ante, 111.
(*w*) *Sturz* v. *De la Rue* and *Others*, 5 Russell's Rep. 322.

the drawing and description, that on the face of the specification it appeared that he intended to use a parallel cylinder. (*x*)

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

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. (*z*)

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. (*a*)

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

(*y*) *Hill* v. *Thompson*, 2 B. Moore, 450, 455, &c. Ante, 54.

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

(*a*) *King* v. *Arkwright*, Printed Case, 175. Dav. Pat. Cas. 117.

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. (*b*) Those omissions in the description were considered of sufficient importance to invalidate the patent.

Every part of the invention which is new must be accurately described, as to the manner in which it is to operate. In the case of *Felton* v. *Greaves*. (*c*) 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

(*b*) *King* v. *Arkwright*, Printed Case, 173. Dav. Pat. Cas. 109.

(*c*) 3 Car. & Payne's Rep. 611.

files, when it is intended to sharpen the edges of scizzors. The specification is insufficient."

There are persons who imagine that if they introduce 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.

In addition to the old authorities, another case (*d*) 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

(*d*) *Crosley* v. *Beverley*, 1 Mood. & Malk. 263; and see 3 Car. & P. 513.

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.

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 would 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.* (*e*) The patent was for an 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 shewn in the drawing by blue lines."

It appeared by the evidence of the plaintiff's witness, that, as to the conducting medium, he

(*e*) Danson & Lloyd's Reports, 33.

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, mislead 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.

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. (*f*)

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 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 ma-

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

nufactures. (*g*) Those parts that are old and 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.

(*g*) *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

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. (*h*) 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. (*i*) It seems, therefore, to be the safest way in the specification to describe the whole subject, and then to point out all the parts which are old and well known.

actual invention of the party, in that case the patent may 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.

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

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

In the case of *Campion* v. *Benyon*, (*j*) it appeared that the patent was taken out "for an improved method of making sail-cloth, without any starch *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."

One of several things not new.

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*. (*k*)

(*j*) 3 B. & B. 5.

(*k*) 4 Barn. & 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

4. Parts or things put in to mislead.

If things useless and unnecessary have been mixed with a substance, or attached to a machine,

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 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, there-

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, (*l*) 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 view to perplex and embarrass the enquirer. In the specification to Turner's patent (*m*) 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

fore, that if any part of the consideration fails, the patent is *void in toto*.

(*l*) Ante, p. 29, n.; and see Printed Case, 182, 186, 187; and see Dav. Pat. Cas. 129, 139, 140; also *Hill* v. *Thompson*, 2 B. Moore, 450.

(*m*) *Turner* v. *Winter*, 1 T. R., 602; ante, 120.

these reasons the validity of a patent could be impeached.

This 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.* (*n*)

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."

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.

(*n*) Ryan & Moody, 1.

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 acid *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."

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. (*o*)

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 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 the introduction of them. (*p*)

5. The drawings incorrect.

It is not absolutely necessary to annex to the specification a model, diagram, picture, or drawing, descriptive of the manufacture. (*q*) 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

(*o*) *Boville* v. *Moore*, Dav. Pat. Cas. 398.

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

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

introduced, it was indispensable that it should be drawn on a *scale*, &c. : (*r*) 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, (*s*) 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 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 as 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 con-

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

(*s*) *King* v. *Arkwright*, Printed Case, 176. Dav. Pat. Cas. 111.

struct the improvement, it is as good as any written description. (*t*)

On the trial at nisi prius, it was objected in the case of *Bloxam* v. *Elsee*, (*u*) 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

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

(*u*) 1 Car. & P. 558.

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 would explain the other sufficiently to enable a skilful mechanic to perform the work, such a specification is sufficient."

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. (*u*) 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, (*v*) a great number of salts were 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.

In *Derosne* v. *Fairie*, (*w*) the specification stated a method of depriving syrups of every description of colour, by filtering them through charcoal, produced by the distillation of bituminous schistus, and used alone or mixed with animal charcoal, or even through animal char-

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

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

(*w*) *Derosne* v. *Fairie* and *Others*, 5 Tyr. Rep. 393.

coal alone when placed in thick beds. It appeared that iron was combined with the *bituminous schistus* found in this country, and it was doubtful whether the charcoal distilled from the schistus was not only disadvantageous but injurious to the matter going through the process. The charcoal sworn to have answered the purpose of the patent, was received from Derosne at Paris, where it had been made, and was declared by him to be the residuum of bituminous schistus from which the iron had been extracted. But no means existed of ascertaining in this country, of what substance it actually was the residuum, nor did the specification mention any process for extracting the iron from bituminous schistus. The Court held, that whether the latter omission avoided the patent or not, the patentee ought to prove, either that the presence of iron in the bituminous schistus used in the process of filtering was not absolutely disadvantageous to the matter going through that process, or that the method of extracting the iron from it was so simple and known, that a person practically acquainted with the subject could accomplish it with ease, or that bituminous schistus, as known in England, could be used in this process with advantage; and a verdict having been found for the plaintiff, the Court set it aside on terms, and granted a new trial. (*x*)

7. Some of several effects specified, not produced.

Not only must there not be any unnecessary

(*x*) There was not any further litigation, but the patentee disclaimed the use of bituminous schistus.

means mentioned in the specification, but *effects* that cannot accurately be produced must not be mentioned and described. The patentee should inform the inquirer 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. (*y*)

(*y*) See *Haworth* v. *Hardcastle*, 1 Bing. N. C. 1822. Tindal, C. J.—"The motion for entering a nonsuit was grounded on two points. First, that the jury had, by their special finding, negatived the usefulness of the invention to the full extent of what the patent and specification had held out to the public. Secondly, that the patentee had claimed in his specification, the invention of the rails of staves over which the cloths were hung, or, at all events, the placing them in a tier at the upper part of the drying-room."

As to the finding of the jury, it was in these words:

"The jury find the invention is new, and useful upon the whole, and that the specification is sufficient for a mechanic, properly instructed, to make a machine; and that there has been an infringement of the patent; but they also find that the machine is not useful in some cases for taking up goods."

The specification must be admitted, as it appears to us, to describe the invention to be adapted to perform the operation of removing the calicoes and other cloths from off the rails or staves, after they have been sufficiently dried. But, we think we are not warranted in drawing so strict a conclusion from this finding of the jury, as to hold that they have intended to negative, or that they have thereby negatived, that the machine was not useful, in the generality of the cases which occur for that purpose. After stating that the machine was useful on the whole, the expression, that in some cases, it is not useful to take up the cloths, appears to us, to lead rather to the inference, that, in the generality of cases, it is found useful.

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 (*z*) 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 (*a*) 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 note, and he consequenly failed in an action of damages for an infringement of the grant, al-

And if the jury think it useful in the general, because some cases occur in which it does not answer, we think it would be much too strong a conclusion to hold the patent void. How many cases occur, what proportion they bear to those in which the machine is useful, whether the instances in which it is found not to answer are to be referred to the species of cloth which are hung out, to the mode of dressing the cloths, to the thickness of them, or to any other cause distinct and different from the defective structure, or want of power in the machine, this finding of the jury gives us no information whatever. Upon such a finding, therefore, in a case where the jury have given their general verdict for the plaintiff, we think that we should act with great hazard and precipitation if we were to hold that the plaintiff ought to be nonsuited, upon the ground that his machine was altogether useless for one of the purposes described in his specification.

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

(*a*) *Bainbridge* v. *Wigley*, K. B. Dec. 1810; and see *Brunton* v. *Hawkes*, 4 Barn. & Ald. 451.

though great ingenuity had been exerted, and the fingering was rendered less complicated by the invention.

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

(*b*) 10 Barn. & Cress. 22.

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 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 Parke.—"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."

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 by 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. (*c*)

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

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

(*d*) *Wood* and *Others* v. *Zimmer* and *Others*, 1 Holt, 58. 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 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.

cealed the best method. A lace machine, (*e*) for 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. (*f*)

It signifies not in what manner this advantage

(*e*) *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 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.

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

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. (*g*)

Inadvertence.

If this improved manner of using the invention 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 practise that mode, and inadvertently did not state the whole in his specification, he must answer for his inadvertence." (*h*)

Subsequent discovery.

But if it appear that this better mode of using

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

(*h*) *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.

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: (*i*) but, as before stated, the presumption of concealment will be against him.

Another important rule of law was established in the case of *Crosley* v. *Beverley*. (*j*) 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 was clearly of opinion the patent was valid

(*i*) *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.

(*j*) 9 Barn. & Cress. 63.

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 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."

II. *Machine.* Upon these grounds, and for these reasons, 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. (*k*) 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. (*l*) A proposition, or truth generally known, needs no reference; and that which can

(*k*) 2 Hen. Bla. 484.

(*l*) 11 East, 105.

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. (*m*) Then the method by which they are united, and the relative velocities of the moveable parts. (*n*)

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. (*o*) 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. (*p*)

III. *Improvements or additions.*

It has been shewn that the grant must not be more extensive than the invention; (*q*) and that, where the patent is for an improvement or addition, the inventor cannot monopolize the whole subject. The specification will, therefore,

(*m*) *King* v. *Arkwright*, Printed Cas. 174. Dav. Pat. Cas. 111.

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

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

(*p*) Ibid. (*q*) Ante, 59.

be incorrect, if it contain a description of *more* than the improvement or addition; (*r*) 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*: (*s*) but he must confine himself to his invention.

The patent for the improvement of a thing, or for the thing improved, is in essence for the same manufacture. (*t*) 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

(*r*) *Bramah* v. *Hardcastle*, MSS., post, 156; and *Williams* v. *Brodie*, cited by counsel in *King* v. *Arkwright*, Printed Cas. 162.

(*s*) *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 what is old. The specification states that the improved instrument is made in manner following. That is not true, since the description comprises 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?

(*t*) 2 Hen. Bla. 481, 2.

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, (*u*) 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 (*v*) obtained

(*u*) 2 Hen. Bla. 489.

(*v*) *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, 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

a patent for a machine. Having very much improved 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.

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.

It must be here observed that Harmar 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 betwcen 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 or improvement of the inventor. (*v*)

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

(*v*) In *Bramah* v. *Hardcastle*, before Lord Kenyon, 1789, the inventor did not distinguish the part he really invented from the parts that were old in his new water closet.

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.

The observations of the Court in *Minter* v. *Mower*, (*w*) are worthy of attention in drawing a specification of a machine. In the specification the invention was described to be of "An improvement in the construction, making, or manufacturing of chairs," and to consist in the application of a self-adjusting leverage to the back and seat of a chair, whereby the weight on the seat acted as a counterbalance to the pressure against the back, and whereby a person sitting in the chair, might, by pressing against the back, cause it to take any inclination, and yet might be supported. In an action for infringing the patent, it was pleaded that the specification did not describe the invention. It was proved that a chair had previously been sold, to which a similar leverage was applied, acting by the pressure in the same way, but having also other machinery which prevented the inclination of the back from being shifted, except when a spring was touched by the hand. The jury found, that without such other machinery, the chair previously sold would have produced an equilibrium by the self-adjusting leverage; that the maker of it was the inventor

(*w*) *Minter* v. *Mower*, 6 Adol. & Ell. Rep. 735.

of the machine, and found out the principle, but not the practical purpose to which it was now applied; and that the plaintiff had discovered such purpose.

Lord Denman, ordering a nonsuit, thus delivered the judgment of the Court.

"An action between the same parties has already been decided by the Court of Exchequer, in which the patent claimed by the plaintiff was deemed good and valid. But, on the trial in this Court, an entirely new fact was given in evidence, and affirmed by the verdict of the jury; namely, that a chair very closely resembling that made by the plaintiff's patent had been made and sold before that patent was taken out. The words of the jury were these:—'We are of opinion that Browne (*w*) was the inventor of the machine, and found out the principle, but not the practical purpose to which it is now applied. We think that Minter (the plaintiff,) made that discovery.'

"This statement might not be fatal to the plaintiff's title, if his invention were truly set forth in the specification; but the material issue in this cause being simply, whether the plaintiff did thereby particularly describe and ascertain the nature of the said invention, we find it needful to examine the terms of it.

"Now, the patent is taken out for "An im-

(*w*) A workman, see ante, p. 27, also *Barker* v. *Shaw*, before Holroyd, J., at Lancaster, 1823, in which the plaintiff was nonsuited, because his workman invented the improvement in hats.

provement in the construction, making, or manufacturing of chairs;' the method of making the machine, and the way in which it acts, are then fully described, without any mention of any of the means employed in Browne's chair. The specification thus concludes:—'What I claim as my 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.' Now, it was perfectly clear, upon the evidence, that this description applies to Browne's chair, though that was encumbered with some additional machinery. The specification, therefore, claimed more than the plaintiff had invented, and would have actually precluded Mr. Browne from continuing to make the same chair that he had made before the patentee's discovery. We are far from thinking that the patentee might not have established his title by shewing that a part of Browne's chair could have effected that for which the whole was designed. But his claim is not for an improvement upon Browne's leverage, but for a leverage so described that the description comprehended Browne's. We are, therefore, of opinion, that the patent cannot be sustained, and a nonsuit must be entered."

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; (*x*) if he clearly express that it is in respect

(*x*) *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.

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 endeavoured to give to that objection is this:—They say there is nothing in

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

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 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;

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

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

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 is required to sustain the patent. (*y*)

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.

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 *tangible*

(*y*) *Harmar* v. *Playne*, 11 East, 107. Ante, 159.

means of carrying that method into practice; (*z*) 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 proportions, the times of mixing, &c., ought to be fully stated, and then the beneficial *use* to which the substance can be applied. (*a*)

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.

(*z*) Ante, 73.

(*a*) *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.

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.

General observations on specifications.

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

It has been shewn that it is a technical, but unjust rule of law, that if the inventor claims anything in the *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* (*b*).

In the first section of 5 & 6 Wm. 4, c. 83, the law has been altered in the following words:—

"Any person who, as grantee, assignee, or otherwise, hath obtained, or who shall hereafter

(*b*) 10 B. & C. 22.

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* (*c*), 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

(*c*) See post, Chap. V. as to the manner of entering *caveats*.

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.

The entry of a disclaimer of part of a specification, under the 5 & 6 Wm. 4, c. 83, s. 1, does not give a right of action for infringements, committed previously to the disclaimer (*d*).

(*d*) *Perry* v. *Skinner*, in Exch. E. T. 1837. Law Journal, p. 127.

CHAP. V.

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 letters patent, the manner of modifying them when obtained, and the method of procuring protection for the invention in foreign countries (*a*), next demand attention. We shall consider the matter in the following order:—

I. *The method of taking out Patents for England, Scotland, Ireland, and the Colonies.*
II. *The Acts of Parliament to enlarge Patent rights.*
III. *The proceedings before the Judicial Committee of the Privy Council, &c.*

(*a*) The laws of foreign countries under which protection may be had for British inventions, will be given in a separate chapter. See Chap. X.

I. THE METHOD OF TAKING OUT PATENTS FOR ENGLAND, SCOTLAND, IRELAND, AND THE COLONIES.

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 inquirer 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. 8, 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* (*b*) (which is written on unstamped paper) to the Queen, to grant to 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.

The declaration.

Formerly, an affidavit sworn before a Master, or Master extraordinary in Chancery, must accompany and support the allegations of the petition, but now (*c*) a declaration is made in lieu thereof.

(*b*) See form of the petition in the Appendix.

(*c*) See 5 & 6 Wm. 4, c. 62, s. 11, it is enacted, That whenever any person or persons shall seek to obtain any patent under the great seal, for any discovery or invention, such person or persons shall, in lieu of any oath, affirmation, or affidavit which heretofore has or might be required to be taken or made, upon or before obtaining any such patent, make and subscribe, in the presence of the person before whom he might, but for the passing of this act, be required to take or make such oath, affirmation, or affidavit, a declaration to the same effect as such oath, affirmation, or affidavit; and

The *petition* and declaration are then left at the office (*d*) 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 her 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* (*e*) 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

such declaration, when duly made and subscribed, shall be to all intents and purposes, as valid and effectual as the oath, affirmation, or affidavit in lieu whereof it shall have been so made and subscribed.

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

(*e*) This proviso was first introduced into the patents in the reign of Queen Anne.

rise to that important instrument, the "*Specification.*" (*e*)

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 Queen's warrant.

This warrant is an echo of the report, and gives authority to her 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 (*f*) of the Attorney or Solicitor General for the bill which is to be marked as examined by him. At the bottom, her Majesty is informed by her 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 *Queen's sign manual,* (*g*) from whence it is taken to be passed

(*e*) Other provisoes are occasionally introduced, as that the patentee shall supply the public service at rates to be fixed by public officers. See Ex parte *Pering*, 4 A & E. 949.

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

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

at the *signet office.* (*g*) The clerk of the signet prepares a warrant to the Lord Keeper of the Privy Seal, whose clerk gives another warrant, 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. (*h*)

(*g*) In Somerset House.

(*h*) For an abridgment of the contents of a patent see the Introduction, ante, p. 22; and for its parts at full length, see Appendix.

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

With an addition of 1*l.* 7*s.* 6d. if the patent of invention extends to Her 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

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

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,
Clerks to the Attorney and Solicitor General.

10*th April*, 1826.

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

The nature of the description required (*j*) in the specification, and the manner in which it must be given, have been fully investigated. It must be under the *hand and seal* of the in- 5. The specification.

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, Signed Thos. Venables,
10*th April*, 1826. *Deputy Clerk of the Signet attending.*

7. Return from the Privy Seal Office, of the ordinary ex-

(*j*) Ante, Chap. IV.

ventor; (*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

penses 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,
17*th April,* 1826.

Signed, JAMES SETON,
D. C. Patents.

(*k*) 21 Jac. I. c. 3, s. 6.

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. (*m*)

The time formerly allowed for the enrolment of the specification was four months: but it is now generally confined to *two months*, unless the inventor make a declaration that he intends to apply for patents for Scotland and Ireland, and then it is extended to four months if for Scotland only, but otherwise to six months. A few instances have occurred in which a still longer time has been allowed to enrol the specification: but in one 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.

The time allowed for enrolment.

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

The legislature alone can grant relief, if the

(*m*) Ante, 20.

(*n*) Petty Bag Office, and Rolls Yard, Chancery Lane. The Master of the Rolls will order clerical errors to be amended.

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

time has transpired: the Lord Chancellor has refused to interfere on such an occasion. (*p*)

If the time for the enrolment be 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.

Certificate of enrolment.

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

Inspection of specification.

The specifications are kept open at the Enrolment Office 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 legisla-

(*p*) 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. —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 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

ture has, however, permitted the specification to be concealed. Mr. Lee (*r*) obtained an act of par-

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 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. 29th 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.

liament, 53 Geo. 3, 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 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 So-

(*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.

licitor 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 think 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 is to be granted. The practice in the office of the Attorney General is guided by rules made by each learned gentleman holding that office. (*t*)

(*t*) The clerks of the Attorneys General have adopted (amongst others) the following rules:

In the event of an opposition to a patent *on the bill*, it is customary for the opposing party *to enter a caveat* to that effect at the patent office in Lincoln's Inn, and at the same time to deposit 30*l.* with the clerk as a guarantee for the expenses of such opposition.

Sir Samuel Shepherd, Attorney General, ordered that no report on a petition should be delivered until the caveats were answered (*i. e.* within the given time) and that *no hearing* should be had *on a bill instead of petition*, without the consent of all the parties *opposing* the same.

May, 1829.

The following rule was laid down by Sir Robert Gifford when he was Solicitor General:

If a caveat be entered after a petition has been in the office seven days, the person is entitled to notice; but if the petitioner is put to any *additional* expense, the party opposing is to pay the same.

When Sir Samuel Romilly was Solicitor General, he es-

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. tablished this rule,—That a cavent entered after the report, should *not be allowed to stop the signing* of the bill, unless the party entering it paid the petitioner his expenses of the report, warrant, bill, and *hearing*, if the invention proved similar. If *dissimilar*, that he paid the petitioner his expenses at the hearing only.

A question having arisen whether seven *entire* days ought to be allowed to persons, having caveats, to answer notices of applications for patents, Mr. Attorney General Scarlett decided, that seven *whole* days should be allowed, exclusive of the date or day of notice.

22nd July, 1829.

The Attorney General (Scarlett) with the concurrence of the Solicitor General (Sugden) laid down this rule, *viz.* That upon the entry of an opposition to a patent, the party opposing shall deposit with the Attorney General's or Solicitor General's clerk the sum of 3*l.* 10*s.*, which sum includes the fee for summons heretofore paid by the petitioner; but if the opposing party appear at the hearing, the fee for summons to be remitted, and the petitioner charged with it as formerly.

8th July, 1829.

Upon which the following postscript was added to the notices:

P. S. The fee for opposing a patent is 3*l.* 10*s.*, which it will be necessary to lodge at the time of opposition.

The Lord Chancellor, in consequence, refused to seal it. (*u*) 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. (*v*)

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. (*w*)

A caveat may be entered at the office of the Attorney General, against permission being granted to a patentee *to disclaim* any part of the title of his patent, or of his specification, under 5 & 6 Wm. 4, c. 83. (*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. 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

(*u*) Ex parte *Heathcote*, in the matter of *Lacy*, ante, 179.
(*v*) Ex parte *Fox*, 1 Ves. & Beam. 67.
(*w*) Id.
(*x*) Post, 190.

but a *scirè 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.

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 be 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 East or West India territories; but otherwise, it is necessary to obtain an act of the colony to enforce the patent; for example, it is requisite in Jamaica to obtain an act of the legislature of that island, to secure the fruits of a patent in that colony.

(*y*) Post, Chap. IX.

II. THE ACTS OF PARLIAMENT TO ENLARGE PATENT RIGHTS.

In the first edition of this treatise, after the necessary forms and instruments have been described; the manner of soliciting, and the matter contained in the acts of parliament, which were sometimes passed to give greater utility to the statute of James, were stated; but since the 5 & 6 Wm. 4, hereafter explained, it is unnecessary to obtain an act to prolong the time of a patent; nevertheless, it may sometimes be necessary to obtain an act to enable a patentee to assign his patent to more than twelve persons.

An Act to enable the patentee to assign to more than twelve persons.

In an act of parliament to enable a patentee to assign to more than twelve persons; after a recital of the date of the patent for the original subject, and also of that for the improvements, (if any has been granted); the proviso by which the patent is declared to be void, if it be transferred to any number of persons exceeding twelve, 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, which rendered it impossible for twelve 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. (*z*)

Such an act of parliament 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 enable the patentee to assign his letters patent to more than twelve persons for the 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 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

(*z*) See 41 Geo. 3, c. 125, local and personal acts.

(*a*) Order of the House of Commons, 30th June, 1801.

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*) 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

(*b*) Order, 30 June, 1801.
(*c*) Order, 26 May, 1685.
(*d*) Order, 24 November, 1699.

a copy of the patent 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.

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 committees 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.

(*e*) Order, 13 May, 1690.

III. PROCEEDINGS BEFORE THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, &c.

Some of the defects in the laws respecting letters patent, have been remedied by acts of parliament introduced by Lord Brougham. (*f*) The 5 & 6 Wm. 4, c. 83, and 2 & 3 Vict. c. 67, which require the remedies to be applied by the Judicial Committee of Her Majesty's most honourable Privy Council.

The objects obtained under these acts by application to the Crown Law Officers, or to the Privy Council, are—

1. *A remedy where it is discovered that the* patentee has claimed something used before.
2. The amendment by a *disclaimer* of the description of the invention in the title or specification.
3. The prolongation of the term of a patent.

1. Public use of the subject of a patent.

It often happened in the course of a trial that the only question discussed, was, whether or not some person besides the patentee had used 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

(*f*) In the Appendix will be found a bill introduced by me, and passed through the House of Commons, which was stopped in the House of Lords.

gradually modified, and in the cases of *Lewis* v. *Marling*, (*g*) and *Jones* v. *Pearce*, (*h*) it was put upon an intelligible basis. (*i*)

The legislative remedy for the evil of varying decisions upon that point is given in section 2 of 5 & 6 Wm. 4, c. 83; 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

(*g*) 10 B. & C. 22, and 4 C. & P. 52. (*h*) Ante, 16.
(*i*) See ante, Chap. III.

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."

The judicial committee of the privy council have promulgated rules for their guidance. (*j*)

(*j*) Rules to be observed in proceedings before the Judicial Committee of the Privy Council, under the Act of the 5 & 6 Wm. 4, intituled "An Act to amend the law touching Letters patent for Inventions." (cap. 83.)

Rule 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 country 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

Their decision will have operation from the date of the verdict, which, being special, will not have

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.

Rule II. A party intending to apply by petition under sect. 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.

Rule 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*.

Rule 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 2nd of these rules, and the matters in such affidavits may be disputed by the parties opposing upon the hearing of the petitions.

Rule V. All persons entering caveats under sect. 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 sect. 2 of the said act, and all persons lodging notices of opposition under the first of these rules, shall respectively be entitled to be served with copies of petitions

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

presented under the said sections, and no application to fix a time for hearing shall be made without affidavit of such service.

Rule 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.

Rule VII. Parties may have copies of all papers lodged in respect of any application under the said act at their own expense.

Rule 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.

A party applying for an extension of a patent under section 4 of the said act, must lodge at the council office four printed or written copies of his specification, for the use of the judicial committee. If such specification shall have been printed in some publication, lodging four copies of the publication containing the same will be deemed sufficient. In the event also of the applicant's specification not having been published as aforesaid, and if the expense of making four copies of any drawing therein contained or referred to would be considerable, the lodging of one copy only of such drawing will be deemed sufficient.

All copies mentioned in this rule must be lodged not less than one week before the day fixed for hearing the application.

The judicial committee will hear the Attorney General or other counsel on behalf of the crown against granting any application made under either the 2nd or 4th sections of the said act, in case it shall be thought fit to oppose the same on such behalf.

verdict until the privy council had examined the matter.

The principal words of this section are,—"*That such invention or part thereof had not been publicly and generally used before the date of the first letters patent.*"—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 had thrown it aside for ten, twenty, or thirty years before the date of the patent.

2. Prolongation of the term of a patent.

By the 21 Jac. 1, c. 19, the Sovereign 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 s. 4 of 5 & 6 Wm. 4, c. 83, it is enacted, "that if any person who now hath or shall hereafter obtain 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.*"

The words "*prosecuted with effect*" gave rise to an interesting discussion before the judicial committee of the privy council, whether the application to enlarge the term of patents had been "prosecuted with effect" before the expira-

tion of the term of the patent. The application (*k*) had been made within the fourteen years, an opposition had been at the latest moment entered, and the judicial committee fixed a day to hear the parties. That day occurred after the fourteen years had expired. The privy councillors were of opinion that their authority was at an end, and refused to hear the case.

To remedy that defect, the 2 & 3 Vict. c. 67, (*l*) was passed: in which there is a recital thus—whereas it has happened since the passing of the said act, and may again happen, that parties desirous of obtaining an extension of the term granted in letters patent of which they are possessed, and who may have presented a petition for such purposes in manner by the said recited act directed, before the expiration of the said term, may nevertheless be prevented by causes over which they have no control from prosecuting with effect their application before the judicial committee of the privy council; and it is expedient therefore that the said judicial committee should have power, when under the circumstances of the case they shall see fit, to entertain such application, and to report thereon, according to the provisions of the said recited act, notwithstanding that before the hearing of the case before them the terms of the letters pa-

(*k*) By Mr. Bodmer, whose patent was for "certain improvements in the machinery for cleaning, carding, drawing, roving, and spinning of cotton and wool."

(*l*) On the 24th August, 1839, since page 22 of this work was printed.

tent sought to be renewed or extended may have expired. It then repeals the provision requiring the application by petition to be prosecuted with effect before the expiration of the term of the patent.

Term of patent right may be extended in certain cases, though the application for such extension not prosecuted with effect before the expiration thereof.

And it is enacted, by sec. 2, that it shall be lawful for the judicial committee of the privy council, *in all cases* (*m*) where it shall appear to them that any application for an extension of the term granted by any letters patent, the petition for which extension shall have been referred to them for their consideration, has not been prosecuted with effect before the expiration of the said term from any other causes than the neglect or default of the petitioner, to entertain such application, and to report thereon as by the said recited act provided, notwithstanding the term originally granted in such letters patent may have expired before the hearing of such application; and it shall be lawful for her Majesty, if she shall think fit, on the report of the said judicial committee recommending an extension of the term of such letters patent, to grant such extension, or to grant new letters patent for the invention or inventions specified in such original letters patent, for a term not exceeding seven years after the expiration of the term mentioned in the said original letters patent: provided always, that no such extension or new letters patent shall be granted if a petition for the same shall not have been presented as by the said recited act directed before the expiration of the

(*m*) Mr. Bodmer has renewed his petition, which will be heard in November, 1839.

term sought to be extended, nor in case of petitions presented after the thirtieth day of November, one thousand eight hundred and thirty-nine, unless such petition shall be presented six calendar months at the least before the expiration of such term, nor in any case unless sufficient reason shall be shown to the satisfaction of the said judicial committee for the omission to prosecute with effect the said application by petition before the expiration of the said term.

The act of 5 & 6 Wm. 4, c. 83, was a wise exercise of the powers of the legislature; it has been most liberally carried into operation by the members of the judicial committee of the privy council, (*n*) who have often advised that new letters patent (*o*) should be granted, and it has had a most beneficial effect upon the inventors, not only by increasing their profits by means of a prolonged term, but also by the confidence which it has spread amongst them that patents are now a *safe* property.

To protect the public, the Attorney General has generally attended the judicial committee. He has not interfered where he saw that the question of a renewal was matter of contention between opposing parties; but, of course he would urge any objection which occurred to him in

(*n*) To hear petitions for new patents, Lord Lyndhurst, Lord Brougham, Mr. Baron Parke, Mr. Justice Bosanquet, and Mr. Justice Erskine, almost always attend.

(*o*) Among the new patents are—Errard's for a harp; Wright's for making pins; Southworth's for drying calicoes; Kyan's for preserving timber; Stafford's for a coach.

cases where no opponent appeared to contest the propriety of the grant.

In every case the judicial committee require very strict proof that all the requisites of the act, as to advertisements, have been complied with. They also closely examine the books of account of the patentee. They will be clearly satisfied that he has really incurred all the expenses set forth in his petition, and will carefully scrutinize the amount of the profits which he has made. An instance occurred (*p*) in which they thought enough profit had been, or was likely to be made, before the expiration of the fourteen years, and refused then to interfere.

It is doubtful whether, in strictness, an assignee of letters patent can be the petitioner for a new patent. The difficulty has generally been removed by an arrangement between the patentee and the assignee. The words of the act are—"any person who now hath or shall hereafter obtain any letters patent." The assignee is a person "who *now* hath" the letters patent, and the inclination of the mind of the judicial committee is in favour of assignees: although an assignee was not permitted by the legislature to have an extension of the term by act of Parliament.

(*p*) Mackintosh's patent.

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

(*a*) See pages 391, 2, and the authorities there collected.

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."

"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,

(*b*) Id. p. 393, 4.

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 patentee, 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

(*c*) Id. p. 394.

(*d*) Id. p. 396.

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 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

(*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.

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 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

(*h*) In *Hornblower* v. *Boulton*, 8 T. R. 98.

(*i*) In Easter Term, 1800; not reported, but mentioned in argument, 1 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.

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" (*j*) and "new manufacture," (*k*) and also by what rules the specification (*l*) is to be judged, have been fully explained: and therefore I shall only add, 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. (*m*)

When the Court of King's Bench took time to consider their judgment in the case of *Hullett* v. *Hague*, (*n*) Lord Tenterden observed,—"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."

The tide had then turned in favour of patentees, and the judges of the present day make every reasonable intendment in their favour.

(*j*) Ante, Chap. II. (*k*) Ante, Chap. III.
(*l*) Ante, Chap. IV. (*m*) Ante, p. 107.
(*n*) 1 Barn. & Ad. 377. In the year 1831.

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. And patentees may now have the term extended by the Queen's privy council.

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

(*o*) Ante, p. 185.

(*p*) *Hesse* v. *Stevenson*, 3 Bos. & 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 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*

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.

In a late case, of *Bloxam* v. *Elsee*, that doctrine was confirmed. (*q*)

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.

(*q*) 6 B. & C. 171. 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 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

The patent and specification must, in fact, stand or fall by themselves; and no extraneous

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. Fourdrinier and Gamble were jointly concerned as co-partners, 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*

matter can be introduced to explain them and establish their legality. If they are bad in

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

themselves, nothing whatever can make them legal instruments.

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."

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, when applying for relief 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.

(*a*) See 2 Bla. Com. Chap. XXVII.

2. The *number of persons* to whom it may be assigned; or who may at the same moment be interested in it.
3. Being sometimes *enlarged*, by an act of parliament, or the grant of a new patent.

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 Queen, therefore, when her Majesty 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, so that *more than twelve 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 *reck-*

(*b*) 21 Jac. 1, c. 3, s. 6.

(*c*) Ante, 24; and see Appendix for copy of a patent.

oned, accounted, and considered, as and for the single person whom they represent, as to the interest they shall be entitled to in right of the testator or intestate. (*d*)

To a declaration in debt on a bond, conditioned for paying plaintiff 10,000*l*., upon his forming a company, and procuring purchasers for nine thousand shares therein, (such company to carry on a distillery according to a process for which a patent had been granted,) it was pleaded,—that the patent contained a proviso, rendering it void if transferred to more than five; that it was intended the said company should consist of more than five, and be formed for the purpose of enjoying the benefit of the letters patent, of acting as a corporate body, and of dividing the benefit of the patent into ten thousand shares, transferrable and assignable without charter from the king; and that it was corruptly and illegally agreed between the parties, that the plaintiff should form the company for such purposes, and should sell the nine thousand shares in order to raise a larger sum of money, under pretence of carrying on the privilege granted by the patent. The Court held the plea to be a bar to the action. (*e*)

(*d*) 21 Jac. 1, c. 3, s. 6.

(*e*) *Duvergier* v. *Fellows*, 5 Bing. Rep. 248. S. C. 4 M. & S. 403. In delivering the opinion of the Court, Best, C. J., said, The words of the condition of the bond are, "have it in contemplation to dispose of their interest of, in, and to the several patents, and of, in, and to the premises and stock in trade, and to part with the same to a company." These terms

Assigument of patent.

Subject to the above mentioned restrictions as to its duration, and the number of persons that

indicate an intention not to destroy, but to transfer unimpaired the monopoly secured by the patents. But it has been said, it does not appear, from the pleadings, that the plaintiff knew of this proviso in the patents, and that the insertion of such a proviso in patents is not required by any law. But we must presume that he knew the contents of the patents referred to by the bond on which he brings his action of the patents, which, it appears by the same bond, he undertakes the sale in the manner stated in that bond. Every man who undertakes to do a thing must be prepared to know what he undertakes, unless he can shew that he has been deceived by the other party. How could he undertake to negociate for the sale of the patents unless he had seen them, and knew their contents?

If the plaintiff knew the terms on which the patents were granted, he must know that what he undertook to do could not be done. As he cannot legally perform his part of the contract, he never can be in a condition to recover the compensation stipulated to be paid on its full and complete performance. There are some old authorities which say, that if a man binds himself by the condition of his bond to do what at the time he executed the bond it was impossible for him to do, the bond shall be considered as without condition, and the obligee may recover the penalty. These authorities are rather opposed to the plaintiff's claim; they apply only to cases where there is nothing to be done by the obligee; here the plaintiff must do something before the bond can be enforced. If what he is to do can never be legally done, the instrument must be inoperative.

The plaintiff not having performed the first condition, can never have a right of action on it. The situation of the plaintiff in this case, is like that of the defendants in the cases alluded to. It is his fault that he has undertaken what he cannot perform. In *Pullerton* v. *Agnew*, Holt, C. J., said, "Where the condition is underwritten or indorsed, there that

may, at any one time, be interested in it, a patent may be *assigned* in the same manner as other personal property. (*f*)

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. (*g*)

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 (*h*) agree with

only is void, and the obligation is single; but where the condition is part of the lien itself, and incorporated therewith, if the condition be impossible, the obligation is void." In the case before us, the service of the plaintiff, and payment for it by the defendant, are incorporated together, and if the service cannot be performed, the whole instrument is a nullity.

(*f*) The property in a patent, and the right to exercise it, should go together. See Ex parte *O'Reily*, 1 Ves. Jun. 118.

(*g*) *Cartwright* v. *Amatt*, 2 Bos. & Pull. 43.

(*h*) *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

another person, for a valuable consideration, 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 per-

defendant to use the engine, *provided he worked it according to the specification*, and would not use any other 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.

mitted, 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, by shewing any thing that would invalidate his own patent. (*i*)

In *Bowman* v. *Taylor*, (*j*) in a declaration in covenant, a deed was set forth 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.

If a person, imagining that he has discovered something new, obtain a patent for it; (*k*) and

(*i*) *Oldham* v. *Langmead*, Sittings after Trin. 1789, coram Lord Kenyon, cited by Mr. Wigley, in arg. 3 T. R. 439.

(*j*) *Bowman* v. *Taylor* and *Another*, Law Journal, vol. xiii. p. 58; and see *Bowman* v. *Rosaw*, id. 62.

(*k*) *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 annum 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

then assign it for a valuable 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 and equity of good con-

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 posseasion of a valuable patent-right, and the plaintiff supposing the same thing. Under these circumatances 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 leasee 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 patent-right; but no money was ever recovered back after the patent had been cancelled. Judgment of nonsuit.

science, it would seem that the purchase money ought to be returned.

Where several parties were jointly interested in a patent and its profits, and had entered into covenants with the plaintiffs, in consideration of a sum paid by them, under a joint contract and all had signed the receipt, the Court of Exchequer in Equity held, that one of the parties, having by fraudulent representations, (although without the knowledge of the others,) occasioned losses in respect of the patent, they were all liable to repay in *solido*, the money received on a consideration which had failed. (*l*)

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. (*m*)

Not only can this property be assigned generally, but it will pass to the assignees of a bankrupt patentee. (*n*) The grant obtained Bankruptcy.

(*l*) *Lovell* v. *Hicks*, 2 Younge & C. 481.

(*m*) 3 Bos. & Pull. 565; and see 2 N. R. 71.

(*n*) *Bloxam* v. *Elsee*, 6 B. & C. 169. S. C. at Nisi Prius, 1 C. & P. 558. Abbott, C. J., 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. 1, 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

by an *uncertificated* bankrupt for an invention made since the act of bankruptcy is affected by

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

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. (*o*)

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."

(*o*) *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 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.

From the case of *Hesse* v. *Stevenson*, (*p*) we discover in what manner patents for inventions

(*p*) *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 *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

are viewed by the bankrupt laws. After deciding generally that a composition entered into by the 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 uncertifi-

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 re-conveyed 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.

cated 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 a patent.

It was doubted by Lord Thurlow, (*q*) 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 stated, (*r*) that it shall not be *assigned in trust* to more than twelve 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*. (*s*)

It has been shewn that the invention may be communicated by a foreigner residing abroad. (*t*) 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*, (*u*) 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 inven-

(*q*) 1 Ves. Jun. 129. Ex parte *O'Reily*.
(*r*) Form of Patent, Appendix.
(*s*) 2 Bos. & Pul. 44.
(*t*) Ante, p. 81.
(*u*) 1 Carr. & P. 558.

tion from a certain foreigner; and the point has not been solemnly decided.

From the reasoning in the cases of *Cartwright* v. *Amatt*, (*v*) and *Bloxam* v. *Elsee*, (*w*) it would seem, that the mortgage of a patent to more than twelve 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. Mortgage and lien.

In 1812, a case (*x*) came before the Lord Chancellor, of a bankrupt having a patent for an invention, who, 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.

It may be bequeathed in any manner the patentee pleases. If he make not a will, it is assets in the hands of his administrator. (*y*) Proper for a devise.

If the patentee does not wish to dispose 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 *Licence to use it.*

(*v*) 2 Bos. & Pul. 43. (*w*) 6 B. & C. 169.
(*x*) Evans's Statutes, vol. iv. p. 67, n. Ex parte *Granger*.
(*y*) 1 Ves. Jun. 118; and see 3 B. & P. 573.

who have licences may maintain actions for damages. (*z*)

3. Enlargement of the patent right by parliament.

The transcendent power of Parliament, now exercised in part by the Judicial Committee of the Privy Council, (*a*) 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 advised by the Judicial Committee, 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 that twelve persons are unable by themselves to reap any benefit from the grant, by passing an

(*z*) Ante, 24. *George* v. *B. Wackerback* and *Another*, MSS.
(*a*) 5 & 6 Wm. 4, c. 83. 2 & 3 Vict. c. 67.

act of Parliament, giving power to the patentee to assign the patent right to any number of persons. The interest in Koop's patent was, by an act of Parliament, made capable of being divided into *sixty* shares. (*b*)

In almost every instance in which the legislature has interfered, a proviso was introduced, that every objection in law competent against the patent shall be of the same force against the act to all intents and purposes. (*c*) But even if that clause were not introduced, yet the patentee, as to the *validity* of the patent, or his *title* to it, was in the same situation as though the act had never been passed. (*d*) The same rule applies under the 5 & 6 Wm. 4, (*e*) to a new patent, granting an extension of the term to seven years.

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

(*b*) 3 Bos. & Pull. 565.

(*c*) See 41 Geo. 3, c. 125, Local and Personal Acts.

(*d*) 3 Bos. & Pull. 578. (*e*) 5 & 6 Wm. 4, c. 83.

such a subject. (*f*) Injury and remedy are inseparable in law; but as there is not any rule of law, nor yet 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*

(*f*) *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.

is practised in getting at the secret. One 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. (*g*)

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. (*h*)

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. (*i*)

(*g*) *Yovatt* v. *Arnyard*, 1 Jac. & Walk. 394. And the case of *Day* & *Martin*, E. T. June, 1821, MSS. before Abbott, C. J.

(*h*) *Newberry* v. *James*, 2 Mer. 446.

(*i*) *Smith* v. *Dickenson*, 3 Bos. & Pull. 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 to be 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*)

(*a*) 2 Hen. Bla. 480. It is a very difficult question, and by some persons 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 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 rea-

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 additions, or by the substitution of things somewhat different from those used by the patentee; yet, if the manufactures are really

sonable 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 auother, 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.

(*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 expedient 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 Watt's engine.

and substantially the same, the patentee is entitled to a remedy at law. (*d*)

In *Webster* v. *Uther* (*e*) the Lord Chief Justice observed, "I believe I told the jury that it was

(*d*) See the elaborate opinion of the Court in *Hill* v. *Thompson*, 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 essentially 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*) MSS. Easter Term, 1824, before Lord Tenterden.

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 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* (*f*), 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* (*g*), the jury asked the

(*f*) MSS. 11th July, 1827, before Lord Wynford.

(*g*) MSS. ante, p. 46.

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 *make*, &c.'"

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, (*h*) although the latter cannot be protected, and may consequently be infringed with impunity; yet any 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. (*i*)

(*h*) Ante, 136. It has been doubted, whether the insertion of imperfect articles ought not to invalidate the grant.

(*i*) 1 Ves. & Beam, 67.

In a declaration for infringing a patent, (*j*) which granted that the plaintiff, and no others,

(*j*) *Minter* v. *Williams*, 4 A. & E. 251. Mr. Justice Coleridge said,—The granting part of the patent authorizes the plaintiff exclusively to "make, use, exercise, and vend" his invention. The prohibitory part forbids all persons to "make, use, or put in practice the said invention," or "counterfeit, imitate, or resemble the same," or to make "any addition thereunto, or substraction from the same, whereby to pretend himself or themselves the inventor or inventors," without licence from the plaintiff. Then the count alleges that the defendant, without the plaintiff's licence, exposed to sale divers chairs intended to imitate and resemble, and which did imitate and resemble, his invention.

Do those words necessarily import the vending spoken of in the granting part of the patent? I certainly think not; because, even assuming that to vend may mean both a selling and an exposing to sale, (though I rather think it means the habit of selling and offering for sale), still those two meanings are not co-extensive; the former may include the latter, but a mere exposure to sale, *i. e.*, with intent to sell, or for the purpose of selling, is not only not equivalent to a sale, but, as regards the patentee, may be attended with wholly different consequences. If we read the word "vend" as expressly inserted in the prohibitory part of the patent, we ought only to give it there the meaning which would effectuate the purpose of the patent, the prevention of acts injurious to the patentee, with as little restraint on the public as possible. It must be taken here, that the defendant has only exposed to sale, that whatever may have been his original purpose in so doing, or whatever motive has supervened, he has abstained from selling.

Now, I cannot say that such a mere exposure to sale is necessarily injurious to the patentee; it may, on the contrary, be very beneficial; it is not, therefore, necessarily the vending which is exclusively granted to him. As to "using

should "make, use, exercise, and vend" his invention, and forbade all persons to "make, use, or put in practice" the same, or to counterfeit or imitate it, without the plaintiff's licence, the plaintiff alleged that the defendant, without his licence, exposed to sale articles intended to imitate his invention: the Court held, on general demurrer, that the count was bad, as not stating any thing which was necessarily an infringement of the patent.

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: (*k*) but, by the statute of Monopolies, (*l*) 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, either,

An *action at law* for damages; or
Proceedings in Equity for an injunction and account.

and exercising," those words cannot be fairly resorted to, when we find with them the word "vending," and that is passed by. But, if they could, the argument would be the same; this might be an innocent using and exercising, and so not prohibited.

(*k*) 3 Inst. 183. (*l*) 21 Jac. I. c. 3, s. 2.

II. REMEDY AT COMMON LAW.

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. (*m*) It is in form an action on the case. (*n*)

Although the patentee has been defeated in one action, still he may maintain fresh suits against other persons: as was done by Mr. Arkwright (*o*) and by Mr. Watt. For actions on the case will lie, notwithstanding the patent is really void, until it has been cancelled. (*p*)

If the patent has been assigned, the assignee may sue alone, or he and the patentee may join in the action. (*q*)

1. The pleadings. The parties.

(*m*) Buller, N. P. 76. (*n*) 1 Chit. Pl. 142.

(*o*) *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.

(*p*) 2 Ventr. 344. Dav. Pat. Cas. 55.

(*q*) 2 Wils. 423, 2 Saund. 115-6, a.

The declaration.

When a grant by letters patent is pleaded, it ought to be shewn under *what* seal it is made; (*r*) and therefore, in the declaration for an infringement, the patent must be stated to be under the *great seal.* (*s*)

A profert is made of the letters patent, which are recited, but oyer of them is never allowed, (*t*) 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*, (*u*) 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 was *not guilty*, which, putting in issue of the whole of the declaration, forced the plaintiff to support the grant in all its parts, and gave to the defendant the greatest latitude for evidence; but now, the defendant must plead all his defences, (*v*) and must also deliver in a list

(*r*) 2 Inst. 555; 1 Vent. 222; 9 Co. Rep. 18.

(*s*) For precedents of declarations, see the record at full length in *The 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.

(*t*) *Rex* v. *Amery*, 1 T. R. 149. 1 Saund. 96, a. 1.

(*u*) 6 T. R. 363. And see *Rex* v. *Haine*, 2 Cox, 235. See also *Brunton* v. *White*, 7 D. & R. 103, in which the venue was laid in London. A motion was made to change the venue to Lancaster. The Court refused the rule.

(*v*) See Rules of Court of Hil. Term, 4 Wm. 4, 1834.

of the objections upon which he intends to rely at the trial. (*w*)

In an action for infringing a patent, with a plea, alleging the user of the invention by other persons, the Court of Common Pleas held, under the 5 & 6 Wm. 4, c. 83, that a judge had jurisdiction to order a further and fuller notice of the names and addresses of all those alleged so to have used it. (*x*)

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. (*y*)

(*w*) By the 5th sec. of 5 & 6 Wm. 4, c. 83, it is 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 shew 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."

(*x*) *Bulnois* v. *Mackenzie*, 4 Bing. N. C. 127. S. C. 6 Dowl. (P. C.) 215. The Court of Exchequer came to a similar conclusion in *Losh* v. *Hague*, MSS.

(*y*) See *Minter* v. *Williams*, 4 A. & E. 251.

2. Evidence. By plaintiff to support the patent.

By the common law, (*z*) 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 the statute 3 & 4 Ed. 6, c. 4, explained by stat. 13 Eliz., c. 6, "patentees, and persons claiming under them, may make title in pleading, by shewing forth an exemplication 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*; (*a*) that he is the *inventor*, and that the *specification* is sufficient in law. "I do not agree," said Mr. Justice Buller, (*b*) "with the counsel who have 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 evi-

(*z*) *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.

(*a*) *Boville* v. *Moore*, Dav. Pat. Cas. 399. *Manton* v. *Manton*, id. 348, 9.

(*b*) *Turner* v. *Winter*, 1 T. R. 606, 7; and see 2 B. Moore, 250.

dence 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."

In the case of *Lewis* v. *Davis* (*c*) 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 anything 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 open to every body, till fourteen years from a later period. It is, therefore, material to shew what are the improve-

(*c*) 3 Car. & P. 502.

ments 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 shew his factory. (*d*)

It is good *primâ 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; (*e*) yet the novelty of the invention cannot be thus proved if one witness is produced who states that he has used it. (*f*)

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. (*g*)

What amounts to an infringement has been considered, (*h*) from which it is easy to determine what evidence is necessary in each particular instance. In case for the infringement of a

(*d*) *Hall* v. *Gervas* and *Boot*, MSS. December, 1822, in K. B.

(*e*) *Manton* v. *Manton*, Dav. Pat. Cas. 350.

(*f*) Ante, p. 40; and see *The King* v. *Arkwright*, Printed Case, 183. Dav. Pat. Cas. 135.

(*g*) *Hill* v. *Thompson*, 2 B. Moore, 447.

(*h*) Ante, 230.

patent, (*i*) a purchaser of a licence to use the patent, is a competent witness for the plaintiff.

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.

The enrolment of a specification, after the patent of another party for the same invention, has been sealed, and his discovery known upon the market, does not of itself alone afford any proof whatever of the want of novelty in the manufacture made under the patent of that party. (*j*)

It was observed to the jury by Lord Ellenborough, in *Huddart* v. *Grimshaw*, (*k*) 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 *primâ 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

(*i*) *Derosne* v. *Fairie*, Moody & R. Rep. vol. i. 457.
(*j*) *Cornish* v. *Keene*, Law Journal, vol. xv. p. 225.
(*k*) Dav. Pat. Cas. 288, 289.

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 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 *primâ 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."

The case of *Rex* v. *Hadden* (*l*) illustrates the practice of giving evidence. 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."

(*l*) 2 Car. & Payne, 184.

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 specification 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 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; (*m*) 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. (*n*)

A witness may be asked whether the invention might not with ease have been clearly described, and whether he does not think that the description is *very* obscure. (*o*)

To prevent the miscarriage, which will almost always take place, in the endeavour to prove an infringement by comparison of the manufactures,

(*m*) *The King* v. *Arkwright*, Printed Case, 173. Dav. Pat. Cas. 108.

(*n*) *Id.* Printed Case, 176. Dav. Pat. Cas. 115, 116.

(*o*) *Id.* Printed Case, 96.

it is prudent first to apply to a court of equity to appoint persons to inspect the manufactories, as was done in several cases. (*p*)

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*, (*q*) 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. (*r*)

A rule *nisi* for a new trial was refused to Arkwright, (*s*) 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 would adduce evidence to contradict or explain the evidence given against him. He added, he did not conceive that the point, that some of the

(*p*) Remedies in Equity, post, 250.
(*q*) 2 Barn. & Ald. 345.
(*r*) A new trial was granted in *Derosne* v. *Fairie*, 5 Tyr. 303.
(*s*) Page 188 of the Printed Case. Dav. Pat. Cas. 142.

articles were immaterial, and inserted only for the purpose of causing misconceptions, would have been litigated.

On the motion for a new trial, in *Lewis* v. *Marling*, (*t*) affidavits were produced as to the publication of the machine 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*."

Pending a rule *nisi* for a new trial, the defendant sued out a *scire facias* to try the same right. The Court of Common Pleas refused to postpone the proceedings on the rule for a new trial until a decision should have been obtained on the *scire facias*. (*u*).

Judgment.

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*. (*v*)

Costs.

The costs of an action for the infringement of a patent are guided by the rules respecting other actions on the case. (*w*) It is often necessary for

(*t*) 10 Barn. & Cres. 25.

(*u*) *Haworth* v. *Hardcastle*, 10 Bing. Rep. 551.

(*v*) 2 Ventr. 344. See *Arkwright* v. *Nightingale*, Dav. Pat. Cas. 55.

(*w*) *Losh* v. *Hague*, 7 Dow. Prac. Cases, p. 495.

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 *Severn* v. *Olive*, (*w*) the Court (after hearing arguments) directed that the prothonotary should review 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.

On the subject of costs a great improvement is made, by section 6 of 5 & 6 Wm. 4, c. 83, where 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

(*w*) 3 Brod. & Bing. 72.

him to a continual outlay, which in some cases has caused his ruin.

A very important improvement has been introduced. By section 3 of 5 & 6 Wm. 4, c. 83, 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." (*x*)

A patent for the exclusive use of an improve- Mandamus.

(*x*) A patentee obtained a verdict. He then commenced forty actions. After the trial of one of them the patent was held to be invalid.

ment in the invention of anchors, contained a proviso for avoiding the patent, if the patentee should not supply for his Majesty's service all such articles of the invention as should be required, on such reasonable terms as should be settled by the Lords of the Admiralty. The latter used the invention, but did not take the articles from the patentee. The Court refused to issue a mandamus to them, to settle the terms according to the patent. (*y*)

III. REMEDY IN EQUITY.

1. The jurisdiction of a Court of Chancery.

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.(*z*)

The great advantage gained by commencing proceedings in equity (*a*) for an infringement, before recourse is had to the common law courts,

(*y*) Ex parte *Pering*, 4 Adol. & E. 949.

(*z*) *Boulton* v. *Bull*, 3 Ves. 140; and see 14 Ves. 132. 6 Ves. 607. 1 Maddox. Chan. p. 113, and post, Book III. c. VIII.

(*a*) Mitford's Chanc. Plead. 124.

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, (*b*) "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 specification is not bad in law, the Court will

(*b*) *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.

brevi manu interfere, and put an end to the injunction. (*c*)

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 services, &c., reference must be made generally to the books of practice, (*d*) observing that for each distinct invasion of the patent there must be separate bills filed. (*e*)

A bill (*f*) having been filed by an assignee of certain alleged patent inventions, for an injunction to restrain the infringement of the patents,

(*c*) *Harmer* v. *Playne*, 14 Ves. 132. *Grierson* v. *Eyre*, 9 Ves. 341. Forsyth's patent (for giving fire to artillery and all kinds of fire arms) came before a court of equity. (MSS. July, 1816.) The invention consisted in 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 moveable 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*, (ante, 31,) by which his patent was supported.

(*d*) 2 Maddox. Chan. Ch. VII., and Eden on Injunctions, Ch. XV.

(*e*) *Dilly* v. *Doig*, 2 Ves. jun. 486.

(*f*) *Few* v. *Guppy*. *Few* v. *Petre* and *Another*. *Guppy* v. *Few*, 1 Mylne & C. 487.

and for an account of the profits made by their use; the defendants by their answer, insisted that the patents were originally invalid; and also, that if originally good, they had been made void by subsequent acts of the patentee. By the decree made at the hearing of the cause, the bill was retained for three years, with liberty for the plaintiff to bring an action; and the defendants were directed to admit that the plaintiff was the assignee of the patents, and that they, (the defendants) had used the alleged inventions; and the plaintiff was ordered to produce certain deeds at the trial, and to admit their execution. The defendants then filed a bill of discovery against the plaintiff; but the discovery sought by that bill had reference only to the acts by which it was alleged that the patents had become void subsequently to their creation. The defendants, afterwards, finding the necessity of a discovery as to the original invalidity of the patents, applied to the Court for permission to file another bill of discovery which should relate to such original invalidity, and the Court granted the permission desired.

An injunction.

The remedy sought in equity is for INSTANT RELIEF. (*g*) 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*

(*g*) 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. & Beam. 67.

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*, (*h*) 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* mentioned 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."

(*h*) 3 Meriv. 624. And *Hill* v. *Wilkinson*, MSS.

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. (*i*)

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. (*j*)

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.

Where a bill (*k*) was filed to restrain the infringement by the defendant of letters patent, a sufficient case to justify it must be stated by the plaintiff on the face of the bill, and he must not depend solely on the admissions contained in the defendant's answer, for the granting or continuing of the injunction. If the answer deny the invention to be new, and also the enjoyment under the letters patent, and state, (as was the fact) that the specification is imperfectly set forth in the bill, the Court will dissolve an injunction previously obtained on affidavit, giving the plaintiff

(*i*) *Crosley* v. *The Derby Gas Light Company*, 1 Russ. & M. 166. Law Journal, vol. xiii. p. 25.

(*j*) *Sturz* v. *De la Rue* and *Others*, 5 Russell's Rep. 322.

(*k*) *Curtis* v. *Cutts*, Law Journal in Chancery, vol. xvii., p. 184.

liberty to bring an action, although the defendant admit by his answer that he has made machines upon the principle comprised in the letters patent.

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. (*l*)

The Court will not, for the purpose of determining the validity of a plaintiff's title as the patentee of an invention, make an order upon demurrer, directing the bill to be retained, with liberty to the plaintiff to bring an action.

Where the bill alleges that the plaintiff is the patentee of an invention, stating its nature generally, but referring for greater certainty to a specification, in which it is set forth and described at large, and alleges also, that the plaintiff has been for ten years in the exclusive enjoyment of such patent, and has established his legal title by repeated actions, a general demurrer on the ground of the invalidity of the patent as stated in the bill, will be overruled. (*m*)

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 dis-

(*l*) *Hicks* v. *Raincock*, 2 Dick. 647.

(*m*) *Kay* v. *Marshal*, 1 Mylne & C. Rep. 373. Law Journal, vol. xv. p. 258. See 5 Bing. N. C. 592.

solved. (*n*) But if, when the bill was filed, an injunction was denied, it may now be moved for. (*o*) 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; (*p*) 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. (*q*)

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. (*r*)

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

(*n*) See *Gibbs* v. *Cole*, 3 P. Wms. 355.

(*o*) 1 Ves. jun. 430.

(*p*) 3 Meriv. 628. And see 1 Stark. N. P. C. 205. *Wood* v. *Cockerell*, Aug. 1819, MSS. Of the *practical* use of a decree for an account, see *Crosley* v. *Derby Gas Light Company*, 3 Mylne & Craig, 428.

(*q*) See Tidd's Practice, p. 750, 7th edit.

(*r*) Ante, 240.

proved. If the infringement be done secretly, he will order the *manufactory to be inspected.* (*s*)

New trial. When a verdict has been given, and the plaintiff moves to revive or to make an injunction perpetual; 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 think 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 be 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. (*t*)

In one instance (*u*) 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 meantime.

Costs in equity. At the same time, the party that is successful may move for the costs and expenses which

(*s*) See *Huddart* v. *Grimshaw*, Dav. Pat. Cas. 265, and *Boville* v. *Moore*, id. 361; and see ante.

(*t*) 3 Meriv. 631.

(*u*) *Boulton* v. *Bull*, 3 Ves. 141.

he has sustained by a suit which could not be supported. (*v*)

IV. REMEDY BY STATUTE.

For the protection of patentees, the new act (*w*) gives a penalty of 50*l.* against a party using the name, &c., of a patentee.

It is enacted, that if any person shall write, paint or print, or mould, cast, or 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

(*v*) 3 Meriv. 629; and see Tidd's Prac. 1001, 7th edit.
(*w*) 5 & 6 Wm. 4, c. 83, s. 7.

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*l.*, 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 patent. In the Courts of Equity, a manufacturer is always restrained from using the letters and figures which a patentee was in the habit of using. (*x*)

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 infringement; and, if it be a doubtful one, the defendant will be restrained from using it until its validity has

(*x*) *Ransome* v. *Bentall*, Law Journal, vol xii. page 161.

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. (*y*)

(*y*) For observations more in detail on "*Proceedings in Equity*," see post, COPYRIGHT, Chap. VIII.

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 Queen—be protected, until it is found by inquisition at law that the grant either ought 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*

(*a*) Ante, 287. 2 Ventr. 344; and see *Attorney General* v. *Vernon*, 1 Vern. 277, 370. 2 Chan. Rep. 353.

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.

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.

(*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, 301, 309.

(*d*) 21 Jac. 1, c. 3, s. 6.

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 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

(*e*) 3 Inst. Ch. LXXXV.; and see the case of *Darcy* v. *Allen*, 44 Eliz. 11 Co. Rep. 85. Noy. Rep. 179.

(*f*) Ante, p. 10.

(*g*) 2 Hen. Bla. 492, by Eyre, C. J.

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.

One of the issues (*h*) to be tried on the *scire* Being hurtful of trade.

(*h*) *The King* 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 manufactures. Mr. Justice Buller.—I don't 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 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

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,

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 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 the public, it is impossible for a man to come to answer that.

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, (i) whether Mr. Arkwright should obtain

(i) *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.

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.

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*, (*j*) when its *object* is not a manufacture, (*k*) and when the *specification* is not sufficiently correct, (*l*) has already been shewn. If the patent has not been *obtained* (*m*) in the usual mode, or will not bear the *construction* (*n*) 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. (*o*)

(*j*) Chap. II. (*k*) Chap. III.
(*l*) Chap. IV. (*m*) Chap. V.
(*n*) Chap. VI.
(*o*) *The King* 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. (*p*)

1. Every false recital in a thing not material will not vitiate the grant, if the queen's intention is manifest and apparent.

2. If the queen is not deceived in her grant by the false suggestion of the party, but from her own mistake, upon the surmise and information of the party, it will not vitiate or avoid the grant.

3. Although the queen 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.

(*p*) Bull. N. P. 75; and see as to construction, ante, p. 200.

1. By whom obtained.

If a patent be void for any of the reasons which have been assigned as sufficient to invalidate the grant, the queen, *jure regio*, for the advancement of justice and right, may have a *scire facias* to repeal his own grant. (*q*)

A subject also, who is prejudiced by a grant, may of *right* petition the queen to use her 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. (*r*)

But between subject and subject, if the queen 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:(*s*) but the second patentee cannot bring a *scire facias* to repeal the first patent, though the better right should be in him. (*t*) 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. (*u*)

2. The necessary instruments.

The *scire facias* for repealing letters patent is an original writ, and must be founded on some

(*q*) 4 Inst. 88. For the law and practice of repealing letters patent by *scire facias*, see Tidd's Prac. 7th edit. 1123. 2 Wms. Saund. 72, p. q. Com. Dig. Patent F. 6. id. Pleader.

(*r*) Dyer, 276, b. 2 Ventr. 344. 3 Lev. 220. S. C. 6 Mod. 229.

(*s*) 4 Inst. 88. Dy. 197, b. 198, a.

(*t*) Dy. 276, b. 277, a.

(*u*) Ante, p. 40.

matter of record. (*v*) A patent for an invention 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. (*w*) The record of the proceedings upon the writ is made up in that court, and sent into one of the courts of common law at Westminster, to be tried. (*x*)

The first step to be taken is to present a petition or *memorial* (*y*) to the crown for a *scire facias*. The next is to obtain the queen's *warrant* to sue; (*z*) which is directed to the Attorney General, who thereupon grants his *fiat*. (*a*) Memorial.

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. (*b*) Summons.

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, &c. (*c*)

After the defendant has appeared, he may plead either in abatement or in bar. The most Plea.

(*v*) 4 Inst. 88. 3 Lev. 223.

(*w*) *Rex* v. *Haine*, 2 Cox, 235; and see 3 Lev. 223; 6 Mod. 229; and ante, p. 238.

(*x*) See 21 Jac. 1, c. 3, s. 6.

(*y*) 2 Rich. Prac. C. P. 391. (*z*) Id. 392.

(*a*) Id. 395. (*b*) See Tidd's Prac. 1158, 1172.

(*c*) For precedents, see the printed account of Mr. Arkwright's patent, where the whole record is set out; and Tidd's Prac. Appendix, Chap. XLI. s. 6. Lil. Entr. 411. 2 Rich. Prac. C. P. 395.

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 face of the proceedings, to support the writ, the defendant may demur. (*d*)

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. (*e*)

Judgment by default.

After the defendant has been warned, and *nihil* twice returned, judgment for annulling the patent may be taken by *default*. (*f*) It is obtained by *confession*, if no defence is made after the appearance. (*g*)

The record is delivered to the Court of Common Law by the clerk of the petty bag: (*h*) and it is not necessary that the issue should be tried at bar; it may be at *nisi prius*. (*i*) 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; (*j*) except that the patentee being here the defendant, he does not want any *primâ 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.

(*d*) 3 Lev. 221. (*e*) Latch. 3. 1 Eq. Cas. Abr. 128.
(*f*) Dyer, 198. (*g*) Dyer, 197, b.
(*h*) 1 Eq. Cas. Abr. 128, 9, 2 Wms. Saund. 6. (1).
(*i*) Cro. Car. 313. (*j*) Ante, 240.

If the patentee can, on an application to the Court, shew any thing to induce them to believe that his case has not undergone the fullest investigation, they will grant a *new trial*; (*k*) but otherwise they will deny it. New trial.

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. Judgment.

If the verdict be for the Queen, the Court adjudges that the letters patent be revoked, and the enrolment 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.

Although the statute 8 & 9 Wm. 3, 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*. (*l*) Costs.

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

(*k*) Ante, 246.

(*l*) *The King* v. *Miles*, 7 T. Rep. 367.

power immediately applicable for repealing its own improvident grants.

The manner in which patentees may torment each other by writs of *scire facais*, 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 inserting 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, (*m*) 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. (*n*) Daniell had

(*m*) *The King* v. *Lister*, and *The King* v. *Hadden*, tried January, 1826, in the King's Bench. MSS.

(*n*) *The King* v. *Fussell*, and *The King* v. *Daniell*, tried July, 1827, before Lord Tenterden. MSS.

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, 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 Fussel 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.

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 original to one, and the duplicate to the other; if a sur-

render 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.

Enrolment. The *surrender* must be enrolled; for it is then only that the patent is vacated.

The certificate. A certificate should be of the *vacatur* having been entered on the roll.

CHAP. X.

FOREIGN LAWS RESPECTING INVENTIONS.

In this chapter will be found the laws respecting inventions, of those countries in which British subjects are accustomed to secure the privilege of using their inventions.

The same analysis is given (as nearly as possible) as that which was made of the British law.

THE AMERICAN LAW.

The existing laws relating to patents are those approved July 4th, 1836, March 3rd, 1837, and March 3rd, 1839; all former acts having been repealed by the act of 1836. (*a*)

Patents (*b*) are granted to citizens of the United States, to aliens who shall have been resident in the United States one year next preceding, and shall have made oath of their intention to become citizens thereof, and also to foreigners who are inventors or discoverers. The inventor.

(*a*) Messrs. Newton & Berry, agents for patents, furnished me with the above abstracts of the acts of the Congress of America.

(*b*) See ante, Chap. II.

A patent may be taken out by the inventor in a foreign country, without affecting his right to a patent in the United States, provided the invention has not been introduced into public and common use in the United States, prior to the application for such patent. In every such case the patent is limited to fourteen years, from the date of the foreign letters patent. A patent is not granted upon introduction of a new invention from a foreign country, unless the person who introduced it be the inventor or discoverer. If an alien neglects to put and continue on sale the invention in the United States, to the public, on reasonable terms, for eighteen months, the patentee loses all benefit of the patent.

Joint inventors are entitled to a joint patent, but neither can claim one separately.

In case of the decease of an inventor, before he has obtained a patent for his invention, "the right of applying for and obtaining such patent shall devolve on the administrator or executor of such person, in trust for the heirs-at-law of the deceased, if he shall have died intestate: but if otherwise, then in trust for his devisees, in as full and ample manner, and under the same conditions, limitations, and restrictions, as the same was held, or might have been claimed or enjoyed, by such person in his or her life time; and when application for a patent shall be made by such legal representatives, the oath or affirmation shall be so varied as to be applicable to them." Act of 1836, sec. 10.

The patents (*c*) are granted for any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement (*d*) on any art, machine, manufacture or composition of matter, not known or used by others, before his or their discovery or invention thereof, and not, at the time of his application for a patent, in public use, or on sale, with his or their consent or allowance, as the inventor or discoverer." Act of 1836, sec. 6. "No patent shall be held to be invalid by reason of the purchase, sale, or use (of the invention) prior to the application for a patent as aforesaid, except on proof of abandonment of such invention to the public, or that such purchase, sale, or public use, has been for more than two years prior to such application for a patent." Act of March 3rd, 1839. The manufacture.

The term for which a patent is granted is fourteen years; but it may, under certain circumstances, be renewed for seven years. The duration of the patent.

An inventor can assign his right before a patent is obtained, so as to enable the assignee to take out a patent in his own name; but the assignment must be first entered of record; and the application, therefore, must be duly made, and the specification signed and sworn to by the inventor. And in the case of an assignment by Property in a patent.

(*c*) See ante, Chap. III.

(*d*) See the American case of *Pennock* v. *Dialogue*, 2 Peters' Reports, p. 1. Ante, 51.

a foreigner, the same fee will be required as if the patent issued to the inventor.

The assignment of a patent may be to the whole, or to an undivided part, "by any instrument in writing." All assignments, and also the grant or conveyance of the use of the patent in any town, county, state, or specified district, must be recorded in the patent office, within three months from the date of the same. But assignments, if recorded after the three months have expired, will be on record as notice to protect against subsequent purchases. No fee is now charged for recording assignments. Patents and assignments recorded prior to the 15th of December, 1836, must be recorded anew, before they can be valid as evidence of any title. This is also done free of expense.

Mode of obtaining the patent.

All fees (*e*) received are paid into the treasury, and the law has required the payment of the patent fee before the application is considered; two-thirds of which fee is refunded on withdrawing the application. But no money is refunded on the withdrawal of an application, after an appeal has been taken from the decision of the commissioner of patents. And no part of the fee paid for caveats, and on applications for the addition of improvements, re-issues, and appeals, can be withdrawn.

(*e*) See ante, Chap. V.

THE SPANISH LAW. (*f*)

The present laws in force in Spain are given in a decree of King Ferdinand VII. dated the 27th March, 1826.

The Inventor. (*g*)—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. (*h*)—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.*

The Specification. (*i*)—When the petition for a patent is presented it must be accompanied with a *plan* or *model*, and a description or explanation

(*f*) See the Appendix to the Parliamentary Report, dated 12th June, 1829.

(*g*) See ante, Chap. II. (*h*) See ante, Chap. III.

(*i*) See ante, Chap. IV.

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. (*j*)—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 :—

(*j*) See ante, Chap. V.

	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. (*k*)—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

(*k*) See ante, Chap. VII.

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. (*l*)—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. (*m*)—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 descrip-

(*l*) See ante, Chap. VIII. (*m*) See ante, Chap. IX.

tions, contained in the *Royal Conservatory of Arts*; or when the subject has been used in a foreign country and the 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. (*n*)—The privilege is granted to a native or foreigner; and he may also take out a privilege in a foreign country.

The Manufacture. (*o*)—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

(*n*) See ante, Chap. II.

(*o*) See ante, Chap. III.

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 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. (*p*)—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

(*p*) See ante, Chap. IV.

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 supply 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. (*q*)—A petition is first presented to the *direction of the circle* in which the inventor resides, wherein he must state

(*q*) See ante, Chap. V.

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 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. (*r*)—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 invention 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. (*s*)—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

(*r*) See ante, Chap. VII.

(*s*) See ante, Chap. VIII.

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 for damages—of the application of the legal penalty, &c. rest with the ordinary judges.

When void, and how cancelled. (*t*)—The privilege becomes void,

1. If the accurate description of the discovery, invention, or improvement, for which the privilege was 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.

(*t*) See antc, Chap. IX.

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. (*u*)—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. (*v*)—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

(*u*) See ante, Chap. II.

(*v*) See ante, Chap. III.

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. (*w*)—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 (*x*).—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 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

(*w*) See ante, Chap. IV.

(*x*) See ante, Chap. V.

patent; and not even then if the 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	0

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. (*y*)—Patents are granted for five, ten or fifteen years; and they may be

(*y*) See ante, Chap. VII.

prolongated 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. (*z*)—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. (*a*)—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

(*z*) See ante, Chap. VIII.

(*a*) See ante, Chap. IX.

years from the date of his patent, unless there have been strong reasons for that delay; of which reasons *the government* is the 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. (*b*)—The National Assembly stated in their decree, that *every new idea*, whereof the manifestation or the development may become useful to society, *belongs originally to him who has conceived it*, and that it would be to

(*b*) See ante, Chap. II.

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 discovery 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. (*c*)—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. (*d*)—The patent is forfeited if the inventor conceal his real means of execu-

(*c*) See ante, Chap. III.

(*d*) See ante, Chap. IV.

tion ; 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 Commissioners 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. (*e*)—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,

(*e*) See ante, Chap. V.

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 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. (*f*)—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

(*f*) See ante, Chap. VII.

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. (*g*)—The patent 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

(*g*) See ante, Chap. IX.

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.

BOOK III.

ON COPYRIGHT.

CHAP. I.

HISTORICAL 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 condensed into a few sentences.

Copyright or literary property may be defined to be—the ownership (by an author or his assignee) of the original manuscript of a work or THE COPY, being the incorporeal right to the sole printing, publishing, and selling of something intellectual, communicated by writing or letters. (*a*)

(*a*) See 4 Burr. Rep. 2311, 2346, 2396, and 2 Blackstone's Commentaries, 405.

"It is admitted by our opponents (says Mr. Serjeant Talfourd, at p. xxii. of his 'Present state of the copyright question') that an author's work remains his own property so long as it exists only in manuscript, and is retained in his own possession. We have not much to be grateful for in

It would be idle to speculate upon the probabilities whether this exclusive right existed among the Greeks and Romans; we cannot trace its existence by any satisfactory authority.

In England before the art of printing was introduced, it seems that the University of Oxford claimed the exclusive right of transcribing and multiplying books by means of writing, (*b*) but it nowhere appears that the authors of books claimed that privilege.

After the introduction of the art of printing into England by *Caxton*, in the year 1474, the

this concession, because, as the uncontrollable power remains in the author, the public had no means of enforcing any claims upon the fruits of his industry. Without fear of the most tyrannical law, or the most absolute monarch, the intellectual magician may, like Prospero,

> Break his staff—
> And deeper than did ever plummet sound
> May drown his book.

But he is ready to admit his contemporaries and posterity to a participation in the results of his labours; and, having the power, and with it the right, of withholding all, he seeks to make one reservation from the grant of that which is wholly his own. In selling each copy of his work, he claims to stipulate with the purchaser that he shall not use it to multiply copies for his own pecuniary gain: and, *the power of annexing this condition to every delivery of the book to a buyer, constitutes* COPYRIGHT."

See also a Treatise on the Laws of Literary Property, by ROBERT MAUGHAM, Secretary to the Law Institution, &c. (published since the first edition of this work) page 1.

(*b*) Bishop Fell's Memoirs. Gutch's Coll. Curiosa, Vol. i. p. 271.

question, of the perpetual right of multiplying copies of works by printing, became one of importance; and yet it does not appear to have been claimed in his time.

The first instance of a claim of exclusive right to print a book, occurs in the year 1518, (*c*) when it was made by a printer as a privilege granted by the crown.

It is quite clear from all the ancient records, that if there were any copyright at common law before the existence of the Stationers' Company, it was at first protected only by royal grants, sometimes for a few years, and sometimes for particular classes of books, and in all instances, the claim was set up by the printer, not by the author, who no doubt, had paid the author for his labour.

On the 4th of May 1556, letters patent were granted to the *Stationers* to form themselves into a corporate body with power to make bye-laws: so that, no one but a member of their company should be allowed to practise or exercise the art or mystery of printing within the dominions of England.

By a bye-law, every person who had printed a book was required to enter it first in their register, and obtain a *license* from them, and those laws were supported by the Star-chamber; for it was the policy of the then governments to keep a

(*c*) By Richard Pynson, who succeeded William Faques, the first "regius impressor." Herbert. Typ. Ant. Vol. i. p. 264.

strict watch and great control over the publishers of books, which was best effected by making the whole of them, as a corporate body, answerable for the acts of each printer or stationer.

After some deference had been paid to the right of the author, we find that the Crown interposed instead of the Company of Stationers, and the stat. of 13 & 14 Car. 2, c. 33, commonly called "*the Licensing Act*" was passed. At first it was for a limited time, afterwards renewed, and ultimately expired in 1694.

At length the legislature interfered by the 8 Ann. c. 19, and released authors, whatever their original right might be, from the thraldom of the Stationers' Company, the uncertainty of the decisions of the courts, and the usurpation of the Crown.

Copyright at common law.

It would be foreign to the plan of this work, to enter into a discussion to shew whether copyright existed at common law; upon that 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 this work (the production of his mind) 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

Pleas, in the case of *Tonson* v. *Collins*: (*d*) but the point was not determined. It was afterwards agitated in the Court of King's Bench, (*e*) 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

(*d*) 1 Bla. Rep. 301, 321.

(*e*) *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 license or consent of the plaintiff *Millar*; the defendant knowing that they had been so injuriously printed by some person or persons, without such license 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.

case of *Beckett* v. *Donaldson*, (*f*) when it was decided without discussion in favour of the right,

(*f*) 2 Bro. P. C. 145, and 4 Burr. 2408. In this case, 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, Ashurst, 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, Ashurst, 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; 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.) 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?

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, 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

Upon this third question the judges Eyre, Nares, Perrot, Gould, and Adams, and De Grey, C. J., C. P. delivered their opinions against Ashurst, 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, Ashurst, 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 Ashurst, 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.

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 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 statutes.

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.

1. Statute law. 8 Ann. c. 19.

The excellent statute of 8 Anne (*g*) 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 composed 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

(*g*) 8 Anne, c. 19, s. 1.

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. (*h*)

15 Geo. 3, c. 56.

Next in chronological order comes the act of parliament (*i*) 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. (*j*)

41 Geo. 3, c. 107.

Immediately after the union with Ireland, an act of parliament (*k*) 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.

By this statute eleven copies of every book was to be delivered to eleven public libraries. (*l*)

54 Geo. 3, 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 fruits of the copyright of a work, then not published, was extended from fourteen to *twenty-eight*

(*h*) 8 Anne, c. 19, s. 11.
(*i*) 15 Geo. 3, c. 56, and see post, Chap. VII.
(*j*) See 6 & 7 Wm. 4, c. 110.
(*k*) 41 Geo. 3, c. 107.
(*l*) See post, 451.

years; (*m*) 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. (*n*)

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

(*m*) 54 Geo. 3, c. 156, s. 4.

(*n*) 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*. *Carnan* v. *Bowles*, Trin. T. 26 Geo. 3. 2 Bro. C. C. 80, and 1 Cox. 283. *Rennett* v. *Thompson*, id.

It was ruled in the case of *Brooke* v. *Clarke*, 1 Barn. & Ald. 396, that if a work has been published more than twenty-eight years *before* the time of passing the stat. 54 Geo. 3, 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. 3, 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.

given to their *personal representatives*, without prejudice to the assignees of all or any part of the former term. (*o*)

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. (*p*)

3 Wm. 4, c. 15.

By the 3 Wm. IV. c. 15, the property in *Dramatic Works* is secured, and rendered profitable to the authors. (*q*)

5 & 6 Wm. 4, c. 65.

By the 5 & 6 Wm. IV. c. 65, (*r*) public lectures are protected, and the authors of them can maintain without difficulty their copyright in them.

The other statutes, which are akin to the copyright acts, secure to artists a right over their productions, the results of their knowledge, skill and labour.

Engravings.

A copyright in engravings is made by 8 Geo. II. c. 13, 7 Geo. III. c. 38, and 17 Geo. III. c. 57, (*s*) extended to Ireland by 6 & 7 Wm. IV. c. 59.

Patterns on linen, &c.

By the 27 Geo. III. c. 38, and 34 Geo. III. c. 23, (extended to Ireland by 2 Vict. c. 13, so as to include wool, silk and hair) patterns for printing *linens*, *cottons*, *calicoes* or *muslins*, are protected for three months. (*t*)

Patterns on woollen articles.

By the 2 Vict. c. 17, original designs for, or patterns, to be worked into or printed on any

(*o*) 54 Geo. 3, c. 156, s. 8, and see post, Assignee, Chap. VII.
(*p*) Id. s. 4.
(*q*) See post, p. 390.
(*r*) See post, p. 327.
(*s*) See post, p. 397.
(*t*) See post, p. 410.

article of manufacture, except those within by 2 Vict. c. 13, are protected for *twelve months*, such as carpets &c. (*u*)

Modelling. By the same act, 2 Vict. c. 17, inventors of designs, made for the *modelling*, or the casting, or the embossment, or the chasing, or the engraving, or for any other kind of impression or ornament on any article of manufacture, being formed of any metal or mixed metals, have the sole right to use the same during the term of *three years*. (*v*)

Sculptures. The works of sculptors are protected by 38 Geo. III. c. 71, and 54 Geo. III. c. 56.

Such are the acts of the legislature by which the fruits of the labours of *Scholars* and *Artists* are secured to them and their representatives.

Several attempts have been made in parliament to extend *the time* of the copyright, particularly by Mr. Serjeant Talfourd. (*w*)

(*u*) See post, p. 413.

(*v*) See post, p. 414.

(*w*) See post, p. 419. See "*Three Speeches* delivered in the House of Commons in favour of a measure for an extension of Copyright, by T. N. Talfourd, serjeant-at-law. Moxon, 1840,"—most eloquent and very argumentative. In the second speech, at page 56, there is a comparison between the protection afforded to inventors and the authors of literary works. It is quoted as appropriate to the subjects forming the two parts of this Treatise. "One of the arguments used, whether on behalf of the trade or the public I scarcely know, against the extension of the term, is derived from a supposed analogy between the works of an author and the discoveries of an inventor, whence it is inferred that the term which suffices for the protection of the one is long enough for the recompense of the other. It remains to be proved that the protection granted to patentees is sufficient; but supposing it to be so,

By his bill he wishes to enact, that the copy-right in any book thereafter to be published

although there are points of similarity between the cases, there are grounds of essential and obvious distinction. In cases of patent, the merits of the invention are palpable; the demand is usually immediate; and the recompense of the inventor, in proportion to the utility of his work, speedy and certain. In cases of patent, the subject is generally one to which many minds are at once applied; the invention is often no more than a step in a series of processes, the first of which being given, the consequence will almost certainly present itself sooner or later to some of those minds; and if it were not hit on this year by one, would probably be discovered the next by another; but who will suggest that if Shakspeare had not written Lear, or Richardson Clarissa, other poets or novelists would have invented them? In practical science every discovery is a step to something more perfect; and to give to the inventor of each a protracted monopoly would be to shut out improvement by others. But who can improve the masterpieces of genius? They stand perfect; apart from all things else; self-sustained; the models for imitation; the sources whence rules of art take their origin. Still they are ours in a sense in which no mechanical invention can be;—ours not only to ponder over and to converse with,—ours not only as furnishing our minds with thoughts, and peopling our weary seasons with ever-delightful acquaintances; but ours as suggesting principles of composition which we may freely strive to apply,—opening new regions of speculation which we may delightfully explore,—and defining the magic circle, within which if we are bold and happy enough to tread, we may discern some traces of the visions they have invoked, to embody for our own profit and honour; for the benefit of the printers and publishers who may send forth the products of these secondary inspirations to the world; and of all who may become refined or exalted by reading them."

"When I am asked, why should the inventor of the steam-engine have an exclusive right to multiply its form for only

in the lifetime of the author, should belong to the author and his assigns for the author's life, and for sixty years to commence at his death; and if published after the author's death, then to belong to the proprietor of the manuscript for sixty years from the first publication thereof.

In cases of subsisting copyright, he wishes to enact, that the extended term should also be given, except when it should belong to an assignee, for other consideration than natural love and affection; in which case it should cease at the expiration of the present term, unless its extension should be agreed to, by the proprietor and the author.

International copyright.

By the 1 & 2 Vict. c. 59, an International copyright is attempted to be established. Her Majesty, by order in council, may direct that authors of books first published in foreign countries, and their assigns, shall have a copyright in such books within her dominions. (*x*)

fourteen years, while a longer time is claimed for the author of a book? I may retort, why should he have for fourteen years what the discoverer of a principle in politics or morals, or of a chain of proof in divinity, or a canon of criticism, has not the protection of as many hours, except for the mere mode of exposition which he has adopted? Where, then, the analogy between literature and mechanical science really exists, that is, wherever the essence of the literary work is, like mechanism, capable of being used and improved on by others, the legal protection will be found far more liberally applied to the latter—necessarily and justly so applied—but affording no reason why we should take from the author that which is not only his own, but can never, from its nature, be another's."

(*x*) See *D'Almaine* v. *Bossey*, 1 Y. & C. 288.

In *America*, (*y*) the copyright is secured by an act of Congress passed 3rd February, 1831, to an author, being a citizen of the United States, or resident therein, for the term of twenty-eight years; and if either he, his wife or children, survive that period, then for a further term of fourteen years. Copyright in foreign countries. America.

The law now in force in *France* (*z*) is a government decree under the empire, dated 5th February, 1810, by which the property in a work is secured to an author for his life, to his widow for her life, and, after their death, to their children for twenty years. France.

The law, it seems, is the same in the *Two Sicilies* as in *France*. (*a*) The Two Sicilies.

In *Holland* and *Belgium*, (*b*) by a law passed in 1817, when the two countries were united, and now in force in each country since the separation, the duration of a copyright is to the author for his life, and to his heirs and representatives for twenty years after his death. Holland and Belgium.

In 1837, the Germanic Diet resolved art. 2, (*c*) that literary rights shall pass to the heirs or representatives of the authors or artists, or those Germany.

(*y*) See "An Historical Sketch of the Law of Copyright, by John J. Lowndes, Esq.," which is a learned and elaborate and well written treatise, to prove that copyright is a right that ought to be perpetual. From the Appendix to that work the above observations on copyright in foreign countries are extracted. Published in 1840.

(*z*) Lowndes on Copyright, p. 117.

(*a*) Id. p. 131. (*b*) Id. p. 120.

(*c*) Id. p. 122.

to whom they have been transferred; and when he who brought out the work, or he who is the editor, is named, this right shall be recognised and protected *in all the states* of the confederation for a period of ten years at the least.

Austria. By an *Austrian* imperial ordonnance, (*d*) art. 1169, the rights of authors respecting the reprinting of their works shall not descend to their heirs.

Prussia. By an ordonnance dated 11th July, 1837, the law of copyright throughout *Prussia* (*e*) is, that an author shall enjoy the sole right of printing his work for his life; and then to his heirs for a period of thirty years, to be reckoned from his death.

Bavaria. In *Bavaria*, (*f*) literary property descends to the heir or representative of the author.

Russia. By the law of *Russia* (*g*) passed in 1830, the author or translator of a work shall have the sole right of printing and disposing of it during his lifetime; and his heirs and assigns shall enjoy the same for the term of twenty-five years after his decease: and for a further term of ten years if they shall publish an edition within five years before the expiration of the first term.

Denmark, Norway, Sweden, Spain. In *Denmark*, *Norway*, *Sweden*, and *Spain*, the copyright of publications is perpetual. (*h*)

(*d*) Lowndes on Copyright, p. 123.
(*e*) Id. p. 124.
(*f*) Id. p. 126.
(*g*) Id. p, 129.
(*h*) Id. p. 130, 1.

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 separate divisions of the work. Thus in one chapter is given the law respecting *Original Compositions*, whether printed in a book, or preserved in manuscript, whether composed by a native, or written by a foreigner; and in another, that relating to *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 those regulating *Theatrical Exhibitions*, as music or plays, will be found in other chapters, distinctly apart by themselves.

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 or

prints, and patterns; in models and sculptures will follow, with the cases that have been decided on them.

This chapter is set apart for *compositions*, which, in the common and strict sense of the word, are called *Original*; 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, thus—

I. *Of a book generally.*
II. *Of works in manuscript.*
III. *Of foreign publications.*

I. A BOOK GENERALLY.

Definition of a book.

Although 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 Camp. 27, n.; and in 11 East, 244, n. S. C. (See Amb. Rep. 404.) This was an action for pirating the words of a song called "Abraham Newland," published on a single sheet of paper. Erskine, contending that this was a book, said, if a

Every distinct and independent *part* of a work, is also a book within the meaning of the statute,

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 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 donominated a *book*, and so continues in some instances to this day. An oath as old as the time of Edward I. runs in this form, "And you shall deliver into the Court of Exchequer a book fairly written," &c.: but the book delivered

as one tale or piece of music printed and bound up with other tales or pieces of music. (*b*)

3. Without author's name.

It will be shewn hereafter that certain names must, for the protection of the public, 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*) engravings, &c. (*h*)

The *property* in a book generally will be investigated under the title—" Author and his Assignee." (*i*)

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. and see 4 Bing. 540.

(*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.

II. WORKS IN MANUSCRIPT.

As a literary work or treatise must necessarily exist in manuscript before it is printed, it appears at first sight more logical, that manuscripts should have been treated of before the law, as it regards books in general, had been inquired 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 control 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 for 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.

(*k*) 2 Bro. P. C. 144. 4 Burr. 2408.

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 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 pre-

(*l*) Amb. 695. See *Webb* v. *Rose*, cited 2 Bro. P. C. 138, and *Forrester* v. *Waller*, id.; and see *Knaplock* v. *Curl*, 4 Ven. Abr. 278. 2 Evans Coll. Stat. p. 625.

(*m*) See *Burnett* v. *Chetwood*, 2 Mer. 443, n.

(*n*) *White* v. *Gerock*, 2 Barn. & 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. 3, c. 156, must be construed with reference to the 8 Ann. c. 19, which it recites, and which, together with the 41 Geo. 3, 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.

viously 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 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*)

Of a similar kind are lectures, the sentiments and language whereof are delivered orally. It was doubted whether there is any legal right of property in the sentiments and language of a lecture, thus orally delivered, and which cannot be shewn to have been reduced into writing: although the persons attending such lecture have no right to publish it for profit; (*q*) and an action upon an implied contract, will lie against a pupil attending the lecture, who causes it to be published for profit. But the Court would grant an injunction against third persons publishing the lecture, who must have procured the means of publishing it, from the persons who attended the delivery thereof, and were thus bound by the implied contract not to publish it. Lectures are now protected by 5 & 6 Wm. 4, c. 65. (*r*)

3. Epistolary writings.

There is a peculiar class of manuscript literary

(*o*) *White* v. *Gerock*, 1 Chit. Rep. 27.

(*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.

(*q*) *Abernethy* v. *Hutchinson*, 3 Law Journal Rep. Eq. 209.

(*r*) See post, Newspapers, Chap. III.

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 receiver, Lord Hardwicke observed, (*r*) "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

(*r*) 2 Atk. 342.

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, (*s*) 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, 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. (*t*)

Common letters.

The third species consists of common letters 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*

(*s*) *Pope* v. *Curl*, 2 Atk. 342.

(*t*) *Thompson* v. *Stanhope*, Amb. 737; and *Duke of Queensberry* v. *Shebbeare*, cited in 4 Burr. 2330, S. C. 2 Eden. Rep. 329; and see 2 Evans. Coll. Stat. p. 624.

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 the Courts of Equity were to interfere on any other principle, they would defeat the ends 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 was contained in letters in which a pretended copyright were 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. (*u*)

In a case before Lord Manners, (*x*) upon a bill filed by an executor, it appeared that the defendant, who was a relation of the testatrix, and as

(*u*) —— 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.

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 injunction obtained on account of agency and

(*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 bankrupts, &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.

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.

III. OF FOREIGN PUBLICATIONS.

Formerly if a book were written by a foreigner and published in a foreign country, a person who purchased the right to publish it here, could not support any copyright thereon either at law or equity, in this country. (*z*)

But by the 1 & 2 Vict. (*a*) it is enacted, that her Majesty, by any order in council, may direct that the authors of books which shall, after a future time to be specified in such order in council, be published in any foreign country to be specified in such order in council, and their executors, administrators, and assigns, shall have the sole liberty of printing and reprinting such books within the United Kingdom of Great Britain and Ireland, and every other part of the British dominions, for such term as her Majesty shall by such order in council direct, not exceeding the term which authors being British subjects are now by law entitled to in respect of books first pub-

(*z*) *Guichard* v. *Mori*, 9 Law Journal, Rep. Ch. 226.

(*a*) 1 & 2 Vict. c. 59.

lished within the United Kingdom; provided, that no such author or his assigns shall be entitled to the benefit of the act unless, within a time to be in that behalf prescribed by such order in council, the title to the copy of every such book, and the name and place of abode of the author thereof, and the time and place of the first publication thereof in such foreign country, shall be entered in the register book of the Company of Stationers in London; and unless, within a time to be also prescribed by such order in council, one printed copy of the whole of such book and of every volume thereof, upon the best paper upon which the largest number or impression of such book shall have been printed for sale, together with all maps and prints relating thereto, shall be delivered to the warehouse keeper of the Company of Stationers at the hall of the said company.

In the case of books published anonymously, the name of the publisher will be sufficient, (*b*) and the wrongful first publication may be amended by Court of Chancery. (*c*)

In the event of a second edition, it is only necessary to deliver the additions or alterations made in the work. (*d*)

(*b*) Id. sec. 2.
(*c*) Id. sec. 3.
(*d*) Id. sec. 4.

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 same general subject, they may differently 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.

(*a*) See *Matthewson* v. *Stockdale*, 12 Ves. 273, for an elaborate opinion of Lord Erskine on this kind of literary compositions.

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 could 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 Patterson, 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*)

(*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

Mr. Cary, at great expense, improved Patterson's work; aud had several times to defend his additions from piracy. In his endeavour to obtain an injunction against Faden he failed. (*c*) 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

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 fundamentally 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.

(*d*) *Cary* v. *Longman*, 3 Esp. N. P. C. 273. 1 East, 359.

(*e*) *Cary* v. *Kearsley*, 4 Esp. N. P. C. 168.

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 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

(*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.

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 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,

(*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.

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 will be shewn to what extent quoting may be carried; and that, when large portions of a work are taken, the 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. (*m*)

Maps, Charts, &c., were formerly considered

(*i*) *Per Lord Mansfield in Sayre* v. *Moore*, 1 East, 361, n.

(*k*) See post, Piracy, Chap. VIII.; also p. 353.

(*l*) *Roworth* v. *Wilkes*, 1 Camp. N. P. C. 98; and see *Wilkins* v. *Aikin*, 17 Ves. 422.

(*m*) See *Mawman* v. *Tegg*, 2 Russ. 385; and *Lewis* v. *Fullerton*, 17th Vol. Law J. Ch. 291.

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. (*n*)

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*, (*o*) and those works which contain *Logarithms*, *Tables of Interst*, &c.

1. Almanacks. James the First, in the 13th year of his reign, granted to the Company of Stationers the right of printing such Almancks as were sanctioned 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. (*p*) The validity of these patents,

(*n*) Post, Chap. VI. *Sayre* v. *Moore*, 1 East, 361, n.; but see 12 Ves. 274.

(*o*) By 4 & 5 Wm. 4, c. 57, the stamp duty is repealed.

(*p*) As to the equivalent given to the Universities, see post, Chap. VII.

although many injunctions had been allowed in support of them, (*p*) was questioned in the fifteenth year of Geo. 3, by Carnan, (*q*) 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 Almancks. 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. (*r*)

Any person may, therefore, make the calculations usually published in Almanacks, and claim a copyright in them.

(*p*) *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.

(*q*) 2 Bla. Rep. 1004; and see post, Chap. VII.

(*r*) 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. 2, 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. 2, c. 30, and 26 Geo. 2, c. 34.

Nautical almanack.

Many acts of Parliament (*s*) were passed offering public rewards to such persons as should discover an exact method of ascertaining the Longitude. A power was given to the commissioners appointed to carry them into execution, to publish a Nautical Almanack, or Astronomical Ephemeris. They were further empowered to give a *license* to some one to print it. Any other person printing, publishing, or vending it, subjected himself to a penalty. Those acts have been repealed, (*t*) and the Nautical Almanack is now placed under the control of the Lords of the Admiralty, and the penalty is increased to 20*l*., with costs of suit, to be paid and applied to the use of the Royal Hospital for Seamen at Greenwich.

2. Tables of logarithms, &c.

Though books of *logarithms*, tables of *interest*, &c., must necessarily be the same, if correctly calculated, yet, inasmuch as great labour must be exerted, and much expense incurred in making the calculations, and publishing them, a copyright exists in each work. And if any circumstance transpires by which it can be shewn

(*s*) The statutes respecting the discovery of the longitude at sea, and the determining the longitude and latitude of the Port Towns, were 12 Ann. stat. 2, c. 15. 14 Geo. 2, c. 39. 18 Geo. 2, c. 17. 26 Geo. 2, c. 25. 2 Geo. 3, c. 18. 3 Geo. 3, c. 14. 5 Geo. 3, c. 11. 5 Geo. 3, c. 20. 10 Geo. 3, c. 34. 13 Geo. 3, c. 77. 14 Geo. 3, c. 66. 16 Geo. 3, c. 6. 17 Geo. 3, c. 48. 20 Geo. 3, c. 61. 21 Geo. 3, c. 52. 30 Geo. 3, c. 14. 36 Geo. 3, c. 107. 43 Geo. 3, c. 118. 46 Geo. 3, c. 77. 55 Geo. 3, c. 75. 58 Geo. 3, c. 20. 1 & 2 Geo. 4, c. 2.

(*t*) 9 Geo. 4, c. 66.

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. (*u*) 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 this is not of itself sufficient. (*v*) 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,) (*w*) 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.

(*u*) *King* v. *Reed*, 8 Ves. 223, n.

(*v*) 3 Esp. N. P. C. 273. 4 Esp. N. P. C. 168. 12 Ves. 275.

(*w*) 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 certainly to 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, can-

not be entertained. An injunction was refused to stop the publication in a magazine, of an abridgment of Johnson's Tale of Rasselas; (*x*) 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 (*y*) was protected in a Court of common law.

(*x*) *Dodsley* v. *Kinnersley*, Amb. 403.

(*y*) *Strahan* v. *Newberry*, Lofft. Rcp. 775. Injunction against an cditor by Mr. Newbcrry, of an abridgmcnt 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 employcd 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 abridgmcnt 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 preservcd, 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 knowlcdge 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 abridgmcnt, where the understanding was employcd 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 abridgmcnt of Mr. Newberry's falls within these reasons and descriptions. Bill dismissed.

But then it must be a fair and real abridgment, the work must not be colourably shortened, (*z*) either by republishing only part of it, (*a*) or by omitting some parts, and merely transposing the remainder. (*b*) 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. (*c*)

Lord Hardwicke (*d*) 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; (*e*) and the law is the same in principle when they are inserted in reviews, &c. (*f*)

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.

(*z*) *Giles* v. *Wilcox*, 2 Atk. 143, S. C. 3 Atk. 268. Barnard, 368; and see 17 Ves. 422.

(*a*) *Read* v. *Hodges*, mentioned in 2 Atk. 143.

(*b*) *Butterworth* v. *Robinson*, 5 Ves. 709. 2 Evans' Col. St. p. 629.

(*c*) *Bell* v. *Walker* and *Another*, 1 Bro. C. C. 451.

(*d*) 2 Atk. 144; and see 4 Ves. 681.

(*e*) Ante, 344. (*f*) Post, 352.

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. (*g*)

2. When written by native in foreign language.

This doctrine came under the consideration of the Court of Chancery in a late case, (*h*) when it was contended that there could not be an exclusive property in papers translated from the French and German languages, and published 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.

3. From modern authors.

The Lord 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

(*g*) *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.

(*h*) *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.

the stat. of 8 Ann. c. 19. It is expressly reserved by the International Copyright Act, (*i*) that translations may still be made.

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, that an author had no copyright in any part of a work, unless he had an exclusive right to the whole book.

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

(*i*) 1 & 2 Vict. c. 59, s. 13.

(*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, p. 336.

(*l*) *Mason* v. *Murray*, cited in 1 East, 360.

granted to prevent an infringement of the copyright in the additional pieces.

Reprinting the 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 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*)

(*m*) *Tonson* v. *Walker*, cited in Amb. 405, and reported in 3 Swanst. Rep. 672. And see *Millar* 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. 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*) *Gricrson* v. *Jackson*, Irish T. R. 304; see 9 Ves. 341.

3. Corrections; verbal criticisms.

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 works published by Dr. Bentley.

(*q*) Ante, Compilations.

CHAP. IV.

OF PERIODICAL PUBLICATIONS.

It is not so much the *contents* of periodical publications, as the laws, which regulate *the manner of giving them* to the public, that 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 control over it, and the courts of justice will not, on that account, protect him, it will then be necessary to notice and examine the substance of the work itself.

To render intelligible that part of the laws relating to the periodical publications, which 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 Property therein.*
V. *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. (*a*)

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.

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 the principal part of another man's composition; and, therefore, a review must not serve as a substitute for the book reviewed. If so much be extracted, that the article communicates the same knowledge as the original work, it is an actionable violation of literary property. The *intention* to pirate is not *always* necessary to be proved, in an action for violating this species of

(*a*) *Wyatt* v. *Barnard*, 3 Ves. & Beam. 77. *Hogg* v. *Kirby*, 8 Ves. 215.

copyright; but it 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. (*c*) It seems that when they are made upon the merits of the work, without any reference to the individual who wrote it, they may be justified, however ridiculous he may be rendered, or how much soever the book may be depreciated in value. (*d*) But in

(*b*) *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. 8, 1817; Eden on Injunctions, 281.

(*c*) See *Green* v. *Chapman*, 4 Bing. N. C. 92; and *Macleod* v. *Wakeley*, 3 C. & P. 311.

(*d*) *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 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

an action for libel against the publisher of a Magazine, evidence of the writer's (not being the defendant) personal malice against the plaintiff is inadmissible. (*e*)

The *Abridgments* and *Translations* sometimes published in this description of literary works, are judged of in the same manner as abridgments and translations in general. (*f*)

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.

(*e*) *Robertson* v. *Wylde*, 2 M. & Rob. 101. See the cases of *Chubb* v. *Flannigan*, and *Chubb* v. *Westley*, 6 Car. & Pay. 436. Id. 431. And also *Watts* v. *Frazer*, 7 id. 369. If the printer and the editor of a Magazine be sued for a libellous article contained in it, they are both liable for a libellous lithographic print which is contained in the work, though it was not printed by the printer, provided that the print is referred to in the letter press part of the libellous article. And it is not libellous to criticise fairly and honestly a painting or any work of art publicly exhibited, however strong the terms of censure may be. *Thompson* v. *Shackell*, M. & M. 187. And it has been held, that a fair, reasonable, and temperate, though erroneous criticism of a work of art, if not written for the purpose of hurting the plaintiff in his profession, is not a libel. *Soane* v. *Knight*, M. & M. 74.

(*f*) Ante, 344, 346. See *Dodsley* v. *Kinnersley*, Amb. 403. As to entry of them at Stationers' Hall, see 54 Geo. 3, c. 156, s. 5, and for *property* in a review, see 8 Ves. 215, and post.

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 despotic ones, they are subject to censors; but in England, where it is contrary to the spirit of the ancient 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.
4. The stamp duties.

Papers for circulating news were first published 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.

A newspaper may now be *defined* to be a Definition of newspaper.

paper containing public news, intelligence, or occurrences, printed in any part of the United Kingdom, to be dispersed and made public; and it may consist of a sheet, or other piece of paper, (*g*) containing on one side thereof *a superficies*, exclusive of the margin of the letter press, of one thousand five hundred and thirty inches. (*h*)

1. Manner of publication.

The regulations that were made for the better conducting the public press, in those statutes that impose the stamps on newspapers, appear actually or virtually to be consolidated in the act passed in 1836. (*i*)

The declaration

It is required that a declaration (*k*) shall be

(*g*) 6 & 7 Wm. 4, c. 76. 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.

(*h*) For the duty on a newspaper, and the increase of it in proportion to the size, see post, *Stamps*.

(*i*) 6 & 7 Wm. 4, c. 76.

(*k*) Id. s. 6. That clause is so very important, that it is better it should be stated at length. It is enacted, that no person shall print or publish, or shall cause to be printed or published, any newspaper before there shall be delivered to the commissioners of stamps and taxes, or to the proper authorized officer at the head office for stamps in *Westminster*, *Edinburgh*, or *Dublin* respectively, or to the distributor of stamps or other proper officer appointed by the said commissioners for the purpose, in or for the district within which such newspaper shall be intended to be printed and published, *a declaration* in writing containing the several matters and things hereinafter for that purpose specified; that is to say, every such declaration shall set forth the correct *title of the newspaper* to which the same shall relate, and the true description of *the house or building* wherein such newspaper is intended to be

delivered into the Stamp Office at Westminster, Edinburgh, or Dublin, or to an officer in the

printed, and also of the house or building wherein such newspaper is intended to be *published*, by or for or on behalf of the proprietor thereof, and shall also set forth the true *name*, *addition*, and *place of abode* of EVERY *person* who is intended to be the *printer*, or to conduct the actual printing of such newspaper, and of EVERY *person* who is intended to be the *publisher* thereof, and of EVERY *person* who shall be a proprietor of such newspaper who shall be *resident out* of the United Kingdom, and also of every person resident in the United Kingdom who shall be a proprietor of the same, if the number of such last-mentioned persons (exclusive of the printer and publisher) shall not exceed two, and in case such number shall exceed two, then of such two persons, being such proprietors resident in the United Kingdom, the amount of whose respective proportional shares in the property or in the profit or loss of such newspaper shall not be less than the proportional share of any other proprietor thereof resident in the United Kingdom, exclusive of the printer and publisher, and also where the number of such proprietors resident in the United Kingdom shall exceed two, the amount of the proportional shares or interests of such several proprietors whose names shall be specified in such declaration; and every such declaration shall be made and signed by every person named therein as printer or publisher of the newspaper to which such declaration shall relate, and by such of the said persons named therein as proprietors as shall be resident within the United Kingdom: and *a declaration of the like import* shall be made, signed, and delivered in like manner whenever and so often as any share, interest, or property soever in any newspaper named in any such declaration shall be assigned, transferred, divided, or *changed by act of the parties or by operation of law*, so that the respective proportional shares or interests of the persons named in any such declaration as proprietors of such newspaper, or either of them, shall respectively become less than the proportional share or interest of any other proprietor

country, to be appointed for that purpose, under a penalty of 50*l.* for each publication.

thereof, exclusive of the printer and publisher, and also whenever and so often as any printer, publisher, or proprietor named in any such declaration, or the person conducting the actual printing of the newspaper named in any such declaration shall be changed or shall change his place of abode, and also whenever and so often as the title of any such newspaper or the printing office or the place of publication thereof shall be changed, and *also whenever in any case, or on any occasion, or for any purpose*, the said *commissioners*, or any officer of stamp duties authorized in that behalf, *shall require such declaration* to be made, signed, and delivered, and shall cause notice in writing for that purpose to be served upon any person, or to be left or posted at any place mentioned in the last preceding declaration delivered as aforesaid, as being a printer, publisher, or propricter of such newspaper, or as being the place of printing or publishing any such newspaper respectively; and every such declaration shall be made before any one or more of the said commissioners, or before any officer of stamp duties or other person appointed by the said commissioners, either generally or specially in that behalf; and such commissioners or any one of them, and such officer or other person, are and is hereby severally and respectively authorized to take and receive such declaration as aforesaid; and if any person shall *knowingly and wilfully sign* and make any such declaration in which shall be inserted or set forth the name, addition, or place of abode of any person as a proprietor, publisher, printer, or conductor of the actual printing of any newspaper to which such declaration shall relate, who shall not be a proprietor, printer, or publisher thereof, or from which shall be omitted the name, addition, or place of abode of any proprietor, publisher, printer, or conductor of the actual printing of such newspaper, contrary to the true meaning of this act, or in which any matter or thing by this act required to be set forth shall be set forth otherwise than according to the truth, or from which any matter or thing required by this act to be truly set

To prevent fraud in the returns as to Newspapers, there is to be a distinct *die* to mark or stamp each newspaper; so that the stamps delivered for one paper may not be used by the proprietors of another newspaper. (*l*)

Evidence of publication.

The declaration is filed by the commissioners, (*m*) and a certified copy made and signed by them, is delivered on payment of one shilling, will, in all matters civil and criminal, be *evidence of itself* against the makers of it. (*n*) A false certificate renders its maker liable to a penalty of 100*l*. The prosecutor for penalties,

forth shall be entirely omitted, every such offender being convicted thereof shall be deemed guilty of a MISDEMEANOR.

(*l*) 6 & 7 Wm. 4, c. 76, s. 3. (*m*) Id. s. 8.

(*n*) In an action for a libel contained in a newspaper, the defendant has a right to have read, *as part of the plaintiff's case*, another part of the same newspaper referred to in the libel complained of. *Thornton* v. *Stephen*, 2 M. & Rob. 45. And in an action for a libel against the printer of a newspaper, one of the proprietors of the newspaper is a competent witness for the defendant, as he is not liable for contribution. *Moscati* v. *Lawson*, 7 C. & P. 32. And it seems the proprietor of a newspaper, convicted and fined for the publication of a libel in the paper, inserted without his knowledge and consent by the editor, cannot recover against the editor the damages sustained by such conviction. *Colburn* v. *Patmore*, 1 C., M. & R. 73. 4 Tyr. 677. The defendant cannot go into evidence in mitigation of damages, to shew that the same libel had appeared in another newspaper, from which the plaintiff had already recovered damages; but the defendant may shew that he copied the libel from another newspaper, and omitted several passages contained in that newspaper which reflected on the character of the plaintiff. *Creevey* v. *Carr*, 7 C. & P. 64.

upon producing a newspaper, need not prove the purchase of it. All notices will be sufficiently served, which are left at the printing-office named in the act. (*n*) But if another declaration 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 declaration. (*o*)

Names on the paper.

The *names* and *residences* of the printers and publishers, and the day of publication, must also appear at the end of every newspaper; (*p*) and

(*n*) 6 & 7 Wm. 4, c. 76, s. 9.

(*o*) Id. See *Rex* v. *Gutch* and *Others*, 1 M. & M. 433. In an indictment for libel, the proprietor of a newspaper is *primâ facie* answerable for what appears in it: but the presumption arising from proprietorship may be rebutted, and an exemption established. But proof that the defendant accounted for the stamp duties of the paper in question, is proof of publication. *Cook* v. *Ward*, 6 Bing. 409. The Court held, in an action for a libel contained in a newspaper, that the publication was proved by the production of a newspaper corresponding in title, &c. with that described in the affidavit lodged at the stamp office. *Mayne* v. *Fletcher*, 9 B. & C. 382. And the rule established at nisi prius in prosecutions for libel in a newspaper, *viz.* that after production of the stamp office affidavit, a paper corresponding with it in title, printer's and publisher's name, and place of publication, may be put in and read as published by the parties therein named, without other proof on this point, applies equally on motions for criminal informations. *The King* v. *Donnison* and *Another*, 4 B. & Ad. 698.

(*p*) Id. s. 14. And a printer whose name does not thus appear, cannot recover in an action for work and labour for

two copies of it, signed by the printer or publisher, must, within three days, be delivered to the commissioners of stamps, (who will pay for them), under a penalty of 20*l.* Such paper may, within two years after the publication, be produced at the expense of the party applying for it, as evidence in any court of justice. (*q*)

A newspaper is generally made up of paragraphs, either essays or observations of the editor, and advertisements. 2. Its contents.

In neither shape can any thing *blasphemous*, *seditious*, or *libellous*, (*r*) be given to the world. Paragraphs.

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. (*s*) The whole publication is considered in law as written by him; for otherwise, he might give the form of letters, advertisements, &c., to his own observations, and thus elude his merited punishment. (*t*) In the case of *Rex* v.

printing it. *Merchant* v. *Evans*, 2 B. Moore, 14. See *Stephens* v. *Robinson*, 2 C. & J. 209. S. C. 2 Tyr. 280.

(*q*) Id. s. 13 and 27. See *Smith* v. *Gillett*, 2 A. & E. 361.

(*r*) It is a libel to publish in a newspaper a story of an individual calculated to render him ludicrous, although he may have told the same story of himself. *Cook* v. *Ward*, 6 Bing. 409.

(*s*) *Rex* v. *Walter*, 3 Esp. N. P. C. 21. *The King* v. *E. Topham*, 4 T. R. 127.

(*t*) Where one newspaper copied a libellous paragraph from another, adding the word "fudge" at the close, Lord Lyndhurst held, in an action by the party libelled against the publisher of the paper in which the word "fudge" was added,

Woodfall, (*u*) (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 *implies a criminal intent* in the proprietor, although it clearly appear that the offensive paragraph was not written by him. (*v*)

that it was for the jury to say whether the object was to vindicate the character of the party by the addition of the word, or whether it was only introduced for the purpose of creating an argument, in case proceedings should be afterwards taken. *Hunt* v. *Algar*, 6 C. & P. 245. But if a person sends a manuscript to the printer of a periodical publication, and does not restrain the printing and publishing of it, and he prints and publishes it in that publication, that person is considered as the publisher, and is liable to an action. *Burdett* v. *Cobbett*, 5 Dow. 301. In order to shew that a defendant had caused and procured a printed libel to be inserted in a newspaper; a reporter to a public newspaper proved that he had given a written statement to the editor of the newspaper, the contents of which had been communicated by the defendant, for the purpose of such publication, and that the newspaper then produced, was exactly the same, with the exception of one or two slight alterations, not affecting the sense. Abbott, Lord, C. J., held, that what the reporter published, in consequence of what passed with the defendant, might be considered as published by the defendant; but that the newspaper could not be read in evidence, without producing the written account delivered by the witness to the editor. *Adams* v. *Kelly*, 1 R. & M. 157.

(*u*) 5 Burr. 2667.

(*v*) See 1 Wm. 4, c. 73, as to the bond to be given to secure payment of damages on actions for a libel.

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. (*w*) But if a member publish his speech in a newspaper, and it contain slanderous charges, an information for a libel may be supported against him, (*x*) as well as against the editor. Reports.

A correct statement of what passes in a court of justice (*y*) 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, (*z*) for fear of prejudicing some of the

(*w*) *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. See *Stockdale* v. *Hansard*, 9 Ad. & El. 1.

(*x*) *King* v. Lord *Abingdon*, 1 Esp. N. P. C. 226, and see *Rex* v. *Creevy*, 1 M. & S. 273, *Rex* v *Bate*, Dougl. 387.

(*y*) *Curry* v. *Walter*, 1 Esp. N. P. C. 457, and 1 Bos. & Pul. 525, S. C., and see 5 Esp. N. P. C. 123, 2 Camb. 563.

(*z*) *Rex* v. *Wright*, 8 T. R. 293, and see *Rex* 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

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 in the Court. (*a*)

Court of Common Pleas by *Currie* v. *Walter*, proprietor of *The Times*, 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 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.

(*a*) In order to justify the publication of a report of a cause tried in a court of justice, the report must contain a fair and accurate statement of what took place at the trial. A mere statement by counsel in his opening to the jury, unsupported

An information will lie for publishing an invective statement, unconnected with argument,

by evidence, is not a fair and impartial report. *Saunders* v. *Mills*, 3 M. & P. 520. 6 Bing. 213. A libel purported to be a report of what occurred before one of his Majesty's commissioners of inquiry respecting corporations, Mr. Justice Patteson held, that the defendant could not give evidence of the accuracy of the report as a matter of justification, but that he might give such evidence in mitigation of damages; and that if he did so, the plaintiff might give evidence in reply to shew the inaccuracy of the report. *Charlton* v. *Watton*, 6 C. & P. 385. It is doubtful whether the publication of the proceedings of a court of law, containing matter defamatory of a person who is neither a party to the suit, nor present at the time of inquiry, amounts to a libel or not. But an account published in a newspaper of proceedings in a court of law, containing matter redounding to the discredit of a person in his business of an attorney, is (whether true or false) rendered actionable as libellous by the paragraph being headed or introduced with the line "shameful conduct of an attorney:" and, consequently, pleas of justification, averring that the supposed libel was a true report of such proceedings, were therefore held to be bad. *Lewis* v. *Clement*, 3 B. & A. 702. S. C. (in error) 7 Moore, 200. 3 B. & B. 297. 1 Price's P. C. 181. It is no justification in an action for a libel in a newspaper, that the matter complained of is a true, fair, just, and correct report and account of proceedings which took place at a public police office, in the course of a preliminary inquiry, openly and publicly conducted before a justice upon a criminal charge against the plaintiff, although published with no scandalous, defamatory, unworthy, or unlawful motive, but merely as public news. It seems, however, that it is lawful to publish in a newspaper the result of what a justice may think fit to do, upon a matter of criminal charge previous to trial, if the publication contains no statement of the evidence, nor any comments upon the case. *Duncan* v. *Thwaites*, 5 D. & R. 447. 3 B. & C. 556. In an action for a libel on not guilty pleaded,

against a judge or jury, for any thing done in their respective capacities, under pretence of its being a report of legal proceedings. (*b*) And no person will be allowed to mix his own observations with what has passed in the Court. (*c*)

It seems, that editors of newspapers may abuse

it appeared that the libel (which was contained in a newspaper) purported to be an account of the trial of a former action, brought by the same plaintiff, for a libel against third parties; and after stating the libel in the original action, and the facts proved by the then defendants, and the summing up of the judge, stated that the jury found a verdict for the plaintiff, with 30*l.* damages. No evidence was given as to any such trial having in fact taken place, or whether the report was fair or not. The judge left it to the jury to say whether the report, although it contained some allegations injurious to the plaintiff on the face of it; and the jury having found for the defendant, the Court refused to grant a rule for a new trial. *Chalmers* v. *Payne*, 2 C., M. & R. 156. 1 Gale, 69.

(*b*) *Rex* v. *White*, 1 Campb. N. P. C. 359, n.; and see *Rex* v. *Watson*, 2 T. R. 199.

(*c*) *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 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 of a court of justice.

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. (*d*)

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 acountable for it, if he give up the real author. (*e*)

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

(*d*) *Heriot* v. *Stuart*, 1 Esp. N. P. C. 437; and see *Stuart* v. *Lovell*, 1 Stark. 93.

(*e*) *Lewis* v. *Walter*, 4 Barn. & Ald. 605. *Brown* v. *Croome*, 2 Stark. 297, 301. See *Lay* v. *Lawson*, 4 A. & E. 795. The declaration stated that defendant published an advertisement in a newspaper, stating that a *capias* had issued against plaintiff, and that it had been impracticable to take him, and offering a reward for such information to be given to the sheriff's officer as would enable him to take plaintiff; *inuendo*, that plaintiff was in indigent circumstances, incapable of paying the debt, and keeping out of the way to avoid being served with process. Plea, that a *capias* had been issued, indorsed for bail, and delivered to the sheriff; that defendant had kept out of the way to avoid being taken; that the sheriff's officer had been unable to take him; and that defendant had published the advertisement, at the request of the party suing out the writ, within four calendar months of the date of the writ, to enable the sheriff and his officer to arrest. The Court held it a justification.

to a felony, was held not to be a libel, because the advertiser, or his employer, was interested in the discovery; and the inquiry was not made with any intention of wounding his feelings. (*f*).

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* had been restrained, 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. (*g*) Lord Kenyon wished it to

(*f*) *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 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 *bonâ fide*, as with a view of investigating a fact, in which the party making it is interested, it is not libellous. And see *Stockley* v. *Clement*, 4 Bing. 162, and 12 Moore, 376.

(*g*) *King* v. *Smith*, 4 T. R. 414.

be understood that the distributor of *hand bills* of a similar description would be equally criminal.

The last lottery was granted by 4 Geo. 4, c. 60: enlarged by 2 Wm. 4, c. 2. There is a penalty of 50*l.* incurred by those who publish advertisements of foreign or illegal lotteries. (*i*)

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.* (*k*)

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.* (*l*) The action to be brought within six months.

By the 5 & 6 Wm. 4, c. 65, s. 2, a penalty is inflicted on the printers and publishers of newspapers who publish any lecture delivered in any school, seminary, institution, or other place, without the consent or leave of the author of such lecture.

3. In what instances noticed by the law.

A newspaper is made *legal evidence* by several acts of parliament, for particular purposes, as of meetings to petition parliament, notice of moving for a private bill, &c. (*m*)

(*i*) 6 & 7 Wm. 4, c. 66.

(*k*) 25 Geo. 2, c. 36. (*l*) 21 Geo. 3, c. 49, s. 5.

(*m*) 36 Geo. 3, c. 8, s. 1; and see *Boydell* v. *Drummond*, 2 Campb. N. P. C. 157; and *Lord Gallway* v. *Matthews*, 10 East, 264. *Jenkins* v. *Blizard*, 1 Stark. 418.

But the newspaper of which the law takes the most notice is one published by authority, the *London Gazette*: (*n*) in which it is necessary to insert all dissolutions of partnership; (*o*) for there is a strong presumption that every body reads the Gazette, but 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 evidence without an agreement stamp; (*p*) yet the Gazette may, for it is only a mere recital that the partnership has been dissolved, be read. (*q*)

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. (*r*)

4. Stamp duties.

A stamp duty is imposed on newspapers: and also on *advertisements*, whether they are published on the wrappers of periodical publications, and pamphlets, or in the gazette and newspapers.

Duty on advertisements.

For every advertisement contained in or published on the wrapper of any periodical publica-

(*n*) First published in 1642. There is also a *Dublin Gazette* published by authority.

(*o*) *Graham* and *Another* v. *Thompson* and *Another*, Peak. Rep. 42. *Graham* v. *Hope*, Peak. Rep. 154; and see 1 Sid. 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.

(*p*) *May* v. *Smith*, 1 Esp. N. P. C. 283.

(*q*) *Jenkins* v *Blizard*, 1 Stark. N. P. C. 418.

(*r*) As to the publishers of, see 6 & 7 Wm. 4, c. 76, s. 12.

tion, or with any part or number of any book, or literary work published in parts or numbers, a duty of one shilling and sixpence is imposed.

Duty on newspapers.

A stamp duty was first put on a newspaper in the reign of Queen Anne. (*s*) It had been increased at different times by many acts of parliament, but is now reduced. (*t*)

No persons but commissioners of stamps or their officer can *supply paper* stamped for print-

(*s*) 10 Ann. c. 19, s. 101.

(*t*) See Schedule A. 6 & 7 Wm. 4, c. 76, containing the duties imposed by this act on newspapers; (that is to say)

	£	s.	d.
For every sheet or other piece of paper whereon any newspaper shall be printed . .	0	0	1
And where such sheet or piece of paper shall contain on one side thereof a superficies, exclusive of the margin of the letter-press, exceeding one thousand five hundred and thirty inches, and not exceeding two thousand two hundred and ninety-five inches, the additional duty of	0	0	0½
And where the same shall contain on one side thereof a superficies, exclusive of the margin of the letter-press, exceeding two thousand two hundred and ninety-five inches, the additional duty of	0	0	1
Provided always, that any sheet or piece of paper containing on one side thereof a superficies, exclusive of the margin of the letter-press, not exceeding seven hundred and sixty-five inches, which shall be published with and as a supplement to any newspaper chargeable with any of the duties aforesaid, shall be chargeable only with the duty of . .	0	0	0½

ing 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 50*l.* (*u*) If the papers are not duly stamped, the publishers stand indebted to the king in the sum that would have accrued if they had been properly stamped. (*v*) There are several penalties respecting *unstamped* newspapers: 20*l.* for printing and publishing, (*w*) or for having possession of them, and 100*l.* for sending them out of the kingdom. (*y*) And whoever sells newspapers unstamped may, upon not paying the penalty, be sent to the House of Correction for any time not exceeding three months, and not less

Unstamped newspapers.

EXEMPTIONS.

	£	s.	d.
Any paper called "Police Gazette, or Hue and Cry," published in Great Britain by authority of the Secretary of State, or in Ireland by the authority of the Lord Lieutenant.			
Daily accounts or bills of goods imported and exported, or warrants or certificates for the delivery of goods, and the weekly bills of mortality, and also papers containing any lists of prices current, or of the state of the markets, or any account of the arrival, sailing, or other circumstances relating to merchant ships or vessels, or any other matter wholly of a commercial nature; provided such bills, lists, or accounts do not contain any other matter than what hath been usually comprised therein.			

(*u*) 6 & 7 Wm. 4, c. 76, s. 15 and s. 25.
(*v*) Id. s. 16. (*w*) Id. s. 17.
(*y*) Id. s. 18.

than one month, (*z*) and justices of peace may grant a warrant to search for them. (*a*)

III. PAMPHLETS.

A Pamphlet was 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. (*b*)

Definition of a pamphlet.

(*z*) Id. s. 28.

(*a*) Id. s. 22.

(*b*) All the parts or numbers of any book or literary work, published in sizes answering to this description, were deemed pamphlets. 60 Geo. 3, c. 9, s. 27, repealed by 6 & 7 Wm. 4, c. 76. By 21st sect. of that act it is enacted, that one copy of every periodical literary work or paper (not being a newspaper) having published therewith any advertisements liable to stamp duty, which shall be published within the cities of *London*, *Edinburgh*, or *Dublin* respectively, or within twenty miles thereof respectively, shall, within the space of six days next after the publication thereof, be brought, together with all advertisements printed therein, or published or intended to be published therewith, to the head office for stamps in *Westminster*, *Edinburgh*, or *Dublin*, nearest to which such literary work or paper shall have been published, and the title thereof, and the christian name and surname of the printer and publisher thereof, with the number of advertisements contained therein or published therewith, and any stamp duty by law payable in respect of such advertisements, shall be registered in a book to be kept at such office, and the duty on such advertisements shall be there paid to the receiver general of stamps and taxes for the time being, or his deputy or clerk, or the proper authorized officer; and one printed copy of every such literary work which shall be published in any place in the United Kingdom shall, within the space of ten days next after the publication thereof, be brought, together with all such

An entry of every pamphlet must be made at the stamp office, to collect the duties on the advertisements which appear on the covers or wrappers.

IV. THE PROPERTY IN PERIODICAL PUBLICATIONS.

The property in periodical publications is similar to that which will be shewn to exist generally in a book. (*c*) 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.

advertisements, to the head distributor of stamps for the time being within the district in which such literary work or paper shall be published, and such distributor is hereby required forthwith to register the same in a book to be by him kept for that purpose, and the duty payable in respect of such advertisements shall be thereupon paid to such distributor; and if the duty which shall be by law payable in respect of any such advertisements as aforesaid shall not be duly paid within the respective times and in the manner hereinbefore limited and appointed for that purpose, the printer and publisher of such literary work or paper, and every other person concerned in the printing or publishing thereof, and the publisher of any such advertisements, shall respectively forfeit the sum of twenty pounds for every such offence; and in any action, information, or other proceeding for the recovery of such penalty, or for the recovery of the duty on any such advertisements, proof of the payment of the said duty shall lie upon the defendant.

(*c*) Post, Chap. VII.

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* (*d*) cannot be imitated in such a

(*d*) *Hogg* v. *Kirby*, 8 Ves. 215. And see *Sedon* v. *Serrate*, cited 2 Ves. & Beam. 220. *Hogg* published a work under the title of the "Wonderful Magazine," by William Granger, Esq., a fictitious name. *Kirby* agreed to sell 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 injury.) 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

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 *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. (e)

Communications.

The *communications from correspondents* to the editors or proprietors of periodical publications are of course the property of the person to whom

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, 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 the continuation 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.

(e) 8 Ves. 222, 3.

they are directed; and cannot be published by any other person, who by chance may have obtained possession of them. (*f*)

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 (the *Bath Chronicle*) (*g*) 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. (*h*)

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

(*f*) 8 Ves. 215.

(*g*) *Keene* v. *Harris*, cited in 17 Ves. 338; and see *Cruttwell* v. *Lye*, 17 Ves. 335; and 8 Ves. 217.

(*h*) *Longman* v. *Tripp* and *Another*, 2 New Rep. 67. See as to bankrupt patentee of an invention, ante, 219.

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. (*i*)

V. 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 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. (*j*)

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; (*k*) except as to the evidence of publication, which has been detailed in this chapter. (*l*)

3. Actions at law.

The penalties inflicted by the 6 & 7 Wm. 4, c. 76, may be recovered by action of debt, bill,

(*i*) 2 New Rep. 67.

(*j*) 6 & 7 Wm. 4, c. 76, s. 22, 27, and 28.

(*k*) See post, Chap. VIII.

(*l*) Ante, p. 359; and see post, p. 379.

plaint, or information in the Court of Exchequer, and, if not exceeding 20*l.*, by information or complaint before a justice of the peace. (*m*)

All actions and prosecutions must be brought against any person for any thing done in pursuance or under the authority of the 6 & 7 Wm. 4, c. 76, within three calendar months next after the fact committed and tried in the county where the cause of action arose, and notice in writing of such action, and of the cause thereof, must be given to the defendant one calendar month before action, and the defendant may plead the general issue; and if the defendant should have a verdict, or the plaintiff be nonsuited, the defendant would be entitled to his full costs of suit as between attorney and client.

Actions on newspapers. Declaration, variance.

If a party declare *in tort*, as the proprietor, editor, and publisher of a newspaper, and it appear 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, (*n*) 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 6 & 7 Wm. 4, c. 76, of producing them (*o*) in evidence against the proprietors, has been stated.

(*m*) 6 & 7 Wm. 4, c. 76, s. 27.

(*n*) *Heriot* v. *Stuart*, 1 Esp. N. P. C. 438.

(*o*) Ante, 359.

The construction which has been put upon the clauses of the repealed statute, 38 Geo. 3, c. 78, are useful to elucidate 6 & 7 Wm. 4, c. 76. It has been decided that the affidavit (now declaration) left at the stamp office, and a newspaper answering the *whole* description contained in that affidavit, produced by a person from the stamp office, was evidence, not only of the publication of the paper, but that it took place *in the county in which it was 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*. (*o*)

And the certified copy of the certificate sworn to by the defendants at the stamp office, and a newspaper corresponding with the title of the 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. (*p*)

With respect to the certificate, (*q*) 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. (*r*)

(*o*) *The King* v. *Hart* and *Another*, 10 East, 94.
(*p*) *Rex* v. *Hunt* and *Another*, 2 Campb. N. P. C. 583.
(*q*) Phil. on Evidence, p. 243.
(*r*) *Rex* v. *White*, 3 Campb. N. P. C. 99.

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* (now declaration) 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. (*r*)

Evidence.

Before the passing of 38 Geo. 3, 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. 3, c. 30, s. 10, for securing the duties on the advertisements, and that he had occasionally applied there respecting the duties on it. (*s*) 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. (*t*) But now the

(*r*) *Id.* 100.

(*s*) *The King* v. *Topham*, 4 T. R. 126.

(*t*) 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

mode of giving it, in evidence, is regulated by 6 & 7 Wm. 4. (*u*)

Though a publisher was liable to a penalty of 20*l.* for not having his newspaper stamped, yet, thus *unstamped*, it might have been 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. (*v*)

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 same newspaper, connected with the subject of the libellous passage. (*w*)

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. (*x*) 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

same as those on the door of the house where the paper produced was bought.

(*u*) c. 76, s. 8. See ante, p. 359.

(*v*) *The King* v *Pearce*, Peake N. P. C. 75.

(*w*) *R.* v *Lambert*, 2 Campb. N. P. C. 400; and see *Tabart* v. *Tipper*, 1 Cambp. N. P. C. 350.

(*x*) *Plunkett* v. *Cobbett*, 5 Esp. N. P. C. 136.

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. (*y*)

(*y*) 6 & 7 Wm. 4, c. 76, s. 19.

CHAP. VI.

OF MUSICAL AND DRAMATIC COMPOSITIONS.

THE laws respecting the copyright in dramatic works and musical compositions, are very similar. 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 enlarge 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 several sheets of music, or some one tune of a particular name in a work bearing a different title. (*c*)

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. & Ald. 298; ante, p. 324.) Abbott, C. J.—I am of opinion that the words of this act of Parliament (54 Geo. 3, 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 found in

2. Property in.

The *property* in a piece of music is exactly the same as that in a book. And therefore, upon 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

one: but this 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 Ves. & B. 77; also *De Pinna* v. *Polhill*, 8 C. & P. 78. Since the new rules of pleading, the denial of the promise in assumpsit is not a denial of that on which it is founded; therefore, where a declaration stated that the plaintiff had composed and written the music and poetry of an opera, and, as such composer and author, had a right to the music and poetry, and in consideration of the premises, and that the plaintiff would sell him such right, the defendant undertook to buy it, &c.; the defendant pleaded only that he did not undertake and promise in manner and form, &c. The Court held, that under this plea he was not at liberty to contend either that the plaintiff did not sell, or that he had not the right, or that he was not the author.

(*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.*"

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 be first established. (*h*)

4. Piracy of by taking it down at theatre

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. (*i*)

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 works on music. (*j*)

II. Dramatic Writings.

The laws respecting dramatic writings or plays will perhaps be best explained by a consideration of plays,

(*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.

(*h*) As to Foreign works on music, see ante, 332, and *Clementi* v. *Walker*, 4 D. & R. 598; and 2 B. & C. 861.

(*i*) Post, p. 389.

(*j*) See ante, p. 322 and *Rennett* v. *Thompson*, cited in 2 Bro. C. C. 80, as to the resulting term.

1. Whenever they are printed.
2. Whilst they continue in manuscript.
3. Whenever they have been publicly represented.
4. The act of 3 Wm. 4, c. 15.

1. Printed pieces.

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*)

2. Manuscript plays.

The protection of the law is also extended to a dramatic composition, whilst it is yet in manuscript, 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* were always granted to restrain persons from *acting* and also from *printing* plays which had 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

(*k*) See post, Chap. VIII., 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.

(*l*) See ante, p. 325.

(*m*) 5 T. R. 245.

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*)

And an action could not be maintained against a person, who at his theatre publicly represented for profit an entertainment, which was *an abridgment* or alteration of a play printed and published by its author. (*p*)

(*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 Surprise*. The plaintiff had purchased the copyright from O'Keefe, the author; and the only evidence of the publication by the defendant was the representation of this piece upon his stage at Richmond.

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. & Ald. 657; and S. C.

But *in equity* injunctions had been continually granted, to stop the performance of printed dramatic pieces, at the instance or request of the author or proprietors of them. (*q*)

4. The act of 3 Wm. 4, c. 15.

The property in dramatic works is now secured by an Act of Parliament passed in 1833. By the 3 Wm. 4, c. 15, it was enacted, that "the author of any tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment, composed, and not printed and published by the author thereof or his assignee, or which thereafter should be composed, and *not printed* or published by the author thereof or his assignee, or the assignee of such author, should have as his own property the sole liberty of representing, or causing to be represented, at any place or places of dramatic entertainment whatsoever, in any part of the United Kingdom of *Great Britain* and *Ireland*, in the Isles of *Man*, *Jersey*, *Guernsey*, or in any part of the *British* Dominions, any such production as aforesaid, not printed and published by the author thereof or his assignee, and should be deemed and taken to be the proprietor thereof; and that the author of any such production, *printed* and published within *ten* years before the passing of that act by the author thereof, or

1 Dowl. & Ryl. 299. As to abridgments in general, see ante, p. 344.

(*q*) *Morris* v. *Harris*, 1814, MSS. *Morris* v. *Kelly*, 1 Jac. & Walk. 481.

his assignee, (*r*) or which should hereafter be so printed and published, or the assignee of such author, should from the time of passing that Act, or from the time of such publication respectively, until the end of *twenty-eight* years from the day of such first publication of the same, and also, if the author or authors, or the survivor of the authors, should be living at the end of that period, during the residue of his natural life, have as his own property the sole liberty of representing, or causing to be represented, the same at any such place of dramatic entertainment as aforesaid, and should be deemed and taken to be the proprietor thereof: Provided nevertheless, that nothing in that Act contained should prejudice, alter, or affect the right or authority of any person to represent or cause to be represented, at any place or places of dramatic entertainment whatsoever, any such production as aforesaid, in all cases in which the author thereof or his assignee should, *previously to the passing of that Act*, have given his consent to or authorized such representation, but that such sole liberty of the author or his assignee should be subject to such right or authority."

(*r*) A person to whom the copyright of a dramatic piece has been assigned previously to and within ten years of the passing stat. 3 & 4 Wm. 4, c. 15 (10th June, 1833), is an assignee within that clause of the act which gives to the author's assignee, in the case of a dramatic work published within ten years, the sole liberty of representing it. *Cumberland* v. *Planche*, 1 Ad. & E. 580.

It was further enacted, That if any person should represent, or cause to be represented, without the consent in writing of the author or other proprietor, at any place of dramatic entertainment, any such production, or any part thereof (*s*), every such offender should be liable, for each and every such representation, to the payment of an amount not less than forty shillings, or to the full amount of the benefit or advantage arising from such representation, or the injury or loss sustained by the plaintiff therefrom, whichever should be the greater damages, to the author or other proprietor of such production so represented to be recovered, together with double costs of suit (*t*).

Players.

The transition from plays to players (*u*) is so

(*s*) What constitutes the representation of *a part* of a dramatic production, within sec. 2 of 3 & 4 Wm. 4, c. 16, is a question for the jury, under all the circumstances of the particular case, and not a question of law for the judge or the Court. Therefore, in an action on the statute, for the singing of three songs from an opera written by the plaintiff, the Court refused to disturb a verdict for the plaintiff, under the direction of the judge to the jury, that the question was, whether there had been a representation of a part of the plaintiff's production within the act of Parliament. *Planche* v. *Braham*, 16 Law Journal Rep. 25.

(*t*) See *De Pinna* v *Polhill*, 8 C. & P. 78.

(*u*) A forfeiture of one hundred marks is incurred by representing a play derogatory of the book of *Common Prayer*, 3 Jac. 1, 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. 1, c. 1. And also three shillings and sixpence for acting on a Sunday, 1 Eliz. c. 2, s. 9.

easy and natural, that the wish to make this Treatise full and satisfactory to every class of

Unlicensed players are rogues and vagabonds, 10 Geo. 2, c. 28. 25 Geo. 2, c. 36. 28 Geo. 2, c. 19. 3 Geo. 4, c. 40, 5 Geo. 4, c. 83. 6 Geo. 4, c. 21. 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. *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. 2, c. 28, s. 6, and 16 Geo. 3, c. 13.

For the authority of the *Lord Chamberlain*, see 10 Geo. 2, 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 license of the playhouse shall be void. See *Levy* v. *Yates*, 3 Nev. & P. 249.

For the power of the *Universities* over players see 10 Geo. 2, c. 19, s. 1.

By 16 Geo. 3, c. 31, and 28 Geo. 3, 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. 2, c. 36, s. 2, made perpetual by 28 Geo. 2, c. 19. A theatre without its license, *Gallini* v. *Laborie*, 5 T. R. 242. 6 T. R. 286; private houses in which persons

readers who may consult it, induces me briefly to state the law as it respect *players.* The principal part of it will be found in the note, placed there for convenieuce.

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. See the late cases of *Gregory* v *Tuffs,* 6 C. & P. 271. S. C. M. & Rob. 313. *Gregory* v. *Tavernor,* 6 C. & P. 281. And see the important cases *Ewing* v. *Osbaldeston,* 2 Myl. & Cr. 53; *Lewis* v. *Arnold,* 4 C. & P. 354; *Kemble* v. *Kean,* 6 Simon, 333: *Flight* v. *Glossip,* 2 Scott, 220, S. C. 2 Bing. N. C. 125, 1 Hodges, 263.

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. *Designs for Articles of Manufacture, as Carpets, &c.*
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 a 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 infringement.

1. The statutes. A property in prints is secured to the inventors and engravers by several 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*

(*a*) 8 Geo. 2, c. 13.

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 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 statute 7 Geo. 3; (*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*)

It has been shewn that by the 8 Geo. II. (*f*)

2. The name and day of publication

(*b*) The fifth clause of 8 Geo. 2, 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*) 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. 3, c. 79, s. 31.

the day of publication, and the name of the proprietor must be truly engraved on each plate and appear on every print. No doubt can be entertained that the directions of the act must be strictly followed; that the day and name must appear, to entitle the party to the *penalties* imposed by it. (*g*)

But a question arose, whether it was 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.

By the statute 17 Geo. III. c. 57, (*l*) a special

(*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.

(*l*) Extended to Ireland by 6 & 7 Wm. 4, c. 59. By sec. 2 it is enacted, that if any engraver, etcher, printseller, or other person shall, within the time limited by the aforesaid recited acts, engrave, etch, or publish, or cause to be engraved, etched, or published, any engraving or print of any description what-

action on the case and double costs are given. It is now settled that, in order to maintain an action for pirating prints under 17 Geo. 3. c. 57, the proprietor's name and the date of publication must appear on the original print, pursuant to 8 G. 2, c. 13, but it is not necessary that the designation "proprietor" should be added to the name. (*m*)

3. Prints that accompany letter press.

The prints that ornament and illustrate works are as fully protected by these statutes as those 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. (*n*) But if a person

ever, either in whole or in part, which may have been or which shall hereafter be published in any part of *Great Britain* or *Ireland*, without the express consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him, her, or them respectivcly, 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 shall and may, by and in a separate action upon the case, to be brought against the person so offending in any court of law in *Great Britain* or *Ireland*, 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.

(*m*) *Newton* v. *Cowie* and *Another*, 4 Bing. 234, and S. P. *Brooks* v. *Cock*, 3 Ad. & E. 138.

(*n*) *Roworth* v. *Wilkes*, 1 Campb. N. P. C. 97; and see *Wilkins* v. *Aikin*, 17 Ves. 422. In which case Lord Eldon decidcd whether a work on architecture was original, with the fair use of another work composed of plates and letter press, by quotation and compilation.

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. (*o*)

4. Maps, charts, &c.

It has been observed that Lord Mansfield held, that maps came within the spirit and meaning of the copyright acts. (*p*) 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. (*q*)

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 person; each must draw from nature. When it was contended before Lord Hardwicke (*r*) 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

(*o*) By Lord Ellenborough, 1 Campb. N. P. C. 99.

(*p*) 1 East, 361, n.

(*q*) 7 Geo. 3, c. 38, s. 1; and 17 Geo. 3, c. 57. And they come within the meaning of the word "Book" in the International Copyright Act, 1 & 2 Vict. c. 59.

(*r*) *Blackwell* v. *Harper*, 2 Atk. 94. Barn. 210, S. C.

these prints of medicinal plants or 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. (*s*)

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, 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 was considered by the Court that no piracy had been committed. (*t*)

(*s*) See Compilations, ante, p. 335; and Stark. N. P. C. 548.

(*t*) *Sayre and Others* v. *Moore*, 1 East, 361, n.; and see *Wilkins* v. *Aikin*, 17 Ves. 422; ante, p. 340. 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:

6. Seditious or libellous prints.

It will be shewn (*u*) that there cannot be any property in an immoral, obscene, or libellous book. That doctrine equally applies to pictures

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 the other, you will find for the plaintiffs. Verdict for the defendant.

(*u*) Post, Chap. VIII.

and prints. (*v*) An action of assumpsit cannot be maintained for the value of them, even against a purchaser at the suit of the person who sold them. (*w*)

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. (*x*)

What things may be the subjects of engravings have already been explained. (*y*)

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. (*z*) From which decision and the words

(*v*) *Du Bost* v. *Beresford*, 2 Campb. N. P. C. 511.

(*w*) *Fores* v. *Johnes*, 4 Esp. N. P. C. 97.

(*x*) 8 Geo. 2, c. 13, s. 1.

(*y*) Ante, p. 400.

(*z*) *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 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

of the act, it may be inferred, that althoug ha 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." (*a*) 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." (*b*)

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. (*c*)

3. Piracy of engravings, &c.

A *fac simile* of an engraving is of course a gross infringement. By the statutes it is enacted 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. (*d*)

is not entitled to relief, which would only enable him to sue at law. Bill is frivolous; allow demurrer.

(*a*) 8 Geo. 2, c. 13, s. 2. (*b*) Id. s. 1.

(*c*) *Thompson* v. *Symonds*, 5 T. R. 41; and see 3 Wils. 60.

(*d*) 8 Geo. 2, c. 13. 7 Geo. 3, c. 38. 17 Geo. 3, c. 57;

The subject of an engraving, it has been shewn, (*e*) 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; (*f*) 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. (*g*)

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 (*h*) respecting prints, the words "*knowing* the same to be so printed or reprinted without such consent, shall publish, *sell*," &c. occur: but they are not to be found in the last act of parliament on this subject. (*i*) And in consequence, although an

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, and see *Martin* v. *Wright*, 6 Sim. Rep. 297, for an enlargement of a print for a *diorama*.

(*e*) Ante, p. 400.

(*f*) Ante, p. 401.

(*g*) 1 Campb. N. P. C. 99.

(*h*) 8 Geo. 2, c. 13, s. 1.

(*i*) 17 Geo. 3, c. 57.

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. (*j*)

(*j*) *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.

Bayley, J.—I am of the same opinion. The provisions of the 8 Geo. 2, 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,

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 attached to him who has published, exposed to sale, or disposed of any pirated engravings: 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. 3, 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. 3, 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.

9. Remedies for an infringment. Penalties.

one moiety passes to the Queen, the other is given to the informer. (*k*)

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." (*l*)

Limitation of action.

All actions for anything 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. (*m*)

(*k*) 8 Geo. 2, 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.

(*l*) A. being employed by B. to engrave plates from drawings belonging to B., took off from the plates so engraved by him a number of proof impressions, which he retained for his own use. A. afterwards became bankrupt, and the proofs of which he had so possessed himself were advertised by his assignees for sale. Held, that neither he nor his assignees were liable by the 17 Geo. 3, c. 57, to an action for having disposed of pirated prints without the consent of the proprietor, inasmuch as that statute applied to impressions of engravings pirated from other engravings, and not to prints taken from a lawful plate. *Murray* v. *Heath* and *Others*, 1 B. & Ad. 84.

(*m*) 5 T. R. 41.

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 a part*, as well as for copying the whole. (*n*) Declaration.

The defendant is permitted to plead the general issue, and to give any special matter in evidence under it. (*o*) Plea.

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. (*p*) 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) be good evidence. (*q*)

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. (*r*) Equity.

(*n*) 5 Barn. & Ald. 737, and 1 Dowl. & Ryl. 400, S. C.

(*o*) 8 Geo. 2, c. 13, s. 3, and 7 Geo. 3, c. 38, s. 8.

(*p*) *Thompson* v. *Symonds*, 5 T. R. 41.

(*q*) In *Bonner* v. *Field*, cited in 5 T. R. 44, Lord Mansfield nonsuited a plaintiff under similar circumstances.

(*r*) *Fradella* v. *Weller*, 2 Russ. & M. 247. In a suit to restrain the sale of pirated copies of a print, where the answer did not suggest that the prints complained of were not pirated copies, a decree was made under the particular circumstances, though the prints which had been exhibited to the witness who proved the offence were not produced at the hearing. Where

Costs.

If the plaintiff is successful in suing for penalties, he is entitled to his *full costs*; (*s*) if he succeed in the special action on the case, then he is to have *double* costs of suits. (*t*) And to the defendant, when the plaintiff is nonsuited or discontinues, full costs are to be allowed. (*u*)

II. DESIGNS FOR ARTICLES OF MANUFACTURE—LINENS, CARPETS, &c.

The pattern of a piece of printed linen or other article often increases the value of the commodity, from its novelty and beauty. Great ingenuity and skill are necessarily exerted in its formation. The Legislature has by several acts of Parliament given a limited monopoly to him who designed it.—We shall consider the subject as it relates to,

I. *As to Patterns printed on Linens, &c.*

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.

II. *As to patterns to be worked into or on articles of manufacture, as Carpets, &c.*

the plaintiff is entitled to have the injunction made perpetual, the defendant will have to pay the costs of the suit, however trivial the subject matter of the suit may be, if he did not, after the injunction was granted, tender the costs up to that time.

(*s*) 7 Geo. 3, c. 38, s. 5.
(*t*) 17 Geo. 3, c. 57.
(*u*) Id. s. 8.

I. *As to Patterns printed on Linens, &c.*

1. The statutes.

This monopoly limited at first to two months, but afterwards extended to *three months*, (*v*) is given "to the proprietor of any new and original pattern for printing *linens*, *cottons*, *calicoes*, 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."

By the 2 Vict. c. 13, the benefits of the 27 Geo. III. c. 38, and 34 Geo. III. c. 23, are extended to Ireland, and the articles protected are enumerated to be to fabrics composed of *wool*, *silk*, or *hair*; to mixed fabrics composed of any two or more of the following materials, (that is to say) linen, cotton, wool, silk, or hair.

2. The name and day of publication.

The much agitated question, (*w*) whether it is necessary to comply with the directions of the statute, as to the date and name, in order to support an action at law, was here raised. It came before the Court in arrest of judgment (*x*) 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

(*v*) 27 Geo. 3, c. 38, made for one year, and afterwards enlarged by 29 Geo. 3, c. 19, and made perpetual by 34 Geo. 3, c. 23.

(*w*) Ante, p. 398.

(*x*) *Macmurdo* v. *Smith*, 7 T. R. 518.

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 these patterns is given to the inventors or proprietors. No mention is made of assigns. But it is enacted (*y*) 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 inferred. (*z*) 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. (*a*)

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.

(*y*) 34 Geo. 3, c. 23, s. 1.

(*z*) Ante, p. 404.

(*a*) Ante, p. 405.

The *time limited* for bringing actions in pursuance of these acts is *six* months. Limitation of action.

The defendant may plead the general issue, and give the special matter in evidence. (*b*) Plea.

Equitable jurisdiction upon the 34 Geo. III. c. 23, is not excluded by the special remedy thereby provided. Independent of that remedy, the statute vests in the inventor a right of property which, though only of three months' duration, equity will protect by injunction, if the title be satisfactorily established: and the Court of Equity will compare and decide upon alleged piracies by inspection, where that can be easily and safely done. (*c*) Equity.

Full costs are given to the plaintiff, if he succeed: (*d*) but if he discontinues, or is nonsuited, or the verdict is against him, then the defendant has full costs allowed him. (*e*) Costs.

II. *As to patterns to be worked into or on articles of Manufacture.*

By the 2 Vict. c. 17, it is enacted, that every proprietor of a new and original design made for any of the following purposes, and not published before the first day of July one thousand eight hundred and thirty-nine, shall have the sole right to use the same for any such purpose during the term of *twelve calendar months*, to be computed from the time of the same being registered according to this Act:

(*b*) 34 Geo. 3, c. 23, s. 2.

(*c*) *Sheriff* v. *Coates*, 1 R. & M. 159.

(*d*) 34 Geo. 3, c. 23, s. 1.

(*e*) Id. s. 2.

First.—For the pattern or print, to be either worked into or worked on, or printed on or painted on, any article of manufacture, being a tissue or textile fabric, except lace, and also except linens, cottons, calicos, muslins, and any other article within the meaning of the acts above mentioned. (*f*)

Second.—For the modelling, or the casting, or the embossment, or the chasing, or the engraving, or for any other kind of impression or ornament, on any article of manufacture, not being a tissue or textile fabric.

Third.—For the shape or configuration of any article of manufacture, except lace, and also except linens, cottons, calicos, muslins, and any other article within the meaning of the above mentioned Acts.

Provided always, that every proprietor of a new and original design made for the *modelling*, or the casting, or the embossment, or the chasing, or the engraving, or for any other kind of impression or ornament on any article of manufacture, being of any *metal* or mixed metals, shall have the sole right to use the same during the term of *three years*, to be computed from the time of the same being registered according to this act; but no person shall be entitled to the benefit of this Act unless the design have before publication been registered according to this Act; and unless such person be registered according

(*f*) 27 Geo. 3, c. 38. 29 Geo. 3, c. 19. 34 Geo. 3, c. 23, and 2 Vict. c. 13. See ante, p. 410.

to this Act as the proprietor of the design, an unless after publication of the design every article of manufacture published by him, on which such design is used, and have thereon the name of the first registered proprietor, and the number of the design in the register, and the date of the registration thereof: and the author of every such new and original design shall be considered the proprietor, unless he have executed the work on behalf of another person for a valuable consideration, in which case such person shall be considered the proprietor, and shall be entitled to be registered in the place of the author; and every person purchasing for a valuable consideration a new and original design, or the exclusive or the partial right to use the same for any one or more of the above-mentioned purposes, in relation to any one or more articles of manufacture, shall be considered as the proprietor of the design for all or any one or more of such purposes, as the case happens to be.

For preventing piracy.

It is further enacted, (*g*) that during the existence of such exclusive or partial right no person shall either do or cause to be done any of the following Acts in regard to a registered design, without the license or consent in writing of the registered proprietor thereof; (that is to say,)

No person shall use for the purposes aforesaid, or any of them, or print or work or copy, such registered design, or any original part thereof, on any article of manufacture for sale:

(*g*) 2 Vict. c. 17, s. 3.

No person shall publish, or sell or expose to sale or barter, or in any other manner dispose of for profit, any article whereon such registered design or any original part thereof has been used, knowing that the proprietor of such design has not given his consent to the use thereof upon such article:

Penalty.

No person shall adopt any such registered design on any article of manufacture for sale, either wholly or partially, by making any addition to any original part thereof, or by making any substraction from any original part thereof: and if any person commit any such Act he shall for every offence forfeit a sum not less than five pounds and not exceeding thirty pounds, to the proprietor of the design in respect of which such offence has been committed. (*h*)

(*h*) It is further enacted, that the party injured by any such act may recover such penalty as follows:

In *England*, either by an action of debt or on the case against the party offending, or by summary proceeding before two justices having jurisdiction where the party offending resides: and if the party injured proceed by such summary proceeding, any justice of the peace acting for the county, riding, division, city, or borough where the party offending resides, and not being concerned either in the sale or manufacture of the article of manufacture or in the design to which such summary proceeding relates, may issue a summons requiring such party to appear on a day and at a time and place to be named in such summons, such time not being less than eight days from the date thereof; and every such summons shall be served on the party offending, either in person or at his usual place of abode; and either upon the appearance or upon the default to appear of the party offending any two or more of such justices may

For the purposes of this act a *Register of Designs* is appointed by the Lords of the Privy Council (*h*) who will give a certificate of such registration. (*i*)

proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party offending or upon the oath or affirmation of one or more credible witnesses, which such justices are hereby authorized to administer, may convict the offender in a penalty of not less than five pounds or more than thirty pounds, as aforesaid, for each offence, as to such justices doth seem fit; and if the amount of such penalty or of such penalties, and the costs attending the conviction, so assessed by such justices, be not forthwith paid, the amount of the penalty or of the penalties, and of the costs, together with the costs of the distress and sale, shall be levied by distress and sale of the goods and chattels of the offender wherever the same happen to be in *England;* and the justices before whom the party has been convicted, or, on proof of the conviction, any two justices acting for any county, riding, division, city, or borough in *England* where goods and chattels of the person offending happen to be, may grant a warrant for such distress and sale; and the overplus, if any, shall be returned to the owner of the goods and chattels, on demand.

(*h*) 2 Vict. c. 17, s. 5.

(*i*) Id. s. 7. It is further enacted, that upon any original design so registered, and upon every copy thereof received for the purpose of being registered, or for the purpose of such registration being certified thereon, the registrar shall certify under his hand that the design has been so registered, the date of such registration, and the name of the registered proprietor; and such certificate made on every such original design, or on such copy thereof, and purporting to be signed by the registrar or deputy registrar, and purporting to have the seal of office of such registrar affixed thereto, shall, in the absence of evidence to the contrary, be sufficient proof, as follows:

It is difficult to discover any valid reason why patterns which come within the meaning of 2 Vict. c. 17, should be registered: and those which are protected by the 2 Vict. c. 13, should not be subject to the same attention.

The statutes 2 Vict. c. 13, and c. 17 were introduced into Parliament by the late President of the Board of Trade (*j*) and it certainly would have been better if the statutes 27 Geo. 3, c. 38 and 34 Geo. 3, c. 23, had been repealed, and the whole law on this subject had been comprised in one act instead of those acts being enlarged by the 2 Vict. c. 13, and new articles taken under protection by 2 Vict. c. 17.

Great attention is required from the artist to distinguish accurately whether his new pattern comes within the meaning of 2 Vict. c. 13, or 2 Vict. c. 17, and he must be careful to register his design, if it be necessary for his protection.

Of the design, and of the name of the proprietor therein mentioned, having been duly registered; and

Of the commencement of the period of registry; and

Of the person named therein as proprietor being the proprietor; and

Of the originality of the design; and

Of the provisions of this act, and of any rule under which the certificate appears to be made, having been complied with.

And any such writing purporting to be such certificate shall (in the absence of evidence to the contrary) be received in evidence without proof of the handwriting of the signature thereto, or of the seal of office affixed thereto, or of the person signing the same being the registrar or deputy registrar.

(*j*) The Right Hon. Mr. Poulet Thomson.

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 (*k*) 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 Parliament (*l*) was obtained, by which the property, *in all sorts* of sculptures, models, copies and casts,

(*k*) 38 Geo. 3, c. 71. *Gahagan* v. *Cooper*, 3 Camp. 111; and see *West* v. *Francis*, 5 Barn. & Ald. 737; and S. C. 1 Dowl. & Ryl. 400.

(*l*) 54 Geo. 3, c. 56.

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 has 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. (*m*)

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. (*n*)

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* for damages (with double costs) to be brought

(*m*) Ante, p. 411.

(*n*) 54 Geo. 3, c. 56, s. 4.

within six months against all persons who shall *in any way* imitate the sculpture, &c. (*p*)

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*. (*r*)

(*o*) 54 Geo. 3, c. 56, s. 3.

(*p*) Id. s. 5.

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—an attempt was made to investigate the law, as it relates to the different kinds of literary property. That task being accomplished, 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 publication of books: which will be done in the following order,—

I. *The Author and his Assignee.*
II. *The Queen and her Majesty's 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 unity 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 contents.
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 the statute law, over his work whilst it continues in manuscript. (*a*) Nor will the mere

(*a*) 4 Burr. 2340, 2379. 2 Meriv. 435. See ante, p. 325.

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 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*)

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

(*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.

(*f*) *Morris* v. *Colman*, 18 Ves. 437.

(*g*) *Clarke* v. *Price*, 2 Wils. Ch. Rep. 157.

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.

Where an author was engaged to write for a certain sum an article to appear among others in a work called "The Juvenile Library," and before he had completed his article, and before any portion of it was published, the work was discontinued: the Court held, that the publishers were not entitled to claim the completion of the article, so that it might be published in a separate form for general readers, but they were bound to pay the author a reasonable sum for the part which he had prepared. (*h*)

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 modified by the stat. 8 Ann. c. 19, (*i*) by which act the time limited for

(*h*) *Planche* v. *Colburn* and *Others*, 5 C. & P. 58. See *Barfield* v. *Nicholson*, 2 Sim. & S. 1. An author having sold the copyright of a work published under his own name, and covenanted with the purchaser not to publish any other work to prejudice the sale of it; *semble*, that another publisher who had no notice of this covenant, will be restrained from publishing a work subsequently purchased by him from the same author, and published under his name, on the same subject, but under a different title, although there be no piracy of the first work.

(*i*) 2 Bro. P. C. 145, and 4 Burr. 2408; ante, p. 322. By 7 Geo. 2, c. 24, 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.

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. (*j*)

And also, that the time was afterwards altered, and that now the copyright in all 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*)

(*j*) 8 Ann. c. 19, s. 1 and 11.

(*k*) 54 Geo. 3, c. 156, ss. 1, 4, and 9; ante, Chap. I. 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. & Ald. 396.

(*m*) 54 Geo. 3, c. 156, s. 8; ante, Chap. I. 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?

Copyright is a property which depends for its continuance on the life of the author, and all control 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*)

Name of author.

Lord Eldon doubted, how far he could 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. Carpets.

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

(*n*) 4 Burr. 2367.

(*o*) 8 Ves. 226.

(*p*) *Lord Byron* v *Johnson*, 2 Meriv. 29.

(*q*) 4 Esp. N. P. C. 169. Hence a question arises 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. 397.

end of three months: (*s*) and that on other patterns and models in twelve months. (*t*)

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. (*u*)

4. How affected by the subject matter. The property in a work of art, whether it be a book, (*v*) an engraving, (*w*) 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 be justly apprehensive that the contents of it will subject him to punishment. (*x*)

5. Assignment. The assignment of a copyright, (*y*) and of engravings (*z*) of patterns and models, (*a*) must be in writing, to enable the assignee to protect his interest either at law (*b*) or in equity. (*c*)

(*s*) Ante, p. 411.

(*t*) Ante, p. 418.

(*u*) Ante, p. 429.

(*v*) Ante, Chap. I.

(*w*) Ante, p. 402.

(*x*) 2 Stark. N. P. C. 107.

(*y*) 8 Ann. c. 19, s. 1. 54 Geo. 3, c. 156, s. 4; and see *Powell* v. *Walker*, 3 Maule & Selw. 7, and 4 Campb. N. P. C. 8, S. C.

(*z*) 7 Geo. 3, c. 38, s. 1.

(*a*) 54 Geo. 3, c. 56, s. 1.

(*b*) *Latour* v. *Bland*, 2 Stark. N. P. C. 382. In assumpsit for the price of a copyright bargained and sold, a defence on the ground that the copyright was not assigned in writing, must be specially pleaded. *Barnett* v. *Glossop*, 1 Bing. N. C. 633.

(*c*) Post, Chap. VIII.

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. (*d*)

It was held by the Court 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 proprietor for the price of the copyright was held not to be a bar to the action. (*e*) 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. (*f*)

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. (*g*)

But an affidavit, in which it was stated that the plaintiff had purchased or legally acquired

(*d*) 2 Bro. C. C. 80.

(*e*) *Latour* v. *Bland*, 2 Stark. N. P. C. 382.

(*f*) *Moore* v. *Walker*, 4 Camp. N. P. C. 8, n.

(*g*) *Longman* v. *Oxberry*, November 1820. MSS.

the copy, was considered to be bad, for not stating that he had purchased it from the author. (*h*)

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. (*i*)

And, moreover, a book will pass to the assignees under a commission of bankrupt, although a manuscript will not. (*j*)

6. 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. (*k*)

The copyright in a work is a personal chattel, and may be devised; (*l*) and a manuscript will pass to the author's executors. (*m*)

7. Taken under execution.

It is doubtful whether an unpublished manuscript can be taken in execution by creditors; (*n*) but the better opinion seems to incline against such a rule of law; because, until the act of publication is accomplished, an author has an undoubted right to have full control over it. (*o*)

8. Abandonment.

It is said that an author may by his conduct

(*h*) *Gulliver* v. *Snaggs*, 4 Vin. Abr. 278.

(*i*) *Morris* v. *Kelly*, Eden on Injunctions, 288.

(*j*) See ante, p. 377, as to the bankruptcy of the proprietor of a newspaper.

(*k*) 54 Geo. 3, c. 156, s. 8, Chap. I.

(*l*) See ante, p. 377, as to the devise of a newspaper.

(*m*) See ante, p. 326. (*n*) 4 Burr. 2311.

(*o*) See ante, p. 325.

abandon his work, and give to the public a power to publish his book before the usual time of copyright has transpired. (*p*)

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; where an author, upon delivering a manuscript to a bookseller, says, "I will make a present of this work to you to publish: I wish to give it to the public," &c. (*q*) The Court of Equity refused to grant an injunction at the end of the first fourteen years, to restrain him from continuing the publication.

A very singular case occurred between an author and his assignee. The author of a law book sold the copyright to a bookseller, who published a third edition of the work (edited by another person,) without any name: but purchasers were likely to suppose that it was edited by the author. Such edition, having errors and mistakes in it, being calculated to injure the reputation of the author, the Court held, at nisi prius, that an action would lie by the author against his assignee. (*r*)

(*p*) 4 Burr. 2346, 2367, 2466; and see 2 Stark. N. P. C. 382. 4 Camp. N. P. C. 8, n.

(*q*) *Murray* v. *Rundall*, 5 Nov. and 7 Nov. 1822. In Chancery, MSS. See 1 Jacob's Rep. 311.

(*r*) *Archbold* v. *Sweet*, 5 C. & P. 219. S. C. 1 M. & M. 162, and 1 M. & R. 162. The question, whether an edition purports to have been edited by A., is a question for the jury;

II. THE QUEEN AND HER PRINTERS.

Hitherto the questions on copyright in books have been discussed in 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 Sovereign, by a prerogative right *vested in the crown*, has the exclusive privilege of printing: (*s*) 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 Queen's printer in England (*t*) enjoys the benefit to be derived from printing the acts of parliaments, &c. The universities of Ox-

but the question whether the alleged errors and mistakes be so or not, and whether they are such as are calculated to injure the reputation of A. as an author, are questions for the Court.

(*s*) 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.

(*t*) There are also Queen's printers for Scotland and Ireland to whom similar patents have been granted.

ford and Cambridge, in common with the King's printer, (*u*) 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. (*v*)

Whether such a prerogative really exists in the crown, *to the extent claimed* by the patentees, has, of late years, been much questioned; (*w*) 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

(*u*) 6 Ves. 689.

(*v*) *Stationers' Company* v. *Carnan*. See Vol. I. of Lord Erskine's Speeches.

(*w*) See 5 Bac. Abr. tit. Prerogative, p. 594. Carter Rep. 89.

and correct, the Queen has a prerogative right *generally* to print all ordinances of the state, as acts of parliament, proclamations, orders of the privy council, &c. and all papers which relate to the good government of the land. (*x*)

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 Sovereign at first exercised a power over the *art of printing* itself; and when that was in some degree lessened, he still controlled 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

(*x*) 2 Ves. & Beam. 21. See the observations of Mr. Justice Yates, in 4 Burr. 2384. 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.

were first granted, the prerogatives of the crown were maintained on principles, which the most servile courtiers would at this day blush to name: that they were all granted before the expiration of the licensing acts; (*y*) 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 some 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.

Secondly, It is said, that if there is not such a general common law prerogative, yet, for political and *public convenience*, the Sovereign, *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 parliaments, proclamations, and orders of council. (*z*) 2. As executive magistrate.

On the other hand it is contended, that the Sovereign has not any power to grant to patentees

(*y*) First enacted in 1662, 13 & 14 Car. II.; and finally done away with in 1694.

(*z*) 2 Bla. Com. 410. 2 Ves. & Beam. 21.

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, 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 Sovereign's patentee could not be used as authentic in the courts of justice, yet it would certainly answer the private purposes of the subject.

3. As head of the church.

Thirdly, It is said that the Sovereign, as *supreme head of the church*, has a right to the publication of all liturgies and books of Divine service, &c.; and in consequence her patentee has the exclusive privilege of printing the forms of prayers for a particular occasion. (*a*)

This argument, it is contended, destroys the proposition which it is adduced to support; for if the Sovereign, *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

(*a*) *Eyre and Strahan* v. *Carnan*, cited 6 Ves. 697, and reported at length in 5 Bac. Abr. tit. Prerogative, p. 597.

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. (*b*)

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 Sovereign'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 who thinks proper 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

(*b*) 4 Burr. 2405. Lord Mansfield.—The copy of the Hebrew Bible, the Greek Testament, or the Septuagint, does 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 control over the subject matter: his power vests 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.

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 their own private profit. And it is added that, so far from the Sovereign'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.* (*c*)

4. The Sovereign's right from purchase.

Fourthly. It was formerly maintained that the Sovereign had a right *by purchase* to such works as were compiled at the expense of the crown. (*d*) By which rule was meant, not a book written and composed by the Sovereign, in which the common law might have given a common copyright,

(*c*) 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.

(*d*) See *Nicol* v. *Stockdale and Others*, 3 Swanst. 687. A voyage of discovery having been executed, and a narrative of it prepared under the orders of the crown, the narrative is the property of the crown; but on a bill by a publisher, authorized by the secretary to the board of Admiralty to publish such a narrative, the profits remaining at their disposition, an injunction restraining publication by a stranger was dissolved.

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 Sovereign appointed the judges, who made the decisions in the courts of law, that therefore the Sovereign had a prerogative to print all law books. (*e*)

And, upon the principle of *purchase* the Sovereign had a prerogative copy in the old Latin grammar, which had been written and composed at the expense of the crown.(*f*)

The position that the Sovereign has a prerogative copy in law publications, or in the Latin grammar, is now considered to be perfectly ridiculous. (*g*) And yet upon the very *same principle of purchase*, combined with the principle of the Sovereign being the *head of the church*, the prerogative over Bibles is said to be founded. (*h*)

The answers, given to the reasons urged in support of the prerogatives in the crown copies, arising from the Sovereign 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, The Bible.

(*e*) Ante, *Roper* v. *Streater*, cited in Skin. 234. 1 Mod. 257. And see 4 Burr. 2316. 2 Show. 260. 10 Mod. 106. Vern. 120.

(*f*) 4 Burr. 2329, 2401.

(*g*) 4 Burr. 2315. *Gibbs* v. *Cole*, 3 P. Wms. 255, which was on a patent for the sole printing a book of architectural designs.

(*h*) 2 Bla. Com. 110.

that the Sovereign has, *by purchase*, (*i*) 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 Sovereign were to write a book herself, with her own hand, she (not being mentioned in the stat. of 8 Ann. c. 19,) might have a perpetual copyright in it.

But the Sovereign *did not* 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; (*j*) for such a

(*i*) See 4 Burr. 2384. 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?

(*j*) 4 Burr. 2346, 2404. Amb. 164. Sed vide, 3 Ves. & Beam. 77.

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 life time 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 Sovereign *purchased* the copy, a common law copyright in the production. That the Sovereign took such interest; and, therefore, inasmuch as he is not bound by the statute of Anne, taking away the common law copyright 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 Sovereign has not a right to books and publi-

cations abandoned to the public, he can have no property in the books called crown copies. (*k*)

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.* (*l*) And yet if the principles upon which the prerogative right is maintained, be correct—that 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. (*m*)

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 Queen's Bench.

To which it is answered, that many reasons

(*k*) Mod. 256. 3 Mod. 75. 4 Burr. 2347, 2402.

(*l*) Ante, p. 244. 2 Evans' Collect. Stat. Part III. Class I.

(*m*) 4 Burr. 2404. Lucas, 105. 2 Ch. Ca. 76.

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 Sovereign'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 circumstances 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. (*n*)

But formerly an injunction was refused to a complainant, unless he had a plain right: (*o*)

(*n*) 8 Ves. 215; and see 12 Ves. 270. 17 Ves. 424.

(*o*) 1 Vern. 129. 1 Atk. 284. *Hills* v. *The University of 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 least some small number more to compensate their charge, yet he thought

and in one instance an injunction was actually denied on the motion of the Sovereign's patentees to stop the sale of English Bibles printed beyond sea, until the validity of the patent had been tried at law. (*p*) The difference arises from the alteration of the practice in the Courts of Chancery.

Respecting the authority of the opinion of a judge sitting in a Court of Equity upon a question of common law, Mr. Justice Yates observed, (*q*) that "great attention and respect were undoubtedly due to the decisions of the Lord Chancellor: but they were not conclusive

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.

(*p*) Anon. 1 Vern. 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.

(*q*) 4 Burr. 2353.

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, (*r*) "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 (*s*)

(*r*) 8 Ves. 224.

(*s*) *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 Parliament 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;

cannot be considered as an authority in the point; for that was a question between two rival patentees, (the Sovereign's Printer and the University of Cambridge) in the discussion of which 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. 8, 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. 1, 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.

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 Sovereign's Printer, he was reminded that by that means he would destroy the grant to his clients. (*t*)

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 *Baskett* v. *The University of Cambridge*, although a case between two rival patentees, Lord Mansfield, and the Court over which he presided, considered the patents of the Crown Printers and the Universities to be valid; and thence *inferred* that there was a common law

(*t*) 2 Evans' Collec. Stat. Pt. III. Cl. I. (9); and see *Bruce* v. *Bruse*, 13 Ves. 505. *Baskett* v. *Parsons*, id.

copyright in authors over their publications. (*u*) 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 Queen's printer.

It follows as a matter of course, that if the Queen has the prerogative of the exclusive right to printing the books called Crown Copies, that her grantees may enjoy the same privileges. (*v*)

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 an 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-

(*u*) 4 Burr. 2332, 2346.

(*v*) The first appointment of a King's printer extant, was that of Grafton, by Edw. 6.

nacks, (*w*) and frequently obtained injunctions in the Court of Chancery in support of that grant: (*x*) which, upon its being referred to a Court of Common Law, was declared to be invalid. (*y*)

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, (*z*) 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.

(*w*) See title "*Almanacks*," ante, p. 340; and 2 Bla. Rep. 1004.

(*x*) *Stationers' Company* v. *Lee*, 2 Ch. Ca. 66, 93. 2 Show. 258, S. C. *Same* v. *Wright*, id. 76.

(*y*) *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.

(*z*) 8 Ann. c. 19, s. 2.

But now, without any express repeal of the first 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

(*a*) 54 Geo. 3, c. 156, s. 2.
(*b*) *Beller* v. *Walker*, cited in 2 Atk. 94.
(*c*) *Beckford* v. *Hood*, 7 T. R. 620; and see ante.
(*d*) 54 Geo. 3, c. 156, s. 5. (*e*) Id.

Gazette will have the same benefits attached 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. (*f*)

It was also provided by the stat. of 8 Ann. (*g*) 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 (*h*) 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 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 Musuem, (*i*) Sion Col-

(*f*) 54 Geo. 3, c. 156, s. 5.
(*g*) 8 Ann. c. 19, s. 5.
(*h*) 41 Geo. 3, c. 107, s. 6.

(*i*) See *The Trustees of the British Museum* v. *Payne* and *Another*, 4 Bing. Rep. 540. A part of a work, to which there were twenty-six subscribers, and of which only thirty copies were printed, and published at intervals of several years, at an expense exceeding the sum to be obtained by the price of the copies, (the expense being defrayed by a testamentary

lege, (*j*) the Bodlean at Oxford, the public one at Cambridge, of that belonging to the faculty of Advocates at Edinburgh, of the four Universities in Scotland, (*j*) Trinity College, Dublin, and King's Inn (*j*) 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.

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 librarian 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

donation), was held by the Court not to be a book demandable by the British Museum, under 54 Geo. 3, c. 156.

(*j*) The right of these places is taken away with a compensation, 6 & 7 Will. 4, c. 110.

(*k*) 54 Geo. 3, c. 156, s. 2.

(*l*) Id. s. 3. (*m*) Id. s. 6.

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 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.

By the international copyright act (*p*) the Company of Stationers are to receive a copy of each book to be protected under that act, and to keep a register of the titles of them.

IV. THE UNIVERSITIES.

The Universities of Great Britain are deeply interested in the laws respecting 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:

(*n*) 54 Geo. 3, c. 156, s. 7.

(*o*) *The University of Cambridge* v. *Bryer*, 16 East, 317.

(*p*) 1 & 2 Vict. c. 59, and see id. sec. 5, as to British Museum.

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 Universities 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 possesses a prerogative in 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 Sovereigns. (*q*)

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

(*q*) 2 Ela. Rep. 1004.

authorities in the Universities. It is under letters patent granted in the 13th year of Elizabeth that they claim to print Bibles. (*r*)

The same power is vested in the Queen's printers for England, and for Ireland. (*s*)

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 (*t*) 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 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 Queen'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 Sovereign to the Crown

(*r*) 2 Bla. Rep. 1004.

(*s*) See *The Universities of Oxford and Cambridge* v. *Richardson*, 6 Ves. 689, and 9 Ves. 341. Irish T. R. 304. The patent for Scotland has expired, and the Bible is now printed under a commission.

(*t*) Bla. Rep. 304. 2 Burr. 661. Burn. Ecc. Law, 347. 4 Burr. 2401. 6 Ves. 697. See Skin. 234.

printer, and the Universities, were declared to be void. (*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 (*v*) that 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

(*u*) Ante, p. 340, 2 Bla. Rep. 1004. 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, which benefit was taken away by the 4 & 5 Wm. 4, c. 57, which repealed all the stamp acts respecting almanacks.

(*v*) 15 Geo. 3, 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 books are given or bequeathed only for a limited time.

The penalties to be inflicted on persons offending against those provisions are the same as if the books where the property of an individual. (*w*)

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. (*x*) 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. (*y*)

The duties imposed on the Company of Stationers to take care that the two Universities are provided with copies of all new books have been mentioned. (*z*)

(*w*) 41 Geo. 3, c. 107.

(*x*) 15 Geo. 3, c. 53, s. 3.

(*y*) Id. s. 4.

(*z*) Ante, p. 451. 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. 2, c. 22. 27 Geo. 2, c. 16.

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. (*a*) If the right be possessed by any of the courts, it is a privilege belonging to all of them. The present inquiry 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.

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. (*b*)

(*a*) 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.

(*b*) See ante, p. 363; and 8 T. R. 293. 1 Bos. & Pul. 525.

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. (*c*)

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, and the privilege of doing it conferred on Mr. Gurney. (*d*)

His Lordship observed that he desired it to be understood, that he had not delivered any judgment in the case, farther than by granting the

(*c*) *Bathurst* v. *Kearsley*, Easter Term, 1776, cited 13 Ves. 504.

(*d*) *Gurney* v. *Longman*, 13 Ves. 493. But yet reports of legal arguments in the House of Lords are regularly given, unnoticed by their lordships.

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 before the Privy Council. (*e*)

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. (*f*) Although decent and correct accounts of what passes in courts of justice may, it has been shewn, (*g*) be given to the public; yet it must be by the consent of the Judges 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. The proprietor (*h*) of the Observer newspaper was fined 500*l*.

(*e*) Mentioned in argument in *Percival* v. *Phipps*, 2 Ves. & Beam. 23.

(*f*) See the Preface to Douglas's Reports.

(*g*) Ante, p. 363.

(*h*) *The King* v. *Clement*, 4 Barn. & Ald. 218. As to advertising for evidence in a cause, see *Poole* v. *Sacheverell*,

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 *Sessions Paper*; and Lord Hardwicke, upon the ground that it had always been usual for the Lord Mayor to give an order to a printer, and to take a consideration for it, granted an in-

1 P. Wms. 675; and see 4 Burr. 2329. Bac. Ab. Courts and their Jurisdiction, 3 Inst. 182.

junction until the hearing. At the hearing the injunction was made perpetual by Lord Northington. (*i*)

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 (*j*) 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 Copyright; and may be investigated in the following order, by stating,

(*i*) *Manby* v. *Owen*, cited in *Millar* v. *Taylor*, 4 Burr. 2330, 2404, 5.

(*j*) *The King* v. *Fleet*, 1 Barn. & Ald. 384.

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 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.* (*k*)

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,

(*k*) 39 Geo. 3, 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. See 6 & 7 Will. 4, c. 76, s. 24.

street, lane, court, or place in which his usual place of abode is situated, under a penalty of 20*l.* for every copy. (*l*) 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. (*m*)

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. (*n*)

These regulations, however, do not extend to impressions of engravings; (*o*) 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; (*p*) nor to alter the regulations respecting newspapers. (*q*)

And no regulation made by 39 Geo. III. c. 79, nor by the 51 Geo. III. c. 65, (*r*) is to extend so

(*l*) 39 Geo. 3, 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. 3, c. 69.

(*m*) 51 Geo. 3, c. 65, s. 1.

(*n*) 39 Geo. 3, c. 79, s. 29.

(*o*) See ante, p. 397.

(*p*) 39 Geo. 3, c. 79, s. 31.

(*q*) See ante, p. 356.

(*r*) 51 Geo. 3, c. 65, s. 3. Before which time, indemnity acts were passed on that account. 39 and 40 Geo. 3, c. 95, and 41 Geo. 3, (U. K.) c. 80.

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 authorised 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 fans, of cards, of numbers, of her Majesty's picture, for the improvement of small sums, or the like offices under that pretence: (*s*) and to a penalty of 50*l.* for printing any proposal for gambling in the lottery. (*t*)

(*s*) 10 Ann. c. 26, s. 109; and see 9 Ann. c. 6, s. 56.

(*t*) 22 Geo. 3, 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. 360.

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, or be of a blasphemous or seditious nature. (*u*)

A printer cannot recover against a publisher for printing a work which contains the life of a prostitute, and the history of her amours with various persons; and it is no excuse to say that the parties are in *pari delicto*. (*w*)

3. Printers of newspapers.

The method by which a newspaper is to be printed has been stated; (*x*) and the responsibility of every person engaged in its publication has been examined. (*y*)

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. (*z*)

(*u*) Holt on Libel.

(*w*) *Poplett* v. *Stockdale*, 2 C. & P. 198. R. & M. 337.

(*x*) Ante, p. 356.

(*y*) Ante, p. 379.

(*z*) *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. 3, c. 78.

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. (*a*) And he has a *lien* on the latter parts of a work published at different times for the printing of the first parts. (*b*)

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; (*c*) and may, if he see cause, mitigate the penalty to any sum not less than 5*l.* above all reasonable costs. (*d*)

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. (*e*)

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

(*a*) *Gillet* v. *Mawman*, 1 Taunt. 136; and *Mawman* v. *Gillet*, 2 Taunt. 325, n.

(*b*) *Blake* v. *Nicholson*, 3 M. & S. 167.

(*c*) 39 Geo. 3, c. 79, s. 30.

(*d*) 51 Geo. 3, c. 65, s. 2.

(*e*) 39 Geo. 3, c. 79, s. 33.

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. (*f*)

Limitation. All prosecutions for penalties are to be commenced within three months after the penalty is incurred; (*g*) one moiety of which is forfeited to the king, whilst the other is given to the informer. (*h*)

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. (*i*)

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,

(*f*) 39 Geo. 3, c. 79, s. 35.
(*g*) Id. s. 34.
(*h*) Id. s. 36.
(*i*) 51 Geo. 3, c. 65, s. 4.

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. (*j*)

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. (*k*) 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.

(*j*) *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 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?

(*k*) Ante, p. 423.

1. Buying and selling and importing books.

The vendor of a pirated work destroys literary property as much as a rival publisher; and, therefore, not only are penalties inflicted on those who print and import books protected by the statutes 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. (*l*)

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. (*m*)

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 5*l*., 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. (*n*)

(*l*) The price of books was formerly regulated, see 25 Hen. 8, c. 15, s. 5. 8 Ann. c. 19, s. 4, and 12 Geo. 2, c. 36, s. 3.

(*m*) Sect. 7. The acts of Parliament, respecting the selling and importing books, that have become obsolete, are numerous. 1 Rich. 3, c. 9, s. 12. 25 Hen. 8, c. 15. 7 Ann. c. 14, s. 10. 12 Ann. st. 2, c. 5. Duties are imposed on pictures imported, 8 Geo. 1, c. 20. 11 Geo. 1, c. 7, and on the canvass used to paint on. *The Attorney General* v. *Brandon*, 3 Price, 360.

(*n*) See 41 Geo. 3, c. 107, s. 7; and 54 Geo. 3, c. 156.

To the same purpose is the 57th section of the statute 34 Geo. III. c. 20, which increases the penalty from 5*l.* to 10*l.*, and allows the 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. (*o*)

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, (*p*) 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 of 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

(*o*) 2 Bla. Com. 407, n. Ed. Christian.

(*p*) The acts of Parliament respecting the duties on paper are very numerous.

Court to be two distinct acts of sale, for which two penalties might be recovered. (*q*)

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. (*r*)

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 *primâ facie* evidence to convict him of the publication. (*s*)

There is a duty payable on the importation of books. It varies according as the works are in sheets or bound up; (*t*) 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

(*q*) *Brooke* v. *Milliken*, 3 T. R. 509. By a late order in council, the duty on books from the colonies to the same as from a foreign country, *viz.* pence by pound weight.

(*r*) See 3 & 4 Edw. 6, c. 10. 1 Mar. s. 2, c. 2. 1 Jac. 1, c. 25. 3 Jac. 1, c. 5, &c.

(*s*) *Rex* v. *Almon*, 5 Burr. 2686.

(*t*) 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.

who was daily accustomed to buy the whole impression of a newspaper from the proprietor, and to resell it at a profit bearing the loss arising from the copies unsold might become a bankrupt. (*u*)

(*u*) *Gillingham* v. *Lang*, 6 Taunt. 532. 2 Marsh. 236.

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 of patterns for linen, &c., (*b*) and of sculptures (*c*) or models.

(*a*) Ante, p. 404. (*b*) Ante, p. 412.
(*c*) Ante, p. 420.

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 the different kinds of literary works in particular, as of books on general subjects, (*d*) abridgments, (*e*) musical compositions, (*f*) and dramatic pieces, (*g*) has been incidentally described, when treating on those subjects.

But it will be convenient before investigating the remedies for an infringement of a copyright, to collect the general principles respecting the piracy of works in general.

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 be 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. (*h*)

(*d*) Ante, p. 343.
(*e*) Ante, p. 346.
(*f*) Ante, p. 387.
(*g*) Ante, p. 389.
(*h*) 2 Bla. Com. 406.

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, (*i*) 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 (*j*) by Ellenborough, C.J., 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

(*i*) *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.

(*j*) In *Cary* v. *Kearsley*, 4 Esp. N. P. C. 169.

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?* (*k*)

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 be 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 giving his work to the public in a cheaper form. And then the mode of doing it becomes a subject for 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

(*k*) *Roworth* v. *Wilkes*, 1 Campb. 97; and see 17 Ves. 424.

for the jury) that it was done with a bad intent, and that the matter which accompanies it has been colourably introduced.

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 (*l*) or pictures, (*m*) 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 (*n*) 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 im-

(*l*) *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.

(*m*) 2 Camp. 511.

(*n*) *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. 3, c. 9.

moral: but even, if there be *a doubt* as to its evil tendency, the Lord Chancellor will not be prevailed on to grant an injunction. (*o*)

And protection has been denied to a translation of an immoral work. (*p*)

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, (*q*) 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

(*o*) *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.

(*p*) *Burnet* v. *Chetwood*, 2 Meriv. 441, n.

(*q*) *Du Bost* v. *Beresford*, 2 Campb. N. P. C. 511; and see 4 Esp. N. P. C. 97.

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 publication, was fully recognized in *Southey* v. *Sherwood.* (*r*) 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. (*s*)

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. (*t*)

(*r*) *Southey* v. *Sherwood*, 2 Meriv. 438; see ante, 213, n. (*z*).
(*s*) *Gale and Another* v. *Leckie*, 2 Stark. 107, post, Ch. VII.
(*t*) *Southey* v. *Sherwood*, 2 Meriv. 438.

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; (*u*) and further, that every such offender shall forfeit one penny (now three pence) (*v*) for every sheet which shall be found in his possession, either printed or printing, published or exposed to sale; one moiety to the Queen, the other to the informer. (*w*) The Penalties.

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,

(*u*) To be done on motion to the Court, 41 Geo. 3, c. 107, s. 1.

(*v*) 40 Geo. 3, c. 107, s. 1, and repealed in 54 Geo. 3, c. 156, s. 4.

(*w*) 8 Ann. c. 19, s. 1.

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 to recover a compensation for an injury done to the copyright in a book, there are some works, periodical publications, such as the newspapers, which may be the subjects of legal proceedings peculiar to themselves, that have been before investigated. (*x*)

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. (*y*)

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. (*z*)

It was for some time doubted whether an author, whose work had not been entered at Stationers' Hall, could maintain an action on the

(*x*) Ante, 379.

(*y*) 8 Ann. c. 19, s. 10. 41 Geo. 3, c. 107, s. 8. 54 Geo. 3, c. 156, s. 10.

(*z*) 54 Geo. 3, c. 156, s. 4.

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 an account, because the book had not been registered at Stationers' Hall. (*a*)

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. (*b*)

(*a*) *Baller* v. *Walker*, see *Blackwell* v. *Harper*, 2 Atk. 94.

(*b*) *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

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 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 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 to 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

special action on the case may be maintained 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. (*c*)

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. (*d*)

Plea. The plea allowed by the statutes is the general issue, Not Guilty, with liberty to give the special matter in evidence under it. (*e*)

The time limited for bringing an action has been altered in the several statutes. It is now twelve months next after the offence has been committed. (*f*)

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."

(*c*) The first publisher of a libellous or immoral work cannot maintain an action against any person for publishing a pirated edition. *Stockdale* v. *Onwhyn*, 5 B. & C. 173, and 2 C. & P. 163; and see ante, p. 478.

(*d*) For the precedents of the declaration, see 8 Went. 420, 434. 2 Chit. Pl. 351. 7 T. R. 518, 620.

(*e*) Upon an action by several plaintiffs for piracy of copyright, it appeared that the defendant had published the work in question pursuant to the conditions of a cognovit given by him to one of the plaintiffs, and one P., in an action for not performing an agreement to write the work in question, and the Court held it to be a sufficient defence. *Sweet and Another* v. *Archbold*, 10 Bing. 33.

(*f*) Ante, p. 482.

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. The circumstance of the same errors being found in two publications on the same subject, is reasonable *primâ facie* evidence of a piracy. (*g*)

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.

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. (*h*)

Motion for an injunction.

Clear title.

At first the courts of chancery would not give assistance, unless the complainant had a clear *legal right*. (*i*) It was considered that injunctions to restrain an infringement of a copyright were of the same nature as those for staying waste;

(*g*) 4 Esp. N. P. C. 168.

(*h*) Ante, p. 250; and see 6 Ves. 705. 3 Bac. Ab. Injunctions.

(*i*) See Eden on Injunctions, 284. Anon, 1 Vern. 120. *Hills* v. *University of Oxford*, id. 275.

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. (*j*)

Lord Northington in one case refused to interpose between two contending parties: (*k*) 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 by the statute of Anne (upon which there was at that time no decision at law) came before him, he refused to interpose before there had been a trial at law, on the ground of the right being so extremely doubtful. (*l*)

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. (*m*)

It often happens that the question is referred to a court of common law. Many examples may be given.

Where the copyright of a work has been assigned by the author to the plaintiff, and the plaintiff and author swear that a person (a stranger to the suit) has only a qualified interest

(*j*) *Millar* v. *Taylor*, 4 Burr. 2303, 2325, 2328, 2400, 2407.

(*k*) *Basket* v. *Cunningham*, 2 Eden, 137. 1 Bla. Rep. 370.

(*l*) *Osborne* v. *Donaldson*. *Miller* v. *Donaldson*, 2 Eden, 327.

(*m*) *Walcot* v. *Walker*, 7 Ves. 1.

in the work, but a person in an affidavit filed by the defendant, swears, that under a bargain between him and the author, he has the entire copyright of the work, but does not state any deed of assignment; the plaintiff cannot obtain an injunction till he has established his right at law. (*n*)

An injunction was refused to restrain an alleged infringement of copyright before trial at law, where the conduct of the plaintiffs had been such as, in the opinion of the Court, was calculated to induce the defendant to believe that the course taken by them would not be objected to by the plaintiffs. (*o*)

An injunction was granted to restrain the publication and sale of a book, which appeared on the answer and affidavits to contain some portion of matter selected and copied from a prior work, and it was continued until the trial of an action at law to try the question of piracy.

Where the plaintiff states circumstances which are not denied, shewing him to be entitled to an equitable copyright in a work, the Court, in directing an action to be brought by him, to determine the question of piracy, will direct the defendant, for the purposes of the action, to admit a legal copyright in the plaintiff. (*p*)

Where a person made a copy of a print in-

(*n*) *Lowndes* v. *Duncombe*, 1 Law Journal Rep. 51.

(*o*) *Saunders and Another* v. *Smith and Another*, 3 Mylne & C. 711, and 16 Law Journal Rep. 227. Quere, whether it is not piracy to print at full length cases contained in the law reports, although with the addition of notes however voluminous.

(*p*) *Sweet* v. *Shaw*, 17 Law Journal Rep. 216.

vented by another person in colours, and of larger dimensions, and exhibited it as a diorama, the Court refused to restrain the exhibition, until the right had been established at law. (*q*)

Possession under colour of title.

Although the severity of the rule respecting the legal title was 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 had never 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. (*r*)

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 years there had been *possession under colour of title.* (*s*)

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. (*t*)

(*q*) *Martin* v. *Wright*, 6 Simons' Rep. 297.

(*r*) *Basket* 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.

(*s*) *Grierson* v. *Jackson*, Irish T. R. 304.

(*t*) 6 Ves. 689. Id. 707. 8 Ves. 505.

It has been shewn, 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. (*u*)

Cases in equity.

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 on Chancery Practice. (*v*) It will be sufficient to describe those parts which more immediately relate to injunctions for copyright, the following cases have been arranged in as much order as the subjects of them will admit.

The Court will not interfere to prevent trivial trespasses; and does not exercise its jurisdiction by injunction for the purpose of acting on legal

(*u*) *Walcot* v. *Walker*, 7 Ves. 1. *Platt* v. *Button*, 19 Ves. 447. Cooper Rep. 303.

(*v*) Eden on Injunctions, Chap. XVII. 2 Maddox. Chan. Chap. VII. Cooper's Pleadings in Chancery. Mitford's Pleadings, 111 and 119. 2 Ves. Jun. 486. Smith's, Daniel's, and Grant's Treatises on the Practice of the Court of Chancery.

rights, but interposes in order either to enforce legal rights, or to prevent mischief, until the time shall arrive when those legal rights may be ascertained. A court of equity, therefore, frequently refuses an injunction where it acknowledges a right, when the conduct of the complaining party has led to the state of things which occasions the application. If the owner of a copyright has, for some time past, acquiesced in different individuals transcribing cases from his works, the Court will not interpose in his favour by injunction against other parties who have subsequently transcribed the cases from the same work, until the owner of the copyright has established his legal right. It is not only the quantity, but the quality of the matter extracted by a defendant from the work of which the plaintiff has the copyright, that is to be considered in an application to the Court for its interposition by injunction. (*w*)

A plaintiff who complains of a piracy of his work, has no remedy in equity, unless he establish a title to an injunction, and then the account will follow. Thus the Court will not grant an injunction, but will leave the plaintiff to seek his legal remedy, where the matter, which is the subject of the alleged piracy, forms but a very inconsiderable part of the plaintiff's work, and contains merely calculations, and when the

(*w*) *Saunders* v. *Smith*, 16 Law Journal Rep. 227, and 3 Mylne & C. 711. See *Bramwell* v. *Halcomb*, id. 737.

work complained of has been published some years. (*x*)

The question of minuteness in value of the original matter extracted from a work for purposes of criticism, will have great weight with the Court, in influencing its decision on the application for an injunction. And the Court is averse to the practice of its time being occupied by applications for injunctions to restrain infringements of copyrights, in which it is difficult, if not impossible, to take an account of the loss complained of. (*y*)

Where a considerable portion of a publication has been shewn to be pirated, the Court will grant an injunction to restrain the publication of the parts which are pirated, without waiting till all the parts pirated can be ascertained. (*z*)

If a plaintiff, who has obtained an injunction, misrepresents to the public what has been done by the Court, and the defendant, to correct that misrepresentation, does an act which, in strictness, is a breach of the injunction, the Court will not entertain any complaint against him on the part of the plaintiff, for such a breach.

If A. sells a work to B., and covenants not to do anything which may be detrimental to the sale or circulation of that work, and if afterwards A. and a partner publish a rival work on the

(*x*) *Bailey* v. *Taylor*, 1 R. & M. 73, and 3 Law Journal Rep. 66.

(*y*) *Bell* v. *Whitehead*, 17 Law Journal Rep. 141.

(*z*) *Lewis* v. *Fullarton*, 17 Law Journal Rep. 291.

same subject, the partner will be restrained as well as A. (*a*)

If A. having entered into such a covenant with B. sells the materials of a rival work to C., who concludes his agreement and pays his money without any notice of the covenant, an injunction on the ground of that covenant cannot be maintained against C.

If an injunction has been granted against a work, which is proposed to be published in successive numbers, on the ground of piracy in the published numbers, the injunction will not be modified so as to permit the publication of the future numbers, while the question of piracy as to the others remains undetermined.

If A. sells to B. the copyright of a work containing letter press and plates which are to be found in prior works, and if A. subsequently furnishes the same letter press and similar plates to C. for the purpose of a rival work, C.'s publication will not, in respect of such letter press and plates, be held to be a piracy upon B.'s work.

The person who forms the plan of a work, to be composed by the labours of various persons, who employs different writers to contribute to it, and who pays them for their contributions, is the author and proprietor of such a work, within the statute of Anne. (*a*)

An injunction was granted until the hearing to restrain the publication of *Milton's Poems*,

(*a*) *Barfield* v. *Nicholson*, 2 Law Journal Rep. 90.

with *Dr. Newton's Notes*, notwithstanding a small addition of original commentary. (*b*)

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. (*c*)

An injunction was granted to restrain the infringement of the copyright in a work as to which it appeared doubtful whether it did not tend to impugn the doctrines of the Scriptures. (*d*)

The question respecting the validity of the injunction 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.

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. (*e*)

(*b*) *Tonson* v. *Walker*, 3 Swanst. 672.

(*c*) *Lawrence* v. *Smith*, 1 Jacob's Rep. 471.

(*d*) 7 Ves. 1. *Southey* v. *Sherwood*, 2 Meriv. 435; and see ante, 480.

(*e*) See ante, p. 428.

An affidavit, in which it was stated generally that the copy had been purchased or legally acquired by a person, was held insufficient, as it did not mention that he had purchased it of the author. (*f*)

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. (*g*)

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. (*h*)

Answer.

It very seldom happens that an answer is put into 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. (*i*)

The defendant is at liberty immediately to

(*f*) *Gilliver* v. *Snaggs*, 4 Vin. Ab. 278.
(*g*) *Lord Byron* v. *Johnston*, 2 Meriv. 29.
(*h*) *Platt* v. *Button*, 19 Ves. 447. Cooper, 303.
(*i*) Ante, p. 256.

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 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. (*j*) 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.

(*j*) *Jeffery* v. *Bowles*, 1 Dick. 429. *Trusler* v. *Comyns*, cit. id. —— v. *Leadbetter*, 4 Ves. 681.

APPENDIX.

APPENDIX.

No. I.

A Form of the Petition for Patent.

TO THE QUEEN'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 state the title of the invention*].

That he is the first and true inventor thereof; and that the same hath never been practised 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 the United Kingdom of Great Britain and Ireland, 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.

No. II.

The Declaration to support the Petition.

I, A. B. of in the county of (profession) do solemnly and sincerely declare that I have invented (*a*)

That I am the first and true inventor (*b*) thereof, and that the same have never been practised by any other person or persons whomsoever, to my knowledge or belief. *And* (*c*) *I further declare, that it is my intention to obtain patents in Scotland and Ireland.* And I make this declaration conscientiously, believing the same to be true, and by virtue of the provisions of an act made and passed in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled, "An Act to repeal an Act of the present session of Parliament, intituled, 'An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the state, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.'"

A. B. { Declared at this day of 184 Before me, A Master in Chancery. (*d*)

(*a*) Here the title given to the invention is to be inserted.

(*b*) In case the invention be a communication from abroad, that circumstance is stated, and it is declared that the same has never been practised in this kingdom, to the knowledge or belief of the party making the declaration.

(*c*) The words in italics are to be omitted when such is not the intention, and they are also to be omitted when the declaration is meant for Ireland or Scotland.

(*d*) Or, a Master Extraordinary in Chancery, or justice of the peace when in Scotland.

No. 1.

The Form of a Patent.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, 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 (*e*) The petitioner, therefore, most humbly prayed we would be graciously pleased to grant (*f*) 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 especial 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 especial license, 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 or 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, exercise, 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, (*g*) 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

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(*e*) For the allegations of the petition.

(*f*) For the prayer of the petition.

(*g*) For the words—"and also within all our colonies and plantations abroad."

during the said term of years herein mentioned, To have, hold, exercise, and enjoy, the said license, 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 such case made and provided. And to the end that he, 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 other 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, (*g*) 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 license, 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, 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,

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(*g*) For the words—"and also within all our colonies and plantations abroad."

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 (*h*) 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, of the dominion of Wales and town of Berwick-upon Tweed

aforesaid, 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

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(*h*) In case it be for an invention communicated from abroad, then the patent is as follows—"or not first introduced therein by the said, &c."

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 condition, that if, at any time hereafter these our letters patent, or the liberty and privileges hereby as granted, shall become vested in or in trust for more then the number of twelve persons, or their representatives, at any one time, as partners, dividing or entitled to divide, the benefit or profit obtained, by reason of these our letters patent, 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 their testator or intestate.

And also, that if the said A. B. shall not particularly describe and ascertain the nature of the 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
calendar months next and immediately after the date of these our letters patent. And also, that if the said A. B., his executors, administrators, or assigns, shall not supply, or cause to be supplied for our service, all such articles of the said invention as he or they shall be required to supply, by the officers or commissioners administering the department of our service, for the use of which, the same shall be required in such manner, at such price, and at and upon such reasonable price and terms as shall be settled for that purpose by the said officers or commissioners so requiring the same, 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. Provided that nothing herein contained shall prevent the granting of licenses, in such manner, and for such considerations, as they may, by law, be granted.

And, lastly, we do by these presents for us, our heirs and successors, grant unto the said A. B., his executors, ad-

ministrators, 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 intent 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 (*i*) 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. IV.

A Form for the Specification.

To all to whom these presents shall come, I, A. B., of [*&c.*] send greeting. Whereas her most excellent Majesty Queen Victoria, by her letters patent, under the great seal (*k*) of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the day of , in the year of her reign, did for herself, her heirs and successors, give and

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(*i*) For the words—"and also within all our colonies and plantations abroad."

(*k*) For Scotland, "under the seal appointed by the treaty of union to be used in place of the great seal of Scotland bearing date at Edinburgh."

grant unto me the said A. B. her especial license, 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 (*l*), [*and also within all her 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 her Majesty's High Court of Chancery, within calendar months 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, are described and ascertained by the drawing in the margin hereof, and the words following; 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 forty.

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 forty, before me,

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(*l*) For Scotland, "within that part of her said Majesty's United Kingdom of Great Britain and Ireland called Scotland."

Rules of Practice laid down by Mr. Attorney and Mr. Solicitor-General.

Until further directions are given the following is to be the mode of proceeding by a party, in order to obtain leave to enter a disclaimer, or alteration of any part, either of the title of his invention or of the specification, pursuant to the 5th and 6th of Wm. 4, c. 83, s. 1.

The person applying must present a petition to the Attorney-General or Solicitor-General, stating what the proposed disclaimer or alteration is, when a time will be appointed for hearing the applicant. The petition is in general to be accompanied by a copy of the original specification, and of the proposed disclaimer or alteration.

If, on the hearing, the Attorney or Solicitor-General should think fit to disallow the proposed alteration or disclaimer, no further proceeding is necessary. If he should think fit to allow it without any advertisement, then, on being applied to for the purpose, he will put his signature to the fiat, authorizing the clerk of the patent to make the required enrolment.

If it appears to the Attorney or Solicitor-General that any advertisement or advertisements ought to be inserted, then he will give such directions as he may think fit relative thereto, and will fix any time not sooner than ten days from the first publication of any such advertisement for resuming the consideration of the matter.

Caveats may be lodged at any time before the actual issuing of the fiat, and any party lodging a caveat is to have seven days' notice of the next meeting.

The fiat must be written or engrossed on the same parchment, with the disclaimer or alteration at the foot thereof.

No. V.

Mode of proceeding before the Attorney or Solicitor, under the first section of the Act 5th and 6th Wm. 4, c. 83, in order to obtain a fiat to enrol disclaimers or alterations.

Form of Petition to Her Majesty's Attorney or Solicitor-General.

The petition of A. B. of , in the county of , profession

Sheweth,

That your petitioner obtained her Majesty's royal letters patent, bearing date at Westminster, the day of in the year of her reign, for [*here is inserted the title of the invention.*] And whereas your petitioner duly enrolled a specification of his said invention.

[*Here set forth some of the particulars, sufficient to lead to the nature of the claims of invention, then set forth the disclaimer or alterations, and the reasons for the same.*]

Your petitioner therefore prays leave of her Majesty's Attorney or Solicitor-General, certified by his fiat and signature, as by the said act provided, to enter with the clerk of the patents of England, the said disclaimer and memorandums of alteration, a copy of which, signed by your petitioner, is left herewith, in the form in which your petitioner is desirous the same should be so entered as aforesaid (*m*).

(*m*) In the event of the petition being in behalf of an assignee of a patent, that circumstance must be stated, and the petition be in his name.

No. VI.

Form of Disclaimer of part of the Title of a Patent.

(See 5 & 6 Will. 4, c. 83, s. 1.)

Form of disclaimer of part of the title of a patent.

[Copy the form for the specification down to * * * and proceed]—And whereas I am desirous, for good and sufficient reasons hereinafter mentioned, to enter a disclaimer of that part of the title of my said invention hereinafter next mentioned, and have obtained for that purpose the leave of her Majesty's Attorney-General, certified by his fiat and signature, according to the form of the statute in such cases made and provided: Know ye, therefore, that I do hereby disclaim the following part of the title of my said invention; that is to say,

[*State the part disclaimed.*]

And I, the said A. B., do further declare that my reasons for making the above disclaimer are as follows; that is to say,

[*State them.*]

And I, the said A. B. further declare and protest, that the above disclaimer does in no wise extend, or purpose to extend the exclusive right granted to me by the said letters patent.

In witness whereof, &c.

[*It will be easy to adapt this form to the case of a disclaimer of part of the specification, or to that of a memorandum of an alteration either of the title or specification.*]

No. VII.

Form of a Notice for a Prolongation of Patent.

A. B. of

Gentleman, hereby give notice that I intend forthwith to apply to her Majesty in Council for a prolongation, for the further term of seven years, or such other term, not exceeding seven years, as her Majesty shall please, of the term of sole using and vending his, the said A. B.'s invention of granted to him, the said A. B. by certain letters patent, bearing date the day of in the year of her reign, 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 the said A. B. hereby gives further notice, that I intend to apply on the day of next, to the Right Honourable the Lords, comprising the Judicial Committee of her Majesty's Honourable Privy Council, for a time to be fixed for hearing the matters of the said petition for such prolongation of the said term as hereinbefore mentioned. And all persons desirous of being heard in opposition to the prayer of the said petitioner, are hereby required to enter caveats at the Privy Council Office on or before the said day of next.

Signed by the Patentee.

Witnessed by the Solicitor.

VIII.

Form of Petition for a Prolongation of the Term of a Patent.

See sec. 4 of 5 & 6 Will. 4, c. 83.

To the Queen's most excellent Majesty in Council.

The humble petition of A. B., of

Sheweth,

Form of a petition for a prolongation of the term of a patent.

That your petitioner, after much labour and considerable expense, invented . That your Majesty, by letters patent, dated the day of in the

year of your reign, granted to your said 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 the town of Berwick-upon-Tweed, and also in all your Majesty's colonies and plantations abroad, for the term of fourteen years from the date of the said letters patent, which term has not yet expired. That your petitioner—

[*State the special circumstances warranting the application.*] That your petitioner hath advertised in the *London Gazette*, three times, and three times in the *Morning Herald, Courier*, and *Morning Post*, being three London papers: and three times in the *Lancaster Gazette*, being a country paper, published in the city of Lancaster, where your said petitioner resides and carries on the manufacture of his said invention; that it his intention to apply to your said Majesty in council for a prolongation of his said term of sole using and vending his said invention.

Your petitioner therefore humbly prays your Majesty to grant to him new letters patent for the sole use and exercise of his said invention, within that part of your Majesty's kingdom of Great Britain and Ireland, called England, the dominion of Wales, and town of Berwick-upon-Tweed, for a term of seven years after the expiration of the said term of fourteen years first above mentioned, according to the form of the statute in such case made and provided.

And your petitioner shall ever pray, &c.

No. IX.

Form of Petition for Confirmation of Letters Patent, under section 2 of 5 & 6 Will. 4, c. 83.

To the Queen's most excellent Majesty in Council.

The humble petition of A. B., of

Sheweth,

That your petitioner having after great labour and considerable expense invented [*state invention*], which invention is

Form of petition for confirmation of letters patent.

of general benefit and advantage, your Majesty was graciously pleased in consideration thereof to grant to your said petitioner, his executors, administrators, and assigns, your royal letters patent, under the great seal of Great Britain, for the sole use and exercise of his said invention 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, which said letters patent bear date upon the day of in the year of your Majesty's reign.

That it hath since been proved and specially found by the verdict of the jury, in a certain action brought by your petitioner against C. D., and tried before the Right Honourable Lord Denman, the Chief Justice of your Majesty's Court of Queen's Bench, at Westminster, on the day of in the year of our Lord that your petitioner was not the *first* inventor of the said by reason of one B. C. having invented the same before the date of the said letters patent.

That the said B. C. never at any time before the date of the said letters patent published or made known the said invention; and that your said petitioner was until, and long after, the date of the said letters patent, wholly ignorant that the said B. C. had invented the said or any part thereof, but verily believed himself to be the *first* and true inventor thereof.

Your petitioner therefore humbly prays that your Majesty will be graciously pleased to confirm the said letters patent and make the same available to give your petitioner the sole right of using, making, and vending the said invention, as against all persons whatsoever, within that part of your Majesty's said United Kingdon of Great Britain and Ireland, called England, the dominion of Wales, and town of Berwick-upon-Tweed.

And your petitioner shall ever pray, &c.

No. X.

Forms of Caveats.

Caveat against any person taking out Letters Patent for any improvement relating to without notice being first given to A. of &c.

Under 5 & 6 Will. 4, c. 83, s. 1.

Caveat against any person entering a disclaimer or alteration in a title or specification relating to without notice to

Under Id. s. 4.

Caveat against A. B. having any extension of his patent dated the day of 184 , for certain improvements in without notice to

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No. XI.

Notice of Objections required by 5 & 6 Will. 4, c. 83, s. 5.

In the

A. B. or *C. D.*

Take notice that on the trial of this cause the defendant (*or* plaintiff) will insist on the following objections to the validity of the patent mentioned in the declaration:—

Notice of objections required by 5 & 6 Wm. 4, c. 83, s. 5.

1st. That &c.

[*State the objections in order.*]

Dated the day of 184 .

Signed *C. D.*, attorney for the { defendant / *or* / plaintiff.

To Mr. *R. R.*, the { plaintiff's attorney / *or* / defendant's

No. XII.

21 James 1, c. 3.

An Act concerning Monopolies and Dispensations with the 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, licenses, 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 license 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, license, 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, licenses, 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, license, charter, letters patents, proclamation, inhibition, restraint, warrant of assistance, 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 treble damages 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, license, 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 distrained, 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 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.

He that delayeth an action grounded upon this statute incurs a præmunire.

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 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 intended, 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 forfeiture 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 alum 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 here-

after 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 made, and not otherwise.

XII. [Nor to the liberties of Newcastle-upon-Tyne, nor to licenses 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. XIII.

5 & 6 Wm. 4, c. 83.

An Act to amend the Law touching Letters Patent for Inventions.

Whereas it is expedient to make certain additions to and alterations in the present law touching letters patent for inventions, as well for the better protecting of patentees in the rights intended to be secured by such letters patent, as for the more ample benefit of the public from the same: 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 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;

Any person having obtained letters patent for any invention may enter a disclaimer of any part of his specification, or a memorandum of any alteration therein, which, when filed, to be deemed part of such specification.

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:

Caveat may be entered as heretofore.

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.

Disclaimer not to affect actions pending at the time.

Attorney-General may require the party to advertise his disclaimer.

Mode of proceeding where patentee is proved not to be the real inventor, though he believed himself to be so.

II. And be it enacted, 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.

If in any action or suit a verdict or decree shall pass for the patentee, the judge may grant a certificate, which being given in evidence in any other suit shall entitle the patentee, upon a verdict in his favour, to receive treble costs.

III. And be it enacted, that if in 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.

Mode of proceeding in case of application

IV. And be it further enacted, that if any person who now hath or shall hereafter obtain any letters patent as aforesaid

for the prolongation of the term of a patent.

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 caveats, 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 authorised 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.

In case of action, &c. notice of objections to be given.

V. And be it 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.

As to costs in actions for infringing letters patent.

VI. And be it 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.

Penalty for using, unauthorised, the name of a patentee, &c.

VII. And be it enacted, that if any person shall write, paint, or print, or mould, cast, or 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 fifty pounds, 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.

No. XIV.

2 & 3 Vict. c. 67.

An Act to amend an Act of the fifth and sixth years of the Reign of King William the Fourth, intituled an Act to amend the Law touching Letters Patent for Inventions.

5 & 6 Wm. 4, c. 83.

Whereas by an act passed in the fifth and sixth years of the reign of his Majesty, King William the Fourth, intituled *An Act to amend the Law touching Letters Patent for Inventions*, it is amongst other things enacted, that if any person having obtained any letters patent as therein mentioned shall give notice as thereby required of his intention 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 be first given to any person or persons who shall have entered such caveats, 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 inquiry of the whole matter, the judicial committee may report to his Majesty that a further extension of the term in the said letters patent shall be granted, not exceeding seven years, and his Majesty is thereby 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 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, and whereas it has happened since the passing of the said act, and may again happen, that parties desirous of obtaining an extension of the term granted in letters patent, of which they are possessed, and who may have presented a petition for such purposes in manner by the said recited act directed, before the expiration of the said term, may nevertheless be prevented by causes over which they have no control from prosecuting with effect their application before the Judicial Committee of the

Privy Council; and it is expedient therefore that the said Judicial Committee should have power, when under the circumstances of the case they shall see fit, to entertain such application, and to report thereon, according to the provisions of the said recited act, notwithstanding that before the hearing of the case before them the terms of the letters patent sought to be renewed or extended may have expired: Be it therefore 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 so much of the said recited act as provides that no entension of the term of letters patent shall be granted as therein mentioned if the application by petition for such extension be not prosecuted with effect before the expiration of the term originally granted in such letters patent, shall be and the same is hereby repealed.

Repealing provision requiring the application by petition to be prosecuted with effect before the expiration of the term of the patent.

II. And be it further enacted, That it shall be lawful for the Judicial Committee of the Privy Council, in all cases where it shall appear to them that any application for an extension of the term granted by any letters patent, the petition for which extension shall have been referred to them for their consideration, has not been prosecuted with effect before the expiration of the said term from any other causes than the neglect or default of the petitioner, to entertain such application, and to report thereon as by the said recited act provided, notwithstanding the term originally granted in such letters patent may have expired before the hearing of such application; and it shall be lawful for her Majesty, if she shall think fit, on the report of the said Judicial Committee recommending an extension of the term of such letters patent, to grant such extension, or to grant new letters patent for the invention or inventions specified in such original letters patent, for a term not exceeding seven years after the expiration of the term mentioned in the said original letters patent: Provided always, that no such extension or new letters patent shall be granted if a petition for the same shall not have been presented as by the said recited act directed before the expiration of the term sought to be extended, nor in case of petitions presented after the thirtieth day of November, one thousand eight hundred and thirty-nine, unless such petition shall be presented six calendar months at the least before the expiration of such term, nor in any case unless sufficient

Term of patent right may be extended in certain cases though the application for such extension not prosecuted with effect before the expiration thereof.

reason shall be shown to the satisfaction of the said Judicial Committee for the omission to prosecute with effect the said application by petition before the expiration of the said term.

No. XV.

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

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 14 years.

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 limited and granted 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 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, heir 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.

Punishment of bookseller, &c. printing without consent of the proprietor.

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

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.

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.

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 *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 inquire 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 inquiry 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 inquiring 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 *Britain* called *England*, and the said Lord President of the *Great* Sessions, Lord Justice General, Lord Chief Baron, and Rector of the college of *Edinburgh*, in that part of *Great Britain* called

and if altered from the price the bookseller set, may order him to pay costs to the party complaining.

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.

Penalty on booksellers selling at higher rates. This clause repealed by 15 Geo. 2, c. 36.

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.

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

Warehouse-keeper to deliver the books ten days after demand.

Penalty of proprietor, &c. not observing the directions of this act.

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.

Penalties in Scotland how recoverable.

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.

This act not to hinder the importation, &c. of books in Greek, &c. printed beyond sea, &c.

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.

General issue.

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 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. XVI.

8 Geo. 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 herein 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 Lord's Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that

Property of prints vested in the inventor for fourteen years.

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

Proprietor's name to be affixed to each print.

Penalty on printsellers or others pirating the same.

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 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;

General issue.

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.

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 aforesaid, That the said *John Pine* shall be entitled to the benefit of this act, to all intents and purposes whatsoever,

Clause relating to J. Pine.

in the same manner as if the said *John Pine* had been the inventor and designer of the said prints.

VI. And be it further enacted by the authority aforesaid, That this act shall be deemed, adjudged and taken to be a

Public act.

public act, and be judicially taken notice of as such by all Judges, Justices and other persons whatsoever, without specially pleading the same.

No. XVII.

12 Geo. 2, 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 empowers the limiting the Prices of Books.

'Whereas the duties payable upon paper imported into this Preamble.
'kingdom to be made use of in printing, greatly exceed the
'duties payable upon the importation 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 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 inquire 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 inquiry 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 inquiring 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. 2, c. 18, and 33 Geo. 2, c. 16.

IV. And be it further enacted, That this act (except so much thereof as repeals the beforemcntioned 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. XVIII.

7 Geo. 3, 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. 3, c. 38.
8 Geo. 2, c. 13.

'Whereas an act of Parliament passed in the eighth year of 'the reign of his late Majesty King George the Second, inti- 'tuled, *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.

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.

entitled to the benefit of recited and present act, &c.

"The sole right of printing and reprinting the late *W. Hogarth's* prints, vested in his widow and executrix 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

General issue.

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.

No. XIX.

15 Geo. 3, 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 given, and 15 Geo. 3, c. 53.
'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 directed 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

Universities, &c. to have, for ever, the sole right of printing, &c.

be bequeathed, or otherwise given by the author or authors of the same respectively, or the representatives of such author or authors, to r 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.

Persons printing or selling such books, shall forfeit the same, and also 1*l*. for every sheet;

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 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, or protection, or more than one imparlance, shall be allowed.

one moiety to his Majesty, and the other to the prosecutor.

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.

'And whereas many persons may through ignorance 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 learning within the same, and to the said universities in '*Scotland*, and to the respective colleges of *Eton*, *Westminster*, 'and *Winchester*, may be ascertained 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 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

No person subject to penalties, unless entered before, &c. Books must be entered within two months after bequest.

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 make entry, &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 '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 mentioned, or reprinted 'and published with additions, shall by the printer or printers 'thereof be delivered 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, and the library of *Sion College* 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, autho-'rised to demand the said copy, to deliver the same for the 'use of the aforesaid libraries; and if any proprietor, book-

'seller, or printer, or the said warehouse keeper of the said Com-
'pany of Stationers, should not observe the direction of the said
'act therein, that then he and they so making default, in not de-
'livering 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 repub-
'lished 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 same remedy as a defendant in any case by law hath.

Limitation of actions.

General issue.

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.

Public act.

No. XX.

17 Geo. 3, 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. 3, c. 57. 8 Geo. 2. 7 Geo. 3.

'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 De-* 'signing, Engraving, and etching Historical and other Prints, by 'vesting the Properties 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 afore- 'said act, and for purposes therein mentioned, it was (among 'other things) enacted, 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 sculpture, either ancient or modern, should have, 'and were thereby declared to have, the benefit and protection '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 original design of such graver, etcher, or 'draughtsman: and whereas the said acts have not effectually 'answered 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 ad- 'vancement 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. XXI.

27 Geo. 3, 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.

'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 de- 'signers, printers, or proprietors, for a limited time; for which 'purpose may it please your Majesty, that it may be enacted;'

27 Geo. 3, c. 38. Preamble.

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, 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 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,

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;

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 to sale, or cause to be printed, reprinted, and exposed to 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 defendant be assoilzied, then the defendant shall be entitled to full costs, for the recovery whereof he shall have the same remedy as herein-before is given to the pursuer.

Mode of prosecuting offences against this act.

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.

Act to continue in force for one year, and to the end of the then next session.

Continued by 29 Geo. 3, c. 19.

No. XXII.

34 Geo. 3, 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.

34 Geo. 3, c. 23. 27 Geo. 3.

'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 designing and printing Linens, 'Cottons, Calicoes and Muslins, by vesting the Properties 'thereof in the Designers, Printers and Proprietors, for a

29 Geo. 3.

'limited time); which said act was, by another act made in 'the twenty-ninth year of the reign of his present Majesty, 'continued 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

Expedient to extend time limited by 27 Geo. 3.

'found to be useful and beneficial: And whereas it is expe- 'dient that the time limited by the said first recited act for 'vesting the property of new and original patterns for printing 'linens, cottons, 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

Term further extended.

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 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.

Act made perpetual.

No. XXIII.

38 Geo. 3, c. 71.

An Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned.

'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, 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.

The sole right and property of making models or casts shall be vested in the original proprietor for fourteen years.

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

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.

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 inquiry thereon, shall give or assess, together with full costs of suit.

Except such persons who shall purchase the same of the original proprietor.

III. Provided nevertheless, that no person who shall hereafter purchase the right, either in any such 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. XXIV.

41 Geo. 3, 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.

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

Booksellers, &c. in any part of the United Kingdom, or British European dominions, who shall print, reprint, 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.

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 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 inquiry 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 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, plaint, or information, in which no wager of law, essoin, 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 fourteen 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

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 Geo. 3, c. 67.

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.*

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.

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 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

Penalty on persons printing such books the same as under s. I.

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.

To extend only to books printed 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 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,

Booksellers, &c. shall not be liable to the penalty of 3*d.* per sheet, unless the title to the copyright be entered by the proprietor, &c. at Stationers' Hall, London; nor if the consent of the proprietor be so entered.

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 of *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 authorised 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 *London Gazette*, and the clerk shall forfeit 20*l*.

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 per-

sons 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 authorised 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 imparlace, shall be allowed.

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.

VI. Provided also, and be it further enacted, That from and after the passing of this act, in additon 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.

No person shall import into any part of the United Kingdom, for sale, any book first composed, &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 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.

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.

General issue.

VIII. And be it further 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 anything 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 de-

fendant, 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; 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.

Limitations of actions under this act six months.

No. XXV.

54 Geo. 3, c. 56.

An Act to amend and render more effectual an Act of his present Majesty, for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned; and for giving further Encouragement to such Arts.

'Whereas by an act passed in the thirty-eighth year of the 'reign of his present Majesty, intituled, *An Act for encou-* 'raging the Art of Making New Models and Casts of Busts, 'and other things therein mentioned; the sole right and pro- 'perty thereof were vested in the original proprietors, for a 'time therein specified: and whereas the provisions of the said 'act having been found ineffecual 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 authority 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

38 Geo. 3, c. 1, s. 1.

Sole right and property of all new and original sculpture, models, copies, and casts, vested in proprietors for fourteen years.

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 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.

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. Purchasers of copyright secured in same.

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. Limitation of actions.

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. XXVI.

54 Geo. 3, 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.

8 Anne, c. 19, s. 5.

'Whereas by an act, made in the eighth year of the reign 'of her late Majesty Queen Anne, intituled *An Act for the en-* 'couragement 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 ad- 'ditions, should, by the printer and printers thereof, be de- 'livered 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 Ad-
'vocates a *Edinburgh*; which said warehouse-keeper 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 warehouse-keeper, 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, be-
'sides 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 41 Geo. 3, (U. K.) c. 107, s. 6.
'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 warehouse-keeper 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 here-
'inafter 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 Parlia-
ment 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 warehouse-keeper 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 warehouse-keeper, for the use of the said libraries, and as imposes any penalty on such printer or warehouse-keeper for not delivering the said copies, shall be, and the same is, hereby repealed.

repealed.

Eleven printed copies delivered on demand, within twelve 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 warehouse-keeper 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; *videlicit*, 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 warehouse-keeper of the said Company of Stationers for the time being; which copies the said warehouse-keeper 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 warehouse-keeper 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 warehouse-keeper 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, pro-

Publishers, &c. neglecting.

Penalty.

prietors 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 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 addition 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 Geo. 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 com-

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.

mence from the day of first publishing the same; and also, if the author shall be living at the end of that period, for the residue 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 inquiry 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 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

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.

Penalty.

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 ware-

Within what time title of books entered at Stationers' Hall.

Copy for British Museum.

Inspection of Register Book.

house-keeper of the said Company of Stationers, and such warehouse-keeper shall, when 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.

Warehouse-keeper 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 warehouse-keeper 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 effect 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.

No. XXVII.

5 & 6 Wm. 4, c. 65.

An Act for preventing the Publication of Lectures without consent.

Whereas printers, publishers, and other persons have frequently taken the liberty of printing and publishing lectures delivered upon divers subjects, without the consent of the authors of such lectures, or the persons delivering the same in public, to the great detriment of such authors and lecturers: 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 *September* one thousand eight hundred and thirty-five the author of any lecture or lectures, or the person to whom he hath sold or otherwise conveyed the copy thereof, in order to deliver the same in any school, seminary, institution, or other place, or for any other purpose, shall have the sole right and liberty of printing and publishing such lecture or lectures; and that if any person shall, by taking down the same in short hand or otherwise in writing, or in any other way, obtain or make a copy of such lecture or lectures, and shall print or lithograph or otherwise copy and publish the same, or cause the same to be printed, lithographed, or otherwise copied and published, without leave of the author thereof, or of the person to whom the author thereof hath sold or otherwise conveyed the same, and every person who, knowing the same to have been printed or copied and published without such consent, shall sell, publish or expose to sale, or cause to be sold, published, or exposed to sale, any such lecture or lectures, shall forfeit such printed or otherwise copied lecture or lectures, or parts thereof, together with one penny for every sheet thereof which shall be found in his custody, either printed, lithographed, or copied, or printing, lithographing, or copying, published, or exposed to sale, contrary to the true intent and meaning of this act, the one moiety thereof to his Majesty, his heirs or successors, and the other moiety thereof to any person who shall sue for the same, to be recovered in any of

Authors of lectures, or their assigns, to have the sole right of publishing them.

Penalty on other persons publishing, &c. lectures without leave.

his Majesty's Courts of Record in *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.

Penalty on printers or publishers of newspapers publishing lectures without leave.

II. And be it further enacted, That any printer or publisher of any newspaper who shall, without such leave as aforesaid, print and publish in such newspaper any lecture or lectures, shall be deemed and taken to be a person printing and publishing without leave within the provisions of this act, and liable to the aforesaid forfeitures and penalties in respect of such printing and publishing.

Persons having leave to attend lectures not on that account licensed to publish them.

III. And be it further enacted, That no person allowed for certain fee or reward, or otherwise, to attend and be present at any lecture delivered at any place, shall be deemed and taken to be licensed or to have leave to print, copy, and publish such lectures only because of having leave to attend such lecture or lectures.

Act not to prohibit the publishing of lectures after expiration of the copyright.

IV. Provided always, That nothing in this act shall extend to prohibit any person from printing, copying, and publishing any lecture or lectures which have or shall have been printed and published with leave of the authors thereof or their assignees, and whereof the time hath or shall have expired within which the sole right to print and publish the same is given by an act passed in the eighth year of the reign of 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*, and by another act passed in the fifty-fourth year of the reign of king *George* the third, intituled *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*, or to any lectures which have been printed or published before the passing of this act.

8 Ann. c. 19.

54 Geo. 3, c. 156.

Act not to extend to lectures delivered in unlicensed places, &c.

V. Provided further, That nothing in this act shall extend to any lecture or lectures, or the printing, copying, or publishing any lecture or lectures, or parts thereof, of the delivering of which notice in writing shall not have been given to two justices living within five miles from the place where such lecture or lectures shall be delivered two days at the least before delivering the same, or to any lecture or lectures delivered in any University or public school or college, or on

any public foundation, or by any individual in virtue of or according to any gift, endowment, or foundation; and that the law relating thereto shall remain the same as if this act had not been passed.

No. XXVIII.

6 & Wm. 4, c. 59.

An Act to extend the Protection of Copyright in Prints and Engravings to Ireland.

17 Geo. 3, c. 57.

Whereas an act was passed in the seventeeth year of the reign of his late Majesty King *George* the third, intituled *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:* and whereas it is desirable to extend the provisions of the said act to *Ireland;* be it therefore 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 all the provisions contained in the said recited act of the seventeenth year of the reign of his late Majesty King *George* the third, and of all the other acts therein recited, shall be and the same are hereby extended to the united kingdom of *Great Britain* and *Ireland.*

Provisions of recited act extended to Ireland.

Penalty on engraving or publishing any print without consent of proprietor.

II. And be it further enacted, that from and after the passing of this act, if any engraver, etcher, printseller, or other person shall, within the time limited by the aforesaid recited acts, engrave, etch, or publish, or cause to be engraved, etched, or published any engraving or print of any description whatever, either in whole or in part, which may have been or which shall hereafter be published in any part of *Great Britain* or *Ireland*, 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 shall and may, by and in a separate action upon the case, to be brought against the person so offending in any Court of Law in *Great Britain* or *Ireland*, 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.

XXIX.

6 & 7 Wm. 4, c. 110.

An Act to repeal so much of an Act of the Fifty-fourth Year of King George the Third, respecting Copyrights, as requires the delivery of a Copy of every published Book to the Libraries of Sion College, the Four Universities of Scotland, and of the King's Inns in Dublin.

Whereas by an act passed in the fifty-fourth year of the reign of his late Majesty King *George* the third, intituled *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*, it is amongst other things enacted, that eleven copies of every published book shall be gratuitously delivered to eleven public libraries named in the said act: and whereas the provisions of the said act have in certain respects operated to the injury of authors and publishers, and have in some cases checked or prevented the publication of works of great utility and importance, and it is therefore expedient that the said act should be amended: be it therefore 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 recited act as requires that a copy of every book which shall be printed and published shall be delivered in manner therein mentioned to the warehouse-keeper of the Company of Stationers for the use of the library of *Sion College*, the libraries

54 Geo. 3, c. 146.

So much of recited act as requires the delivery of copies of books for the libraries herein mentioned repealed.

of the four universities of *Scotland*, and the *King's Inns Library* at *Dublin*, shall be and the same is hereby repealed.

Compensation to be made to the said libraries out of consolidated fund.

II. And be it further enacted, that it shall be lawful for the Lord High Treasurer or for the Commissioners of his Majesty's Treasury, or any three or more of them, from time to time to issue and pay out of the consolidated fund of the united kingdom of *Great Britain* and *Ireland*, to the person or persons or body politic or corporate, proprietors or managers of each of the aforesaid libraries, such an annual sum as may be equal in value to and a compensation for the loss which any such library may sustain by reason of the said act being repealed, so far as relates to such library; such annual compensation to be ascertained and determined according to the value of the books which may have been actually received by each such library, in such manner as the commissioners of his Majesty's treasury or any three or more of them shall direct, upon an average of the three years ending the thirtieth day of *June* one thousand eight hundred and thirty-six.

Application of the compensation.

III. And be it further enacted, that the person or persons or body politic or coporate, proprietors or managers of the library for the use whereof any such book would have been delivered, shall and they are hereby required to apply the annual compensation hereby authorized to be made in the purchase of books of literature, science, and the arts, for the use of and to be kept and preserved in such library; provided always, that it shall not be lawful for the said lord high treasurer or commissioners of his Majesty's treasury to direct the issue of any sum of money for such annual compensation until sufficient proof shall have been adduced before him or them of the application of the money last issued to the purpose aforesaid.

No. XXXI.

1 & 2 Vict. c. 59.

An Act for securing to Authors, in certain Cases, the Benefit of International Copyright.

Her Majesty, by order in council, may direct that authors of books first published in foreign countries, and their assigns, shall have a copyright in such books within her Majesty's dominions.

Whereas it is desirable to afford protection within her Majesty's dominions to the authors of books first published in foreign countries, and their assigns, in cases where protection shall be afforded in such foreign countries to the authors of books first published in her Majesty's dominions, and their assigns; be it therefore 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 it shall be lawful for her Majesty, by any order of her Majesty in council, to direct that the authors of books which shall, after a future time to be specified in such order in council, be published in any foreign country to be specified in such order in council, and their executors, administrators, and assigns, shall have the sole liberty of printing and reprinting such books within the united kingdom of *Great Britain* and *Ireland*, and every other part of the *British* dominions, for such term as her Majesty shall by such order in council direct, not exceeding the term which authors being *British* subjects are now by law entitled to in respect of books first published within the united kingdom; provided that no such author or his assigns shall be entitled to the benefit of this act unless, within a time to be in that behalf prescribed by such order in council, the title to the copy of every such book, and the name and place of abode of the author thereof, and the time and place of the first publication thereof in such foreign country, shall be entered in the register book of the Company of Stationers in *London*; and unless, within a time to be also prescribed by such order in council, one printed copy of the whole of such book and of every volume thereof, upon the best paper upon which the largest number or impression of such book shall have been printed for sale, together with all maps and prints relating thereto, shall be delivered to the warehouse-keeper of the Company of Stationers at the hall of the said Company.

Title of book to be entered at Stationers' Hall, and one copy delivered to the warehouse-keeper.

In case of books published anonymously, the name of publisher to be sufficient.

II. Provided always, and be it enacted, that if a book be published anonymously it shall be sufficient to insert in the entry thereof in such register book the name and place of abode of the first publisher thereof, instead of the name and place of abode of the author thereof, together with a declaration that such entry is made either on behalf of the author or on behalf of such first publisher, as the case may require.

Wrongful first publication may be amended by Court of Chancery.

III. And be it enacted, that every such entry shall be *primâ facie* proof of a rightful first publication; but if there be a wrongful first publication, and any party have availed himself thereof to obtain an entry of a spurious work, the author or his first publisher may apply by petition or on motion to the Court of Chancery to order such entry to be amended; but no such order shall be made unless it be proved to the satisfaction of the said Court, first with respect to a wrongful publication in a country to which the author or first publisher does not belong, and in regard to which there does not subsist with this country any treaty of international copyright, that the party making the application was the author or first publisher, as the case requires; second, with respect to a wrongful first publication either in the country where a rightful first publication has taken place, or in regard to which there subsists with this country a treaty of international copyright, that a Court of competent jurisdiction in any such country where such wrongful first publication has taken place has given judgment in favour of the right of the party claiming to be the author or first publisher.

Register book to be kept at Stationers' Hall, and to be open to inspection.

IV. And be it enacted, that such register book shall at all times be kept at the hall of the said Company, and for every such entry the sum of two shillings, and no more, shall be paid, and the same register book may at all seasonable and convenient times be inspected by any person on payment of the sum of one shilling, and no more, to the warehouse-keeper of the said Company of Stationers; and such warehouse-keeper shall, when and as often as thereto required, give a certificate under his hand of every or any such entry and delivery, and of the time of making the same respectively, and for every such certificate the sum of one shilling shall be paid; and such certificate, upon proof of the handwriting of the person signing the same, and that such person was in fact the warehouse-keeper of the said Company, shall without further proof be admitted in all Courts

Certificate by warehouse-keeper.

as evidence of such entry and delivery, and of the time of making the same respectively.

Warehouse-keeper to deposit books in the British Museum.

V. And be it enacted, that the said warehouse-keeper shall receive at the Hall of the said Company every book or volume so to be delivered as aforesaid, and within one calendar month after receiving such book or volume shall deposit the same in the library of the *British* Museum.

Second or subsequent editions.

VI. Provided always, and be it enacted, that it shall not be requisite to deliver to the warehouse-keeper of the said Stationers' Company any printed copy of the second or of any subsequent edition of any book or books so delivered as aforesaid, unless the same shall contain additions or alterations; and in case any edition after the first of any book so delivered as aforesaid shall contain any addition or alteration, it shall not be requisite to deliver any printed copies thereof, if one printed copy of such additions or alterations only, printed in an uniform manner with the former edition of such book, be, within a time in that behalf to be prescribed by any such order in council as aforesaid, deliver to the warehouse-keeper of the said Company of Stationers.

Orders in council may specify different periods for different foreign countries, &c.

VII. And be it enacted, that the respective terms to be specified by such orders in council respectively for the continuance of the privilege to be granted to the authors of books to be first published in foreign countries, and their respective assigns, may be different for books first published in different foreign countries, and that the times to be prescribed for the entry of the titles to the copies of such books, and the delivery to the said warehouse-keeper of the aforesaid copy, may be different for different foreign countries and for different classes of books.

Booksellers, &c. who shall print, &c. any book to which order in council may extend, without consent of proprietor, liable to penalties.

VIII. And be it enacted, that if any bookseller or printer, or other person whatsoever, in any part of the United Kingdom of *Great Britain* and *Ireland*, or in any other part of the *British* dominions, shall, within the term to be limited by any such order in council, print, reprint, or import for sale, or cause to be printed, reprinted, or imported for sale, any book to which such order in council shall extend, without the consent of the author or other proprietor of the copyright of and in such book first had and obtained in writing, or, knowing the same to be so printed, reprinted, or imported for sale without such consent

of such author or other proprietor, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or have in his possession for sale, any such book without such consent first had and obtained as aforesaid, then every such offender shall be liable to a special action on the case, at the suit of the author or other proprietor of the copyright of and in such book so unlawfully printed, reprinted, imported, or published or exposed to sale, or being in the possession of such offender for sale as aforesaid, contrary to the true intent and meaning of this act; and every such author or other proprietor shall and may, by and in such special action on the case to be so brought against such offender 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 inquiry thereon shall give or assess, together with double costs of suit, in which action no privilege or protection shall be allowed: and every such offender shall also forfeit such book, and every sheet being part of such book, and shall upon order of any court of record in which any action at law or suit in equity shall be commenced or prosecuted by such author or other proprietor, to be made on motion or petition to the said court, deliver the same to the author or other proprietor of the copyright of such book, or to his attorney or agent to be thereto lawfully authorized, and he shall forthwith damask or make waste paper of the same; and every such offender 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 her Majesty and the other moiety thereof to any person who shall sue for the same in any such court of record by action of debt, bill, plaint, or information, in which no privilege or protection shall be allowed: provided always, that in *Scotland* such offender shall be liable to an action of damages in the court af 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 any such action where damages shall be awarded double costs of suit or expenses of process shall be allowed.

IX. Provided always, and be it enacted, that no such order in council shall have any effect unless it shall be therein stated, as the ground for issuing the same, that due protection for the benefit of the authors of printed books first published in the dominions of her Majesty and their assigns has been secured by the foreign power in whose dominions the books to which such order in council shall relate shall be first published.

No order in council to have any effect unless it states that reciprocal protection is secured.

X. And be it enacted, that it shall be lawful for her Majesty, by an order in council, from time to time to revoke or alter any order in council previously made under the authority of this act, but nevertheless without prejudice to any rights acquired previously to such revocation or alteration.

Orders in council may be revoked.

XI. And be it enacted, that every order in council to be made under the authority of this act shall, as soon as may be after the making thereof by her Majesty in council, be published in the *London Gazette*, and from the time of such publication shall have the same effect as if every part thereof were included in this act.

Orders in council to be published in *Gazette*, and to have same effect as this act.

XII. And be it enacted, that a copy of every order of her Majesty in council made under this act shall be laid before both Houses of Parliament within six weeks after issuing the same if Parliament be then sitting, and if not, then within six weeks after the commencement of the then next session of parliament.

Orders in council to be laid before Parliament.

XIII. Provided always, and be it enacted, that nothing in this act contained shall be construed to prevent the printing, publication, or sale of any translation of any book, the author whereof and his assigns may be entitled to the benefit of this act.

Translations of books first published abroad.

XIV. And be it enacted, that the author of any book to be after the passing of this act first published out of her Majesty's dominions, or his assigns, shall have no copyright therein within her Majesty's dominions otherwise than such (if any) as he may become entitled to under this act.

Foreign authors not entitled to copyright, except under this act.

XV. Provided nevertheless, and be it 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, and not afterwards.

Limitation of actions.

XVI. And be it enacted, that in the construction of this act the word "book" shall be construed to include "volume," "pamphlet," "sheet of letterpress," "sheet of music," "map,"

Interpretation clause.

"chart," or "play;" and the words "printing" and "re-printing" shall include engraving and any other method of multiplying copies; and the expression "her Majesty" shall include the heirs and successors of her Majesty; and the expressions "order of her Majesty in council" and "order in council" shall respectively mean order of her Majesty, acting by and with the advice of her Majesty's most Honorable Privy Council: and in describing any persons or things any word importing the plural number shall mean also one person or thing, and any word importing the singular number shall include several persons or things, and any word importing the masculine shall include also the feminine gender; unless in any of such cases there shall be something in the subject or context repugnant to such construction.

No. XXXI.

2 Vict. c. 13. (*a*)

An Act for extending the Copyright of Designs for Calico Printing to Designs for printing other woven Fabrics.

27 Geo. 3, c. 38.

34 Geo. 3, c. 23.

Whereas by an act passed in the twenty-seventh year of the reign of his late Majesty King *George* the Third, intituled *An Act for the Encouragement of the Arts of designing and printing Linens, Calicoes, and Muslins by vesting the Properties thereof in the Designers, Printers, and Proprietors for a limited time*; and by another act made in the thirty-fourth year of the same reign, for amending and making perpetual the said act, it was enacted, that every person who should 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, should have the sole right and liberty of printing and re-printing the same for the term of three months: and whereas it is expedient to extend the said acts to *Ireland*; and whereas since the passing of the last-recited act there have been invented other fabrics of

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(*a*) There is a bill before Parliament (January 1840) extending the time limited by this act to twelve months.

a similar nature to which the said copyright doth not extend; 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 this act shall come into operation on the passing thereof.

Commencement of act.

II. And be it enacted, that the said recited acts and this act shall extend to *Ireland*, as well as to *England* and *Scotland*.

Acts extended to Ireland.

III. And be it enacted, that the provisions of the said recited acts shall extend to the following woven fabrics published after the passing of this act; (that is to say,)

Description of fabrics to which the recited acts shall extend.

To fabrics composed of wool, silk, or hair:

To mixed fabrics, composed of any two or more of the following materials; (that is to say,) linen, cotton, wool, silk, or hair.

IV. And with regard to any fabrics to which the recited acts and this act extend which shall be published after the passing of this act, be it enacted, that the recited acts and this act shall be construed as one act.

Recited acts and this act to be construed as one act.

V. And be it enacted, that if any offence either against the recited acts or against this act be committed in *Ireland*, the party aggrieved shall have the same remedies in the supreme courts of law in *Dublin*, which in the like case the same party would have in *England*.

Remedy for offences committed.

No. XXXII.

2 Vict. c. 17.

An Act to secure to Proprietors of Designs for Articles of Manufacture the Copyright of such Designs for a limited time.

Whereas it is expedient that provisions should be made for securing the exclusive benefit of designs for articles of manufacture to the authors and proprietors thereof for a limited time; be it therefore 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 Parlia-

Duration of copyright.

ment assembled, and by the authority of the same, that every proprietor of a new and original design made for any of the following purposes, and not published before the first day of *July*, one thousand eight hundred and thirty-nine, shall have the sole right to use the same for any such purpose during the term of twelve calendar months, to be computed from the time of the same being registered according to this act; and the following are the purposes referred to:

First.—for the pattern or print, to be either worked into or worked on, or printed on or painted on, any article of manufacture, being a tissue or textile fabric, except lace, and also except linens, cottons, calicoes, muslins, and any other article within the meaning of the acts mentioned in the schedule hereto annexed:

Second.—For the modelling, or the casting, or the embossment, or the chasing, or the engraving, or for any other kind of impression or ornament, on any article of manufacture, not being a tissue or textile fabric:

Third.—For the shape or configuration of any article of manufacture, except lace, and also except linens, cottons, calicoes, muslins, and any other article within the meaning of the acts mentioned in the schedule hereto annexed:

Proviso for designs for modelling, &c.

Provided always that every proprietor of a new and original design made for the modelling, or the casting, or the embossment, or the chasing, or the engraving, or for any other kind of impression or ornament on any article of manufacture, being of any metal or mixed metals, shall have the sole right to use the same during the term of three years, to be computed from the time of the same being registered according to this act; but

Conditions of copyright.

no person shall be entitled to the benefit of this act unless the design have before publication been registered according to this act, and unless such person be registered according to this act as the proprietor of the design, and unless after publication of the design every article of manufacture published by him, on which such design is used, have thereon the name of the first registered proprietor, and the number of the design in the register, and the date of the registration thereof: and the

Proprietor explained.

author of every such new and original design shall be considered the proprietor, unless he have executed the work on behalf of another person for a valuable consideration, in which case such person shall be considered the proprietor, and shall

be entitled to be registered in the place of the author; and every person purchasing for a valuable consideration a new and original design, or the exclusive or the partial right to use the same for any one or more of the above-mentioned purposes, in relation to any one or more articles of manufacture, shall be considered as the proprietor of the design for all or any one or more of such purposes as the case happens to be.

Transfer of copyright and register thereof.

II. And be it enacted, that every person purchasing a new and original design may enter his title in the register hereby provided; and any writing purporting to be a transfer of such design, and signed by the proprietor thereof, shall operate as an effectual transfer; and the registrar shall, on request, and the production of such writing, insert the name of the new proprietor in the register; and the following may be the form of such transfer, and of such request to the registrar;

Form of Transfer and Authority to register.

'I, *A. B.*, author [*or* proprietor] of design number
'having transferred my right thereto [*or if such transfer be*
'*partial*] so far as regards the making of [*describe the*
'*articles of manufacture with respect to which the right is trans-*
'*ferred*] to *B. C.* of do hereby authorize you to insert
'his name on the register of designs accordingly.'

Form of Request to register.

'I, *B. C.*, the person mentioned in the above transfer, do re-
'quest you to register my name and property in the said
'design, according to the terms of such transfer.'

For preventing piracy.

III. And be it enacted, that during the existence of such exclusive or partial right no person shall either do or cause to be done any of the following acts in regard to a registered design, without the license or consent in writing of the registered proprietor thereof; (that is to say.)

No person shall use for the purposes aforesaid, or any of them, or print or work or copy, such registered design, or any original part thereof, on any article of manufacture, for sale:

No person shall publish, or sell or expose to sale or barter, or in any other manner dispose of for profit, any article whereon, such registered design or any original part thereof has been used, knowing that the proprietor of such design has not given his consent to the use thereof upon such article:

No person shall adopt any such registered design on any article of manufacture for sale, either wholly or partially, by making any addition to any original part thereof, or by making any subtraction from any original part thereof:

Penalty. And if any person commit any such act he shall for every offence forfeit a sum not less than five pounds and not exceeding thirty pounds, to the proprietor of the design in respect of which such offence has been committed.

Recovery of penalties for piracy.

IV. And be it enacted, that the party injured by any such act may recover such penalty as follows:

In *England*, either by an action of debt or on the case against the party offending, or by summary proceeding before two justices having jurisdiction where the party offending resides; and if the party injured proceed by such summary proceeding, any justice of the peace acting for the county, riding, division, city or borough where the party offending resides, and not being concerned either in the sale or manufacture of the article of manufacture or in the design to which such summary proceeding relates may issue a summons requiring such party to appear on a day and at a time and place to be named in such summons, such time not being less than eight days from the date thereof; and every such summons shall be served on the party offending, either in person or at his usual place of abode; and either upon the appearance or upon the default to appear of the party offending, any two or more of such justices may proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party offending or upon the oath or affirmation of one or more credible witnesses, which such justices are hereby authorized to administer, may convict the offender in a penalty of not less than five pounds or more than thirty pounds, as aforesaid, for each offence, as to such justices doth seem fit; and if the amount of such penalty or of such penalties, and the costs attending the conviction, so assessed by such justices, be not forthwith paid, the amount of the penalty or of the penalties, and of the costs, together with the costs of the distress and sale, shall be levied by distress and sale of the goods and chattels of the offender wherever the same happen to be in *England*; and the justices before whom the party has

been convicted, or, on proof of the conviction, any two justices acting for any county, riding, division, city, or borough in *England* where goods and chattels of the person offending happen to be, may grant a warrant for such distress and sale; and the overplus, if any, shall be returned to the owner of the goods and chattels, on demand:

In *Scotland*, either before the court of session, or by summary proceeding as aforesaid before any two or more justices of the peace of the county or place where the offence was committed:

In *Ireland*, either by action in a superior court of law at *Dublin*, or by civil bill in the civil bill court of the county or place where the offence was committed:

And no action or other proceeding for any offence under this act shall be brought after the expiration of six calendar months from the commission of the offence; and in such action or other proceeding every plaintiff or prosecutor shall recover his full costs of suit, or of such other proceeding.

Registrar, &c. of designs to be appointed.

V. For the purpose of registering designs for articles of manufacture, in order to obtain the protection of this act, be it enacted, that the lords of the committee of privy council for the consideration of all matters of trade and plantations may appoint a person to be a registrar of designs for articles of manufacture, and if the lords of the said committee see fit, a deputy registrar, clerks, and other necessary officers and servants; and such registrar and deputy registrar shall hold their offices during the pleasure of the lords of the said committee; and the commissioners of the treasury may from time to time fix the salary or remuneration of such registrar, deputy registrar, clerks, officers, and servants; and, subject to the provisions of this act, the lords of the said committee may make rules for regulating the execution of the duties of the office of the said registrar; and such registrar shall have a seal of office.

Registrar's duties.

VI. And be it enacted, that the said registrar shall not register any design unless he be furnished with three copies or drawings of such design, accompanied with the name and place of abode of the proprietor thereof; and the registrar shall register all such copies from time to time successively as they are received by him for that purpose, and on every such copy he shall affix a number corresponding to such succession, and

he shall retain two copies, one of which he shall file in his office, and the other he shall hold at the disposition of the lords of the said committee, and the remaining copy he shall return to the person by whom the same has been forwarded to him; and in order to give ready access to the copies of designs so registered, he shall keep a classified index of such copies of designs.

Certificate of registration of design.

VII. And be it enacted, that upon any original design so registered, and upon every copy thereof received for the purpose of being registered, or for the purpose of such registration being certified thereon, the register shall certify under his hand that the design has been so registered, the date of such registration, and the name of the registered proprietor; and such certificate made on every such original design, or on such copy thereof, and purporting to be signed by the registrar or deputy registrar, and purporting to have the seal of office of such registrar affixed thereto, shall, in the absence of evidence to the contrary, be sufficient proof, as follows:

Of the design, and of the name of the proprietor therein mentioned, having been duly registered: and

Of the commencement of the period of registry; and

Of the person named therein as proprietor being the proprietor; and

Of the originality of the design, and

Of the provisions of this act, and of any rule under which the certificate appears to be made, having been complied with:

And any such writing purporting to be such certificate shall (in the absence of evidence to the contrary) be received in evidence without proof of the handwriting of the signature thereto, or of the seal of office affixed thereto, or of the person signing the same being the registrar or deputy registrar.

Fees of registration, and application thereof.

VIII. And be it enacted, That the commissioners of the treasury shall from time to time fix the fees to be paid for the services to be performed by the registrar, and such fees shall be applied to defray the expenses of the said office, and the salaries or other remuneration of the said registrar, and of any other person employed under him, with the sanction of the commissioners of the treasury, in the execution of this Act, and the balance shall be carried to the consolidated fund of the United Kingdom, and be paid accordingly into the receipt of her Majesty's Exchequer at *Westminster*; and the commis-

sioners of the treasury may regulate the manner in which such fees are to be received, and in which they are to be kept, and in which they are to be accounted for.

Penalty for extortion.

IX. And be it enacted, that if either the registrar or any person employed under him either demand or receive any gratuity or reward, whether in money or otherwise, except the salary or remuneration authorized by the commissioners of the treasury, he shall for every such offence forfeit fifty pounds to any person suing for the same, by action of debt in the Court of Exchequer at *Westminster*, and he shall also be liable to be either suspended or dismissed from his office, and rendered incapable of holding any situation in the said office, as the lords of the treasury see fit.

Letters, &c. to and from the office of registrar of designs exempt from postage.

X. And for the purpose of facilitating the use of the provisions of this act in regard to the registration of designs, be it enacted, That all letters and packets transmitted by post, either to or from the office of registrar of designs, relating solely to the business of such office, shall be exempt from postage; and that in respect of such letters and packets the provisions of an act passed in the first year of her present Majesty's reign, intituled *An Act for regulating the sending and receiving of letters and packets by the post free from the duty of postage*, relating to the general regulation of the official privilege of franking, and to the transmission to the post-office of unprivileged letters, and the penalties and provisions mentioned in an act passed in the first year of the reign of her present Majesty, intituled *An act for consolidating the laws relative to offences against the post-office of the United Kingdom, and for regulating the judicial administration of the post-office laws, and for explaining certain terms and expressions employed in those laws*, shall, so far as the same may be applicable, apply to the office of the registrar of designs, and the franking officer thereof.

1 Vict. c. 35.

1 Vict. c. 36.

Interpretation clause.

XI. And for the interpretation of this act, be it enacted, That the following terms and expressions, so far as they are not repugnant to the context of this act, shall be construed as follows; (that is to say,) the expression "Commissioners of the Treasury" shall mean the Lord High Treasurer for the time being, or the Commissioners of her Majesty's Treasury for the time being, or any three or more of them; and the expression "article of manufacture" shall include any article of the kind herein referred to, whether it be made by hand or by

machinery, or by both of those means; and the singular number shall include the plural as well as the singular number; and the masculine gender shall include the feminine gender as well as the masculine gender.

Commencement of act.

XII. And be it enacted, That this act shall come into operation on the passing thereof, as to the office and the appointment of the registrar hereby authorized, and on the first day of *July* one thousand eight hundred and thirty-nine, as to the other parts of the act.

SCHEDULE.

Date of Acts.	*Title.*
27 Geo. 3, c. 38. (1787.)	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.
29 Geo. 3, c. 19. (1789.)	An act for continuing 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.
34 Geo. 3, c. 23. (1794.)	An act for amending and making perpetual 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.
2 Vict. (1839.)	An act passed during the present session of Parliament, "for extending the copyright of designs for calico printing to designs for printing other woven fabrics."

ADDENDA.

Licenses to use Patent, p. 225. *Protheroe and Another* v. *May and Another*, MSS., 8th August, 1839. His Honor the Vice-Chancellor sent the following questions to the Court of Exchequer for their opinion, who answered every one of them in the *negative*.

1st. Has the grant of the said first mentioned exclusive license to the said *Protheroe* and *Guppy* invalidated the letters patent of itself, without reference to the subsequent facts?

2nd. Has the assignment to and vesting of the said first mentioned license in the said partnership of more than twelve persons invalidated the letters patent of itself, and without reference to the other facts stated?

3rd. Has the grant of the said twelve last mentioned exclusive licenses, or of any, and which of them, invalidated the said letters patent?

4th. If all the grantees of all the licenses were to coalesce and become jointly interested in such licenses, would the letters patent be thereby invalidated?

5th. Would the letters patent have been invalidated if the districts covered by the licenses had included the whole of England, Wales, and Berwick-upon-Tweed, and the Colonies?

Bill in Chancery, p. 252. *Westhead* v. *Keene*, 1 Bevan's Rep. 287. A bill filed by a patentee to restrain the piracy of his patent, and for an account, did not distinctly state the specification, or explain the nature of the invention for which the patent right was claimed; but it alleged that the specification was duly enrolled, and that the drawings and description in the specification could not be set out in the bill, and it charged that the plaintiff was the inventor, and that the invention was new: the Court (not without some doubt) held, on the authority of *Kay* v. *Marshall*, that the bill was not demurrable.

Injunction, p. 253. *Bacon* v. *Spottiswoode*, *Bacon* v. *Jones*, 1 Bevan's Rep. 382. Where a bill is filed by a patentee for

an injunction to restrain an alleged infringement of his patent, the plaintiff is not precluded from asking for an injunction at the hearing, by the fact of his not having applied for it on an interlocutory motion; but the not moving for the injunction imposes on the plaintiff, in such a case, the obligation of making out a clear and unexceptionable title at the hearing: and if he fails in that, and has not previously obtained an injunction, he will not be allowed to use the facts proved in the cause, as evidence of a *primâ facie* case, giving him a right to further time, for the purpose of enabling him to establish more satisfactorily his legal title.

A patentee brought the cause to a hearing without having previously moved for an injunction, and the Court being of opinion that on the evidence then produced an injunction would not have been granted, on an interlocutory application, refused to retain the bill, to give the patentee an opportunity of establishing his right at law, but dismissed it with costs.

Upon the motion of Sir Robert Peel, Bart., the following returns were made to parliament on 2nd March, 1840.

1. Petitioners to the Judicial Committee under the 2nd sect. of 5 & 6 Wm. 4, c. 83.

C. L. Stanislas, Baron Heurteloup.

J. Wells, Ass. of W. Gibbons and T. Westrup.

2. Petitioners to the Judicial Committee under the 4th section of 5 & 6 Wm. 4, c. 83, for a prolongation of the term of letters patent. Those marked thus* had the term extended.

S. Hall.
*R. B. Bate.
*E. S. Swaine.
J. Tulloch.
* L. W. Wright.
W. R. Vigors and Others.
* J. Russell.
*J. Kay.
*B. Downton.
*Orpheus, commonly called Pierre Erard.
C. Macintosh.
*W. Southworth and Others.
*H. Shuttleworth and Others.
*D. Stafford.
J. G. Bodmer.
*G. A. Kollman.
*R. Roberts.

A Supplement

TO THE SECOND EDITION

OF A

PRACTICAL TREATISE

ON

The Law

OF

PATENTS FOR INVENTIONS

AND OF

COPYRIGHT.

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ILLUSTRATED BY

NOTES OF THE PRINCIPAL CASES;

WITH AN ABSTRACT OF THE

LAWS IN FOREIGN COUNTRIES.

BY

RICHARD GODSON M.A.-Q.C.-M.P.

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TO

THE RIGHT HONORABLE

LORD BROUGHAM AND VAUX,

TO WHOM

THE TREATISE WAS DEDICATED.

THIS SUPPLEMENT

IS,

WITH MOST SINCERE THANKS,

FOR HIS APPROBATION OF THAT WORK

AND FOR HIS KINDNESS TO THE AUTHOR,

RESPECTFULLY

INSCRIBED.

PREFACE.

SINCE the publication of the *Second* Edition of The Practical Treatise, on the Law of Patents for Inventions and of Copyright, in 1840, many decisions have been pronounced in the Courts of Law and Equity, and in the Judicial Committee of the Privy Council, the Author therefore felt constrained either to publish a *Third* Edition or to make a Supplement. He preferred the latter course, because the purchasers of the Second Edition would thus have the law, as administered at the present time, at a small price: and for those, who were not possessed of the original Book, the Treatise and Supplement (if bound together) would make a complete Work.

The same plan was much approved of, when *two* successive Supplements were added to the First Edition.

The laws, respecting COPYRIGHT in *Books*, and *Musical Works*, and in *Designs* for articles of manufacture, and regulating our literary intercourse with foreign countries, have been much improved since the last Edition, by acts of Parliament, for which the public owe great thanks,

as to Copyright, to Mr. Serjeant Talfourd, as to Designs, to Mr. Emerson Tennant, M.P., and as to International Protection, to The Right Honorable W. E. Gladstone. The Author of this Supplement enjoyed the great pleasure of lending his assistance to the enactment of those measures.

As the new decisions must, in a Supplement, be referred, to the paragraphs in the Treatise, in the different divisions, it is impossible to prevent the appearance of patch-work ; and thus, for any inelegance in the structure of the sentences, the Author must be excused. In the part on Copyright, the Acts of Parliament have been set forth and explained in the briefest manner, because they are given at full length in the Appendix.

The *Table of Contents* and the *Index* of the Treatise are reprinted, with references to the pages of the Supplement : so as to serve, as well for a Table of Contents and an Index of the Supplement, as also of the Work, when the Treatise and Supplement are bound together into one Book.

Inner Temple,
June, 1844.

SUPPLEMENT

TO

PATENTS AND COPYRIGHT.

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SUPPLEMENT

TO PATENTS FOR INVENTIONS.

Chap. I.

Introduction (*a*).

If the reader of this *Supplement* place the *Second Edition* of The Practical Treatise before him, he will clearly see the application of the new authorities now cited: it was imagined that the object of this publication being to explain the law in its present state in a concise and intelligent manner, that result would be most readily accomplished by—A Supplement to each Chapter.

The section of Chap. 5, which treats of the proceedings before the Privy Council, will be found to be much enriched by judgments delivered by *Lord Brougham.* The benefits conferred on patentees and their families by the labours of the Lords of the Judicial Committee of Her Majesty's Privy Council are very great, and call for the warm thanks of all scientific men.

An unusual number of patents have, since the publication of the Second Edition, been called in question in the Courts of Common Law, and many decisions have been made on the practice, pleadings, and evidence required in such cases, which, being collected in the proper

(*a*) See p. 17 of The Practical Treatise, 2nd Edition.

place, will be found to be very useful. They have rendered the Chapter on the Remedies for an Infringement of a Patent much more complete than it formerly appeared.

The particular attention of patentees is drawn to the case of *Brown* v. *Annandale* (*a*).

The learned Judges of the several Courts in Law and Equity have continued to pursue the wise course adopted only of late years, of giving every reasonable advantage to the meritorious inventor, as the Supplement to the Chapters respecting *the subject* of a Patent, and the correctness of *the specification* will clearly demonstrate.

Chap. II.

Of the Inventor (*b*).

No case raising the question—who is the first inventor? has occurred.

It is necessary to caution parties that the practice of taking out patents in the name of a British subject residing in England, because another British subject has communicated an invention to him by letter, has been carried to the extreme of the law, and that it is doubtful whether some patents so taken out could bear the test of a trial in a court of justice.

(*a*) See a report of that case by Charles Shearman, gent., of Gray's Inn.

(*b*) See p. 26 of The *Practical Treatise, 2nd Edition.*

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 subject of letters patent for inventions than that already given in the treatise.

The manufacture must be new (*b*).—It is essential to the validity of a Scotch patent, that the invention or improvement for which it is granted should be new in England as well as in Scotland.

Accordingly, evidence of the use of an invention in England previous to the date of a patent for it in Scotland is admissible, and is sufficient to make the patent void, as appeared in *Brown* v. *Annandale* (*c*), which was a case that came to the House of Lords on an appeal from the Courts in Scotland.

The question in that case originated in an application by the appellant to the Court of Session for an interdict or injunction against the use, by the respondents, of a certain apparatus or machinery in the manufacture of paper at their works at Polton, in the county of Mid-Lothian. The appellant's averment was, that he had invented certain improvements in the machinery for making paper, for which he had obtained letters patent; that the machinery so invented by him had not been known to or practised by others before the date of the

(*a*) See p. 35 of The Practical Treatise, 2nd Edition.

(*b*) Id. p. 40.

(*c*) 8 Clark & F. 437. The same rule applies to England, if the invention has been used either in Scotland or Ireland.

letters patent; and that the respondent, without his license or consent, had used and were continuing to use his said invention, or part thereof, to his serious injury and damage.

The respondents in their answers stated that the machinery employed by them was purchased by them of John Evans, paper manufacturer, of Birmingham, who obtained a patent for it in 1839; and that it was substantially different from that described in the appellant's specification; and even if it could be supposed that their machinery was the same with the machinery so described by the appellant, that his patent was invalid on several grounds; but more particularly, because his alleged invention or improvement were *not new*, having been known and publicly used both in England and in Scotland prior to the date of the patent (*a*).

Sir *F. Pollock*, the *Attorney General*, with *Andrews*, Q. C. appeared for the appellants, and *Fitzroy Kelly*, Q. C. with *Godson*, Q. C. for the respondents. It is unnecessary to set forth the arguments. The respondents relied upon the case of *Roebuck* v. *Stirling* (*b*).

The *Lord Chancellor Lyndhurst* said,—The words of the proviso are decisive, if they are justified by the

(*a*) 8 Clark & F.'s Rep. 437.

(*b*) Decided in the House of Lords in 1774, reported in 5 Brown's Sup. to Dic. of Decisions, 522. See also Lord Haile's Col. of Decisions, vol. 1, p. 566. The Lord Chancellor Lyndhurst, in the course of the arguments, said—"Mr. Attorney General has stated that several opinions have been taken upon this subject in England. When the case came before one judge, he decided it in the way in which we think he ought to have decided it. Then it afterwards went before the full Court, and they were unanimous in their judgment, corresponding with the previous decision of this House. And with respect to the previous decision of this House, we have searched the Journals, and we find that the Lord Chancellor was present, and not only the Lord Chancellor, but Lord Mansfield also.

statute. They are the same, I suppose, in English and Irish patents. Those words in the appellant's patent are: "Proviso semper, &c. dictam inventionem quoad publicum ejus, in illa parte regni nostri uniti, Scotia vocata, usum et exercitum non esse novam inventionem, vel a dicto Jacobo Brown ut prædicitur non esse inventam." The Crown can only grant a patent for what is new. The question is, where new? You have evidence of the construction of the act of James I. in a long course of usage, in the form of the proviso. It is a restrictive proviso, less than the act authorizes, if we hold that the act is to be so construed. It would be a monstrous thing if an invention, having full publicity in one part of the United Kingdom, could be made the subject of a patent in another part of it. There is a difficulty in applying the words *hæc regna* in the recital in the patent, to Scotland only. *Roebuck* v. *Stirling* is in point: as far as I am concerned, I feel myself bound by the decision of the House in that case: you cannot aver against the record as in the Journals.

Lord Brougham.—The case of *Roebuck* v. *Stirling* appears to me perfectly to decide this case. The Court of Session had dismissed the suit, because it appeared that the process in question was known to and practised by different persons in England. This House adjudged that the interlocutors complained of be affirmed "for other reasons, as well as the reasons specified therein." That implies that they concurred in the reasons thus given on the face of the interlocutor. What other reasons there may have been for the affirmance may be a question, but that reason was put forward by the Court below as the ground of its decision; and being so put forward, was, at all events, one of the reasons for the affirmance of the judgment, with other reasons not stated

by the House. I should have so decided without that precedent if it had been *res integra.*

Lord Campbell.—There is an express decision applying in its terms to the present case just as much as if other reasons had not been introduced into the judgment of the House. That being an express decision upon the point in question, unless it is shown that the House was under some great mistake at the time, it must be considered as binding. I entirely concur in the decision: I think it is perfectly right, and if it had been *res integra*, I should have so decided; but especially after that decision, I perfectly concur in the affirmance of the judgment of the Court below. My opinion is that the law was quite correctly laid down by this House in 1774.

The Manufacture must not have been used (*a*).—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." Those words have received a definite explanation by the Court in *Carpenter* v. *Smith*, (*b*) where they held that the "public use and exercise" of an invention which prevents it from being considered a novelty, is a use in public, so as to come to the knowledge of *others* than the inventor, as contradistinguished from the use of it by himself in private; and it does not mean a use by the public generally. Therefore where an improved lock, for which the plaintiff had a patent, had previously been used by an individual on a gate adjoining a public

(*a*) See p. 40 of The Practical Treatise, 2d Ed.

(*b*) 9 Meeson & Welsby's Rep. 300.

road, for several years; and several dozens of a similar lock had been made at Birmingham from a pattern received from America and sent abroad, it was held that that use constituted such a "public use and exercise" of the invention as to avoid the patent. In his judgment *Baron Alderson* observed, the case of *Lewis* v. *Marling* went to the very extreme point of the law. And *Lord Abinger* said—I was counsel in the cases of *Lewis* v. *Marling* and *Jones* v. *Pearce*, and I recollect that those cases proceeded on the ground of the former machines being in truth mere experiments which altogether failed.

This view of the law was confirmed in the House of Lords (*a*), when allusion was made to the cases of *Jones* v. *Pearce*, *Cornish* v. *Keene*, and *Carpenter* v. *Smith*, and the rule clearly established that the prior use of a thing invalidates a patent although that use may not take place at or about the time of taking out the patent. But their Lordships left undecided, whether the use of an invention which had been formerly used and abandoned many years ago, and the whole thing had been lost sight of, would invalidate a patent taken out for it.

The question of a prior use of an article was further illustrated in the case of *Kay* v. *Marshall* (*b*). A patent had been obtained for new and improved machinery for preparing and spinning flax, hemp, and other fibrous substances by power. The improvement as to the spinning, consisted in placing the retaining and drawing rollers nearer to each other (at the distance of

(*a*) The Househill Company, appellants *v.* Neilson and others, respondents, Webster's cases, 673. See the judgment of Lord Campbell, id. p. 716.

(*b*) 5 Bing. N. C. 592, and also 1 Beavan, 535, and in the House of Lords, 8 Clark & F.'s Rep. 245.

two and a half inches) than they had been ever used before in flax spinning; the shortening of the reach being rendered practicable by the maceration of the flax in the new machinery for preparing it. But spinning machines, varying in the distance of the reach according to the length of the fibre of the substance to be spun, had been in use before the patent was obtained. The House of Lords held that the part of the machinery for spinning was not a new invention, and that the patent was not valid in point of law.

Also that the House will not permit parties on appeal to raise objections which they did not raise in the Court below.

To Page 46, add *Morgan* v. *Seaward* is reported in 2 Meeson & W. Rep. 544.

Experiments (*a*).—That experiments may be made until the invention is complete, without interfering with the validity of a patent, is clearly deducible from the case of *The Househill Coal and Iron Company*, appellants v. *Neilson and others*, respondents in the House of Lords (*b*).

To Page 56. In the note of the case of *Walker* v. *Congreve*, Eq. July, 1816. The argument of Mr. *Leach* then at the Bar is given as if it were a judgment by him when Vice-Chancellor, which is an error.

As to a Method or Process (*c*).—In the treatise many arguments (*d*) were urged to prove that it is doubtful whether a *mere* method of making a thing, or a process,

(*a*) See p. 52 of The Practical Treatise, 2d Ed.
(*b*) Webster's Cases, p. 673.
(*c*) Page 84 of The Practical Treatise, 2d Ed.
(*d*) Id. from p. 84 to p. 91.

or a manner of operating, can be the subject of a patent. That doubt has been strengthened by the case of *Gibson* v. *Brand* (*a*), in which cause the patent was entitled "A new and improved process or manufacture of Silk, and Silk in combination with certain other Fibrous Substances," where the pleadings (the second and third issues) raised the question, whether the alleged invention was a new thing invented. The jury found specially—that the invention was not new, but an improved process, and not a new combination. The Court held that, upon those issues, the verdict should be entered for the defendant, and the Chief Justice *Tindal* said, "According to the plain meaning of these words, the jury appear to have found that there was no novelty in the plaintiff's alleged invention; that it contained no new combination, but that it was only an improvement in an old process; and the question is, whether, if this finding be supported by the evidence, the issue is found for the plaintiffs or the defendant; and it appears to me that it is found for the defendant, and that the verdict ought to be so entered accordingly.

In order to ascertain this point let us see what it is the patent is taken out for, and what the specification declares to be the nature of the discovery. The invention is said to be "a new or improved process or manufacture of silk, and silk in combination with certain other fibrous substances," and the nature of the invention is said to consist in eight different branches or parts of the process of spinning the silk. It appears, therefore, that the patent is taken out strictly and entirely for a process.

It is not necessary on this occasion to go into the

(*a*) 4 M. & G. 179.

question, whether or not a patent can be supported for a process only. If the specification were properly prepared, it *probably* might be considered a fit subject for a patent.

Now looking at the specification in this case, it appears to me that the patent cannot be supported in law, because the plaintiffs have *claimed more* than they are in fact entitled to. One cannot read the description of the invention, and the purposes for which it is intended, without understanding it to be *a claim of an improvement of certain machinery* to produce a certain desired effect.

I confess I feel it impossible to apply all this language otherwise than to a substantive claim to an invention of a new machine, or a new combination of the parts of an old machine: the jury, however, have, by their special finding, negatived both; and unless we could see from the evidence that they were decidedly wrong, the matter must rest there. I think, upon the finding of the jury, there is sufficient to entitle the defendant to have the verdict entered for him on both the second and third issues; and, upon the evidence, I see no reason to be dissatisfied with that finding."

Mr. *Justice Cresswell* said: "The patent right claimed in this case is undoubtedly of rather a singular character. It is not a claim in respect of any article produced—it is not a claim for any machine for the production of an article—it is not a claim for any particular ingredient—but it is a claim for a mere process.

There are dicta, but there is no distinct decision to be found in the books, that the omission of part of a previously known process may be the subject of a patent (*a*),

(*a*) See Russell *v.* Cowley, 1 C., M. & R. 864.

that is a point to which I shall be prepared to give my consideration when it arises, but it is not the present case.

I do not consider it necessary to go into the evidence in this case; no fault is found with the verdict, but each party claims to have the verdict entered for them upon the special finding of the jury. Now they have found that the subject of the patent is not a new invention, and that it is not a new combination, but that it is an improved process. Then the question is, have the plaintiffs claimed a new invention, or a new combination? For if they have, the jury have found that there was neither. The specification states that the subject of the patent is an "invention of a new and improved process or manufacture of silk, and silk in combination with certain other fibrous substances;" and the patentees then declare that the nature of their said invention consists in eight parts or heads, which are then set forth. And if there could be any doubt as to the intention of the patentees to claim all the eight parts, such doubt would be removed by the concluding passage of the specification, where they say, "We restrict our claims to the eight several heads of invention mentioned in the early part of this specification, all of which we believe to be new, and of great public utility."

Then, does it appear that the patentees claim any novelty of mechanism? I think it clear that they do. I have considerable doubt whether, under the sixth head mentioned in the specification, they mean to claim the throstle-machine on the principle of the long *ratch* as an invention, or merely the improved use of it; and if there were any question on the ambiguity of the specification, I should be disposed to think this difficult for the plain-

tiffs to get over. Under the seventh head the plaintiffs clearly claim certain improvements in the throstle-machine as their own; but the jury have said there was no new invention, and this is equally fatal to the plaintiffs, whether they claim a part only of the machine or the whole of it, as a new invention. If they mean to claim a new combination, the jury have found there was none.

But I think it clear that the plaintiffs intended to claim a novelty of mechanism. It is immaterial, therefore, to inquire what may be meant by the term, "improved process," for whatever it may mean, it does not relieve the plaintiffs from the difficulty they labour under of having claimed a new invention, which claim, in fact, is distinctly found against them."

The question—what is a new method?—was very fully answered in the case of *Crane* v. *Price* (*a*). In 1829 Neilson obtained a patent for the use of a hot air blast in furnaces. In 1837 Crane took out a patent for "an improvement in the manufacture of iron," which consisted in "the application of anthracite or stone coal, combined with a hot air blast in the smelting of iron." The hot air blast was used by Crane under a license from Neilson. The use of it with anthracite was new, and the iron produced in consequence was greater in yield, cheaper in cost, and better in quality than that produced by the ordinary method; and the Court held that such combination was a "a new manufacture."

The judgment of the Court of Common Pleas carries the doctrine to a farther limit than any other decision that has yet been made.

(*a*) 4 M. & G. 580.

The Lord Chief Justice *Tindal* said, "it was contended that the verdict ought to be entered for the defendants on the issues joined on the record; but as the main question between the parties turns on the third issue, which involves the question whether the invention of the plaintiff is a manufacture within the intent and meaning of the statute of James, that is, whether it is or is not the subject matter of a patent, and as the determination of this issue in favour of the one party or the other will render the decision as to the other issues simple and free from difficulty, we will apply ourselves, in the first instance, to that question.

Now, in order to determine whether the improvement described in the patent is or is not a manufacture within the statute, we must, in the first place, ascertain precisely what is the invention claimed by the plaintiff; and then, by the application of some principles admitted and acknowledged to govern the law relating to patents, and by the authority of decided cases, determine the question in dispute between the parties.

The plaintiff describes the subject of his invention to be, the application of anthracite or stone coal, combined with hot air blast in the smelting or manufacture of iron from iron stone, mine, or ore, and states distinctly and unequivocally at the end of his specification that he *does not claim the using of a hot air blast separately* as his invention when uncombined with the application of anthracite or stone coal; nor does he claim the application of anthracite or stone coal when uncombined with the use of hot air blast; but that what he claims for his invention is, the application of anthracite or

stone coal, and culm combined with the using of hot air blast in the smelting and manufacture of iron from iron stone, mine, or ore. And the question therefore becomes this, whether, admitting the use of the hot air blast to have been known before, in the manufacture of iron with bituminous coal, and the use of anthracite or stone coal to have been known before in the manufacture of iron with the cold blast, but that the combination of the two together, (the hot air blast and the anthracite), was not known before in the manufacture of iron, such combination can be the subject of a patent. We are of opinion, that if the result produced by such a combination is either a new article, or a better article, or a cheaper article to the public, than that produced before by the old method, such combination is an invention or a manufacture intended by the statute, and may well become the subject of a patent.

Such an assumed state of facts fall clearly within the principle exemplified by *Abbott*, C. J., in *The King* v. *Wheeler* (*a*), where he is determining what is and what is not the subject of a patent, viz. "It 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 or more expeditious manner, or of a better or a more useful kind." And it falls also within the doctrine laid down by Lord *Eldon* in *Hill* v. *Thompson* (*b*), viz., "There may be a valid patent for a new combination of materials previously in use for the same purpose, or for a new method of

(*a*) 2 B. & Ald. 350.

(*b*) 3 Merit 629.

applying such materials; but, in order to its being effectual, the specification must clearly express that it is in respect of such new combination or application."

There are numerous instances of patents which have been granted where the invention consisted in no more than the use of things already known, the acting with them in a manner already known, the producing effects already known, but producing those effects so as to be more economically or beneficially enjoyed by the public. It will be sufficient to refer to a few instances, in some of which the patents have failed on other grounds, but in none on the objection that the invention itself was not the subject of a patent. We would instance Hall's patent (*a*) for applying the flame of gas to singe off the superfluous fibres of lace, where the flame of oil had been used before for that purpose; Derosne's patent (*b*) in which the invention consisted in filtering the syrup of sugar through a filter, to act with animal charcoal and charcoal from bituminous substances where charcoal had been used before for the filtering of almost every liquid except the syrup of sugar; Hill's patent (*c*) above referred to, for improvements in the smelting and working of iron: there the invention consisted only in the use and application of the slags or cinders thrown off by the operation of smelting, which had been previously considered useless for the production of good and serviceable metal, by the admixture of mine rubbish. Again, Daniel's patent (*d*) was taken out for improvements in dressing woollen cloth, where the invention consisted

(*a*) Webster's Ca. 97.
(*b*) Derosne *v.* Fairie, Webster's Ca. 152.
(*c*) 3 Meriv. 629.
(*d*) Rex *v.* Daniel. Godson on Patents, 274.

in immersing a roll of cloth, manufactured in the usual manner, in hot water.

The only questions, therefore, to be considered with respect to the evidence are, was the iron produced by the combination of the hot air blast and the anthracite a better or cheaper article than was before produced from the combination of the hot air blast, and bituminous coal? And was the combination described in the specification new, as to the public use thereof in England? And upon the first point, upon looking at the evidence in the cause, we think that there is no doubt that in the result of the combination of the hot air blast with the anthracite or stone coal, the yield of the furnace was more, the nature, properties, and quality of the iron were better and the expense of making the iron was less, than under the former process, by means of the combination of the hot air blast with the bituminous coal. It is to be observed, that no evidence was produced on the part of the defendants to meet that given by the plaintiff on these points, and that it was a necessary consequence, from the proof in the cause, that from the substitution of the anthracite, in whole or in part, in the stead and place of bituminous coal, the manufacture of iron should be conducted at a less expense.

It was objected, in the course of the argument, that the quantity or degree of invention was so small that it could not become the subject of a patent—that the person who had procured a license to use the hot air blast under Neilson's patent, had a full right to subject to that blast, coal of any nature whatever, whether bituminous or stone coal. But we think, if it were necessary to consider the labour, pains and expense encountered by the plaintiff in bringing his discovery to perfection, that

there is evidence in this cause that the expense was considerable and the experiments numerous; but in point of law the labour of thought or experiment and the expenditure of money are not the essential grounds of consideration upon which the question whether the invention is or is not the subject matter of a patent, ought to depend, for if the invention be new and useful to the public, it is not material whether it is the result of long experiments and profound research, or whether of some sudden and lucky thought, or of mere accidental discovery. The case of *Monopolies* (*a*) states the law to be "that where a man by his own charge or industry, or by his own wit or invention brings a new trade into the realm, or any engine tending to the furtherance of a trade, that never was used before, and that for the good of the realm, the king may grant him a monopoly patent for a reasonable time." And if the combination now under consideration be, as we think it is, a manufacture within the statute of James the First, there was abundant evidence in the cause, that it had before the granting of the patent, been a great object or desideratum to smelt iron stone by the means of anthracite, and that it had not been done before; indeed no evidence was called on the part of the defendants to meet that which the plaintiff brought forward. These considerations, therefore, enable us to direct that the verdict shall be entered for the plaintiff upon the third issue,—that this was a manufacture, and a manufacture new as to the public use and exercise thereof, within England and Wales."

3. *Patent for a method, but the subject is something*

(*a*) Darcy *v.* Allein, 11 Co. Rep. 84; Noy, 178.

material (*a*).—So in *Neilson* v. *Harford* (*b*), the Court held, also, that in that specification the plaintiff did not claim a patent for a mere principle, but for a mode of applying a well known principle; viz. the application of heated air, by means of a mechanical apparatus, to fires and furnaces.

Chap. IV.

Of the Specification (*c*).

The several cases which have been decided in the Courts respecting that important Instrument—The Specification—will be introduced under the appropriate heads of the analysis to be found in the Treatise.

The Title (*d*).—Another illustration, of the difference between the *title* of the patent and the claim made in the specification, occurs in the case of *Gibson* v. *Brand* (*e*). The title of the patent was "a new and improved *process* or manufacture of silk, and silk in combination with certain other fibrous substances." The claim, after a description of the machinery used, was made in these words, "We restrict our claims to the eight several heads of invention mentioned in the early part of this

(*a*) See p. 91, of The Practical Treatise.
(*b*) 8 Meeson & Welsby's Rep. 806.
(*c*) See p. 106 of The Practical Treatise, 2nd Edition.
(*d*) Id. p. 108 to p. 117.
(*e*) 4 Manning & Granger's Rep. 170. See ante, p. 10.

specification, all of which we believe to be new, and of great public utility." The jury found that—"The invention was not new, but was an improved process, and not a new combination." The Court held "That the patent was taken out strictly and entirely for a process, whilst the claim was for an improvement of certain machinery, or combination thereof, to produce a certain desired effect" (*a*), and they held the patent to be invalid.

But in another case (*b*) the Court overruled an objection to the title as not being supported by the claim in the specification. The title of the patent was, "An invention for the *improved application of air* to produce heat in fires, forges, and furnaces, where bellows or other blowing apparatus are required."

The thing done was thus described in the specification, "A blast, or other current of air, must be produced by bellows or other blowing apparatus in the ordinary way; to which mode of producing the blast, or current of air, this patent is not intended to extend. The blast, or current of air, so produced is to be passed from the bellows, or blowing apparatus, into an air vessel or receptacle made sufficiently strong to endure the blast, and from that vessel or receptacle by means of a tube, pipe, or aperture, into the fire, forge, or furnace."

Mr. *Baron Parke*, in delivering the judgment of the Court, said—"We think that the plaintiff does not merely claim a principle, but a machine embodying a principle, and a very valuable one," and the patent was supported: for the invention of applying fires, &c., to air heated in the manner therein stated might well be described as an "improved application of air."

(*a*) See p. 200 and 202 of The Practical Treatise, 2nd Ed.
(*b*) Neilson & Others *v.* Harford & Others, 8 M. & W. 806.

General Rules (*a*).—But there must not be an error in the statement: for then it will not be sufficient that a competent workman could correct it in practice.

If a specification (*b*) contain an untrue statement in a material circumstance, of such a nature that, if literally acted upon by a *competent workman*, it would mislead him, and cause the experiment to fail, the specification is therefore bad, and the patent invalidated, although the jury, on the trial of an action for the infringement of the patent, find that a competent workman, acquainted with the subject, would not be misled by the error, but would correct it in practice.

Terms Ambiguous (*c*).—Upon an issue as to the sufficiency of the specification of a patent for a fuse for discharging mines, &c., as embracing in its centre, in a continuous line throughout, a small quantity of gunpowder, "or *other* proper combustible matter, prepared in the usual pyrotechnical manner of firework for the discharge of ordnance;" the Court held (*d*) that the sufficiency of the specification was for the jury; that its language was not to be astutely construed in order to defeat the patent: but that it lay on the party infringing to make out his objection clearly; and it was not sufficient to sustain the objection, that no other material than gunpowder had ever been used for such purposes, no ambiguity being thereby occasioned, nor the difficulty hereafter of constructing the instrument increased, by the import of the

(*a*) See p. 118 of The Practical Treatise, 2nd Ed. Neilson *v.* Harford, 8 Meeson & W. Rep. 806.

(*b*) Neilson *v.* Harford, 8 Meeson & W. 806.

(*c*) See p. 120 of the Practical Treatise, 2nd Ed.

(*d*) Beckford *v.* Skewes, 1 Gale & D. 736.

terms used, that the patentee had ever used such other combustible material than gunpowder in the use of his invention.

In the specification of a patent, the title of which was "An invention for the improved application of air to produce heat in fires, forges, and furnaces, where bellows or other blowing apparatus are required," the mode of operation was described as follows:—"A blast or current of air must be produced by bellows or other blowing apparatus, and is to be passed from the bellows, &c., into an air vessel or receptacle, made sufficiently strong to endure the blast, and from that vessel or receptacle, by means of a tube, pipe, or aperture into the fire, &c. The vessel or receptacle must be air-tight or nearly so, except the apertures for the admission and emission of air, and at the commencement and during the continuance of the blast, must be kept artificially heated to a considerable temperature." After giving directions as to the materials and dimensions of the vessel, the specification proceeded to state, "The form or shape of the vessel or receptacle is immaterial to the effect, and may be adapted to the local circumstances or situation." In other parts of the specification the same language was used with reference to the ultimate beneficial effect upon the furnace, &c. The Court held, that such was the reasonable construction of the above clause also, and not that the form or shape of the vessel was immaterial to the effect of heating the air within it.

This doctrine (*a*) respecting necessary descriptions is illustrated by a late case (*b*), in which it was held that

(*a*) See page 128 of The Practical Treatise, 2nd Ed.

(*b*) Macnamara *v.* Hulse and Others, 1 Car. & M. 471.

if a patent be taken out for blocks for paving with "stone *or any other suitable material*," it will include wood pavement, although no wood pavement was in actual use at the date of the patent, and although the inventor might not have had wood pavement in his contemplation.

Disclaimers (*a*).—The rules of practice, and the forms respecting them, will be found in the Appendix of the Practical Treatise. (*b*)

Chap. V.

Of the Practice of obtaining Letters Patent for Inventions.

This chapter is, in the Practical Treatise (*c*), divided into three sections.

Sect. I.

The method of taking out Patents for England, Scotland (*d*), Ireland and the Colonies.

The law under this section has continued unaltered,

(*a*) See page 165 of The Practical Treatise, 2nd Ed.

(*b*) Page 9.

(*c*) Page 168.

(*d*) In the case Brown *v.* Annandale, 8 Clark & F. p. 443, the laws respecting patents taken out in Scotland were thus observed upon.

but the power of the Master of the Rolls (*a*) to make any amendment after the patent is enrolled, has been explained.

When the specification has once been enrolled, the power of the Master of the Rolls to make amendments is very limited. He can order clerical errors to be rectified, but cannot alter any matter of substance. And therefore, where the letters patent for an invention and the enrolment contained the same error, it was held that the Master of the Rolls has no authority to order the enrolment to be amended until a corresponding amendment had been made in the letters patent, and they had been resealed.

The question thus arose. An application having been made to the Crown for the grant of a patent for an invention of machinery for covering fibrous substances, &c., and the Solicitor General having certified in favour of such grant, the invention was, by a mistake of the copying clerk in the Home Office, misdescribed in the Queen's warrant, by inserting the word "recovering" for the word "covering" and the error was adopted without being observed, in the Queen's bill, the privy seal bill, and the letters patent. After the letters patent had been enrolled, the error was discovered: and the patentee, having procured the Queen's warrant, the Queen's bill, and the privy seal to be duly amended by

Lord Campbell.—But it has been considered that the 6th Article of the Act of Union has made the law of Scotland the same as the law of England with respect to letters patent, and the rights under them.

Lord Brougham—Yes? English cases are cited in patent cases in the Courts of Scotland just as in England. Turner *v.* Winter, Boulton *v.* Bull, and all the leading cases are cited as law there as well as here.

(*a*) Page 177 of The Practical Treatise, 2nd Ed., note (*n*).

the proper officers of the Crown, presented a petition to the Master of the Rolls as keeper of the public records, praying that the enrolment might be made to accord with the privy seal as so amended. And the Master of the Rolls made an order accordingly. But upon an appeal to the Lord Chancellor by a party against whom the patentee had previously commenced an action, for the infringement of the patent, the Court held that the enrolment could on no account be allowed to represent what the letters patent did not contain; and the appeal petition was directed to stand over, with liberty to the patentee to make such application to the Lord Chancellor as he should be advised. An application was accordingly made for the amendment of the letters patent, but the Lord Chancellor refused to entertain it, unless upon the terms of the patentee's paying all the costs of the proceedings then pending against the party alléged to have infringed the patent, and undertaking not to commence any new proceedings for past infringements; which terms having been declined, a joint order was made by the Lord Chancellor and the Master of the Rolls, by which the previous order of the Master of the Rolls was discharged, and the enrolment, which had in the meantime been amended pursuant to that order, was directed to be restored to its original state (*a*).

But when under the 5 & 6 W. 4, c. 83 (*b*), a patentee had, by the authority of the Solicitor General, entered a memorandum of alteration of the enrolment of the specification, which it was alleged would thus extend the patent that infringed upon another patent granted

(*a*) In the matter of Nickel's Patent, 1 Turner & Phillips, 36, and 4 Beavan, 563.

(*b*) See The Practical Treatise, 2nd Ed., p. 165.

to the petitioner, the Master of the Rolls held that he had no jurisdiction to order such memorandum of alteration to be expunged (*a*).

Costs of caveat (*b*).—A party who had lodged an unsuccessful caveat against the granting of a patent was ordered to pay to the patentee the taxed costs occasioned by the caveat (*c*). It seems that such costs will be taxed upon the principle upon which costs in a cause are taxed as between party and party.

Section III.

Proceedings before the Judicial Committee of the Privy Council.

The rules, to be observed by the petitioner, when seeking for a confirmation of his patent, or for a prolongation of the time, are given in the Treatise (*d*), and cannot well be abridged. A doubt having arisen whether the advertisements should be put *three times* in the three London papers, it has been removed, and the advertisement appears only once in each of them. When the day mentioned in the advertisement for making the application to be heard is drawing near, a summons is issued by the clerk of the Privy Council to the petitioner, that he may apply on a day therein mentioned; which is either the day named in the advertisement, or some early day after it on which the Judicial Committee assemble. The petitioner's counsel makes a motion for a day to be fixed

(*a*) In re Sharp's patent ex parte Wordsworth, 3 Beavan's Rep. 245.

(*b*) See The Practical Treatise, p. 183.

(*c*) In the matter of Job Cutler's patent, 4 Myl. & C. 510.

(*d*) See p. 189 of The Practical Treatise, 2nd Edition. If the patentee has no residence nor factory in Britain, then the advertisements must be put in the newspapers of the places where the licences are used. Derosne's Patent enlarged, 20th May, 1844, MSS.

for hearing the petition. If no caveats have been entered there must be an interval of a week at least, but if caveats have been entered, then the petitioner must have sufficient time allowed, to enable him to give four weeks' notice to the persons who have entered the caveats.

After the day for hearing the petition has been fixed, a notice of it must be advertised in the *London Gazette* and in two London papers.

Since the publication in 1840 of the second edition of The Practical Treatise (*a*) many cases for the prolongation of the term of patents have been heard before the Privy Council. On several occasions the noble lords forming the Judicial Committee have stated the reasons for their decisions. The principles upon which judgments will in future be given may therefore now be pretty accurately ascertained.

1st. There must be great *merit* in the inventor: it will not be any objection that he has improved the subject: or that he is an importer, or alien residing abroad. (*b*)

2nd. There must be a great benefit conferred on the community: the grant is not a matter of course.

3rd. There must have been either an actual loss or very little profit made: but the expense and anxiety arising from litigation will be favourably considered.

4th. That the new patent will be granted to the assignee, or to the persons in whom the legal estate of the letters patent may be vested at the time of the application to the Privy Council (*c*).

(*a*) See p. 189, where there ought to have been a reference from the 2nd sub-division to p. 165 for the law respecting *disclaimers*, and to the Appendix, p. 9, for the rules of practice respecting them.

(*b*) Prolongation of Derosne's Patent, 20th May, 1844, MSS.

(*c*) Wright's Patent, Webster's cases, 561. But that power has been questioned; Russell *v.* Ledsam, Exch. 1844.

5th. The time(*a*) of the extension will depend upon all the circumstances of the case, and if it be granted to an assignee, he may be put under terms to do justice to the patentee or his family.

These principles upon which prolongations are granted were nearly all explained by *Lord Brougham* in the case of Whitehouse's patent (*b*), who said,—"Their Lordships having taken the whole of this matter into account, retain the opinion which they have had impressed upon their minds from the very beginning, that this is an invention of extraordinary merit, doing the greatest honour to the inventor, and conferring great benefit on the community; founded in this eminent merit, being not merely the application of a known principle embodying it in new machinery and applying it to practical purposes but involving the discovery of a new, curious, and most important principle, and at the same time applying that principle to a most important purpose.

"Their Lordships have on the same side of the question taken into account (which it is material to mention,) Mr. Russell's merit in patronizing the ingenious and deserving author of this invention, in expending money till he was enabled to complete this invention, and in liberally supplying the funds which were requisite for the purpose of carrying the invention into execution.

"On the other hand, their Lordships have taken into mature consideration (which they always do in such cases,) the profit made by the patentee, Mr. Russell standing in the situation of the inventor. They find,

(*a*) A Bill (May, 1844,) has been brought into the House of Lords by Lord Brougham to give power to the Judicial Committee to extend the time to 14 years, upon a petition referred to them by Her Majesty on the address of either House of Parliament.

(*b*) Id. p. 477.

that it is not a case as in claims of other inventions of great ingenuity, and certainly of great public benefit, of actual loss in some, and of very scanty, if any, profit realised in others, but that a considerable profit has been realised, and upon the whole, no loss. It is to be observed that that profit is not perhaps very much greater, if at all greater, than the ordinary profits on stock to that amount, employed without the privileges and extra profits of a monopoly. It is proper to consider that one great item of deduction from those profits also involves great pain and anxiety and suffering to the party, namely, the litigation to which he has been subjected, and which is generally found to be in proportion to the merit and the usefulness of a patent, namely, the temptation to infringe it, and to set at nought the right of the patentee, both in the Court of Chancery, when he applies for protection by injunction, and afterwards in a Court of Law, when he comes to claim compensation for damages; the temptation being, as I have stated, in proportion to the benefit of, and the demand for the invention. That is an item which has to a considerable degree attracted the attention of their Lordships in this profit and loss account, which has been laid before them in the course of these transactions.

"Taking the whole of the matter into consideration, the merits of the patentee, the merits of Mr. Russell, and the loss that has been sustained in the litigation, and setting against those, on the other hand, the profits which have been made, their Lordships are of opinion that the term ought to be extended, and upon due execution being given to the undertaking (*a*) which has

(*a*) An assignment to Mr. Russell was put in, containing a clause securing to Mr. Whitehouse an annuity of 300*l.*; it was suggested by

just been given on behalf of the inventor, that the term ought to be extended for the period of six years." Thus the term of letters patent for improvements in manufacturing gas tubes, was extended by the Judicial Committee under the 5 & 6 Wm. 4, c. 83, for six years on the ground of the great merit and utility of the invention and the inadequate remuneration occasioned in a great measure by the expense incurred by litigation which the assignee of the patent had been involved in for the protection of his patent rights. And also, inasmuch a meritorious inventor, being a mechanic, had assigned his interest to his master; the Judicial Committee, under the circumstances, made it a condition to their recommendation to the Crown to prolong the term of the patent, that the assignee of the patent should secure to the inventor an annuity during the period of the extension (*a*).

In the case of Jones's patent (*b*), *Lord Brougham* gave judgment as follows:—" It is perfectly true as has been stated not only upon this but upon former occasions, that these applications are anything rather than matters of course. This is a very extraordinary jurisdiction which has been conferred on the Judicial Committee by

one of their Lordships, that as the extension of the term would occasion considerable profits the inventor should have a larger annuity secured to him. Upon that suggestion the annuity was increased to 500*l.* during the existence of the patent. The securing this annuity was further recited as part of the consideration of the grant of the new letters patent to Russell; and then there was among other provisos, a proviso that the said new letters should be void if the said Russell should not secure the annuity to Whitehouse so long as the said new letters patent should last.

(*a*) See Re Russell in Whitehouse's Patent, 2 Moore's P. C. Rep. 496.

(*b*) Webster's Cases, p. 579.

the Legislature, and is to be exercised only on the most special grounds alleged and proved in reference to each case. Their Lordships are of opinion, that in this case the grounds are most decisive, and have been proved in a most satisfactory manner. From the nature of the invention, it appears to be hardly possible that, within the ordinary period of time, ten, twelve, or fourteen years, a remuneration could be expected. In this case it is clearly proved, not only that there was no remuneration, but that every year a very heavy loss has been sustained. Under these circumstances, their Lordships are of opinion, that unless they give the whole term of seven years, there is no reasonable chance of that loss being counteracted by the profit to the parties now in possession of the patent. Their Lordships are therefore of opinion, that in the circumstances of the case, and regard being had to the merits of the invention, and its usefulness to the public, the whole period of seven years' extension should be granted."

Respecting "further improvements," since the grant of the patent, *Lord Brougham* said, in *Galloway's case* (*a*), "Now it appears, that improvements were made in the float, such manifest improvements, that no person would after these ever think of persisting in using the invention as it originally stood, but would have recourse to the improvements. That, however, is no reason against the claim of the original inventor, it is only saying that his invention, though useful, has been capable of improvement, and its having been improved affords no reason for denying him an extension of the patent, if upon other grounds he has merit, and if

(*a*) Webster's Cases, 727.

upon other grounds he has been shown, not to have reaped a due benefit in proportion to that merit. If such an argument were to prevail, any improvement made by him upon the patent would at once take away the patentee's right to obtain under whatever circumstances he may come before this Court, a recommendation to have under the act of Parliament an enlargement of the term."

In Soames's case (*a*), the merit of an importer as contrasted with an inventor was discussed. *Lord Campbell* said, "I should say, sitting here, if it had been published in a foreign journal, considering whether the patent should be prolonged, I should be influenced by what I saw published in a foreign journal, without inquiring whether it was known in England: though when sitting in a Court of justice and considering the validity of the patent, I should require that it should be known in England."

In giving judgment in that case, *Lord Brougham* said,—"If this case were to be disposed of upon the ground which in arguing such cases has sometimes been assumed to be the fit one, that there must not only be merit and benefit to the public, and (which is essential) a want of sufficient remuneration in the course of using the patent, but that moreover the case is to be tried here as on a bill in Parliament introduced to prolong the patent; then, I apprehend, there can really be no doubt whatever that in this case no bill would ever have passed through the two Houses of Parliament; but their Lordships have always considered that it was with the view of affording a better remedy, not only cheaper and easier, but better in this respect, that there might be cases which never

(*a*) Webster's Cases, 733.

would have prevailed on the Legislature to make a new personal law prolonging a monopoly, which, nevertheless, might seem meritorious enough in respect of the individual, beneficial enough in respect of the public, and deficient enough in remuneration to justify interference, which, nevertheless, had they been presented in the form of a petition to Parliament, would have failed to procure an act."

Again he said,—"Nevertheless, they have been spirited and active persons in this matter, and the public has gained something from their spirit and activity, and from what they have expended; and their Lordships, under these circumstances, are of opinion that they will do well in giving the benefit of a very moderate extension of this patent right, but that moderate it must be, in respect of the circumstances which I have already stated—the very small step which was made, and the proportionate small benefit which the public may be said to have gained.

It is very fit their Lordships should guard against the inference being drawn, from the small amount of any step made in improvement, that they are disposed to undervalue that in importance; if a new process is invented, if new machinery is invented, if a new principle is found out and applied so as to become the subject of a patent right, embodied in a manufacture, then, however small it may be in advance of the state of science or of art previous to the period of that step being made, that is no reason whatever for undervaluing the merits of the person who makes a discovery in science, or an invention in art, because the whole history of science from the greatest discoveries down to the most unimportant, from the discovery of the system of gravi-

tation itself and the fractional calculus itself, down to the most trifling step that ever has been made, is one continued illustration of the slow progress by which the human mind makes its advance in discovery; it is hardly perceptible, so little has been made by any one step in advance of the former state of things, because generally you find that just before there was something very nearly the same thing discovered or invented.

In Morgan's case (*a*) *Lord Brougham* said: "When applications are made to their Lordships for the extension of a patent term, that is to say, of a monopoly, under letters patent, *by assignees*, to whom the interest of the patentee has been parted with, and in whom it is vested, their Lordships have always been used to consider that by taking into their view, and favourably listening to the application of the assignee, they are, though not directly, yet mediately and consequentially, as it were, giving a benefit to the inventor; because if the assignee is not remunerated at all it might be said that the chance of the patentee of making an advantageous conveyance to the assignee would be materially diminished, and consequently his interest damnified. For this reason consideration has been given to the claims of the assignee who has an interest in the patent."

And further he said (*b*): "Their Lordships do not consider that this invention is entirely without merit, but it seems of a very moderate degree, being the substitution of the chemical process of washing with sulphuric acid for the scaling process by fire; making a cheaper and somewhat better article. It is not without merit, at the

(*a*) Webster's cases, 737.
(*b*) Id. 738.

same time it cannot be said to be of very great merit—merit which could lead their Lordships to strain much in favour of the inventor.

"Their Lordships upon the whole are of opinion that if they were to grant an extension of the term in this case, either with a view to the inventor himself, or to his assignees mediately towards him, they hardly could ever resist any future application that might be made. It is anything rather than a matter of course that an application of this sort should be granted. Formerly it was most difficult to obtain an extension of a patent; an Act of Parliament was very seldom, indeed, obtained by an inventor, great as his merits might be, and small as his gains might have been. It is by no means the course of their Lordships—as has been frequently said, and by myself lately in giving the judgment of the Court in a recent case—it is by no means their course to put themselves precisely in the situation of the Legislature, and never to grant an extension in a case where an Act of Parliament could not have been obtained. At the same time there are some limits to this: they are to look to a certain degree at the position in which they are placed, and to consider that they here represent the Legislature, and that they are invested with somewhat similar powers of discretion to those exercised formerly by the whole three branches of Parliament; and therefore they by no means intend to have it understood (as has been repeatedly said in these cases) that it is anything like a matter of course, that upon a case being produced of small merit, and proportionably small consequence, especially in the circumstances of its being the assignee that makes the application, that it is anything

like a matter of course that they shall grant the application; and upon the whole their Lordships see no reason for granting this application for an extension."

The extension of a patent was granted pending a suit respecting the validity of the original letters patent (*a*). *Lord Brougham* observed, if the Judicial Committee could see that the patent upon the face of it was manifestly and grossly illegal, they would not advise her Majesty to grant an extension of it; though such extension would not benefit the party obtaining it, if the patent in the first instance was invalid; but that if they postponed giving their decision until the result of the suits then pending were known, the patent would in the meantime expire, and being of opinion, that upon the merits shown the patentee ought to have some extension, their Lordships would advise such for the period of three years (*b*).

The extension of a patent was granted to a foreigner who had no residence in Britain (*c*).

The *Solicitor General* and *Godson*, Q. C., applied for an extension for the patent granted to Derosne, a Frenchman, residing at Paris. It was objected by *Waddington*, for the Crown, that the 5 & 6 Wm. 4, c. 83, had not provided for such cases, as he could not give the notices required to be published in the newspapers circulated where he resided or where he carried on his business. It appeared in evidence that the invention was carried

(*a*) Re Kay's Patent, 3 Moore, P. C. Rep. 24.

(*b*) The Patent was ultimately determined not to be valid on the ground that the invention was not new. See 1 Beavan, 535, and 8 C. & F. 245.

(*c*) Derosne's Patent, May, 1844.

on under licenses in London, Liverpool, Bristol, Hull, &c. Their Lordships decided, that notices in the newspapers of all those places were sufficient and granted the extension.

Practice respecting hearing of Counsel where several Parties enter Caveats.—*Lord Brougham* observed that the rule respecting the number of counsel entitled to be heard being the same there as in the House of Lords, viz. two only on either side, two counsel only would be heard to oppose the petition, unless the parties had independent and distinct grounds of opposition founded on separate and independent interests (*a*).

The extra costs of applying for the new patent will sometimes be ordered to be paid by the person opposing, if it appear that his opposition be frivolous or vexatious (*b*), and on the other hand, they will be given to an objector if he has been improperly compelled to come before the Privy Council to protect his rights (*c*).

Confirmation of Patents (*d*).—The Judicial Committee has seldom been called on to exercise their powers under the second section of 5 & 6 Wm. 4, c. 83, to confirm a patent: but they refused to confirm one where it appeared that the invention had been published many years before the patent in a well-known book, and had also been made the subject of a prior patent (*e*).

(*a*) In re Woodcroft's Patent, 3 Moore, P. C. Rep. 172.

(*b*) Re Downton, Webster's Cases, 565.

(*c*) Re Mackinstosh, id. 739.

(*d*) See p. 190 of The Original Treatise, 2d Ed.

(*e*) Westrupp and Gibbin's Patent, Webster's Cases, 554.

The applications to the Privy Council for prolongation have been very numerous and generally successful (*a*).

(*a*) The following is a list of the principal patents brought before the Privy Council under 5 & 6 Wm. 4, c. 83, s. 2.

Heurteloup's Patent.	March, 1836	Confirmed.
Westrup and Gibbin's Patent.	March, 1836	Not confirmed, Petition dismissed with costs.

Under sect. 4.

Erard's Patent -	1835	An extension for 7 years.
Bate's Patent -	1836	Do. for
Swaine's Patent -	1837	Do. for 7 years.
Southworth's Patent, ex parte Haworth, assignee	1837	Do. for 5 years.
Wright's Patent, ex parte Shuttleworth -	1837	Do. for 5 years.
Macintosh's Patent -	1837	Abandoned. Costs of opposition allowed.
Stafford's Patent -	1838	An extension for 7 years.
Bodmer's Patent -	1838	Do. for 7 years.
Whitehouse's Patent, ex parte Russell -	1838	Do. for 6 years.
Kollman's Patent -	1839	Do. for 7 years.
Roberts's Patent -	1839	Do. for 7 years.
Wright's Patent -	1839	An extension for 7 years.
Downton's Patent, administratrix -	1839	Do. for 5 years. Extra costs to be paid by the opposition.
Kay's Patent -	1839	Do. for 3 years.
Quarrill's Patent -	1840	Refused.
Jones's Patent, ex parte Riddle and Piper	1840	An extension for 7 years.
Woodcroft's Patent -	1841	Refused.
Simister's Patent -	1842	Do.
Galloway's Patent to assignee	1843	An extension for 5 years.
Soames's Patent to assignees	1843	Do. for 3 years.
Morgan's Patent -	1843	Refused.
Wright's Patent -	1843	An extension for 7 years.
Derosne's Patent -	1844	An extension for 6 years.

Chap. VI.

Of the Construction of Letters Patent (*a*).

The construction of the specification of a patent belongs to the Court and not to the jury (*b*).

Chap. VII.

Of the Property in an Invention (*c*).

The effect of an Assignment generally (*d*) has been stated and the consequence to the inventor, if his patent should afterwards be discovered to be invalid (*e*). But there are many cases in which it would be contrary to good faith to permit an assignee to set up the invalidity of the patent as an excuse for not performing a contract into which he had entered.

Thus, where Neilson had obtained a patent for the application of the principle of smelting iron by the use of heated air applied to furnaces, Baird obtained a license from him to use this process, on the payment

(*a*) See p. 202 of The Practical Treatise, 2d Ed.

(*b*) Neilson *v.* Harford, 8 M. & W. 806.

(*c*) See p. 211 of The Practical Treatise, 2d Ed.

(*d*) Id. 215.

(*e*) See Chanter *v.* Leese, 4 M. & W. 295, and 5 id. 698, which was principally decided on a point of pleading, post, 44; but the Court also held in an action by a patentee, on an agreement to recover a payment for the use of a patent right, the party might plead that it was not at the time of the grant, a new invention.

of one shilling per ton on the iron thus smelted. Disputes, and then litigation arose between them, and it was agreed, by an instrument in writing, dated 11th of November, 1833 (which recited the previous circumstances) that both parties should withdraw their law processes; and that,—"in consideration of the present payment of 400*l.* to be accepted by Neilson in full of one shilling per ton on the whole iron smelted from the erection of Baird's works up to the 11th day of November current, and in consideration of the payment of one shilling per ton upon the whole iron which shall be smelted from the 11th of November current, till the expiring of the letters patent, by the use of heated air in any of the modes heretofore applied, or in any other mode falling under the said patent." Neilson should grant to Baird a license, which, further on in the agreement, was described to relate to "the application or use of heated air in any of the modes heretofore practised at Baird's works, or in any other mode falling under the description in the said patent, or in the specification thereof." Afterwards, Neilson instituted a suit to compel Baird to perform this agreement, but he instituted a cross suit to suspend Neilson's proceedings, on the ground, that the process of smelting by heated air, used at his works, did not fall within the patent. The House of Lords held, affirming the decree of the Court of Session, that, after this agreement, Baird could not set up such a defence to the claim of Neilson (*a*).

Licenses to use the Patent (*b*).—The question respect-

(*a*) Baird and others *v.* Neilson and others, 8 Clarke & F.'s Rep. 726.
(*b*) See p. 225 of The Practical Treatise, 2d Ed.

ing licenses has been fully discussed, and the extent to which they can be made, has been clearly settled.

The grant of an exclusive license to use a patent does not invalidate the patent itself, although the patent may be vested in twelve persons; and it is wholly immaterial to its validity, in what number of persons such a license is vested, whether exclusive or not. The license would not be invalid if the district covered by the license included the extent of the patent (*a*).

The circumstances of that case were thus stated in a case (*b*) sent to the Court of Exchequer. Before the month of July, 1839, and at the time of granting the license, the letters patent became and were vested in twelve several persons, partners, dividing or entitled in their own rights respectively, and not by representation, to divide the benefits or profits obtained by reason of the letters patent. On the 1st of July, 1839, the twelve patentees or persons in whom the letters patent were so vested, signed and executed an instrument in writing, whereby, after reciting that they had agreed with Samuel Guppy and Philip Protheroe to grant unto them an exclusive license for the use and exercise of the invention within the city of Bristol, and at such other place or places within thirty-five miles therefrom, as were described on the map with a compass, having Bristol for its centre, as they should think proper: *they had so granted it.* Under that license, Protheroe and Guppy used and exercised the patent invention within the city of Bristol and such other places within thirty-five miles thereof as they thought fit, and they assigned the license

(*a*) Protheroe *v.* May, 5 Meeson & W. 675.
(*b*) Id. 678.

and the benefit thereof to or in trust for a company or copartnership consisting of more than twelve persons who are now using and exercising the same, and have duly paid the rents made payable by virtue of the said license. And on the 2d of July, 1839, the twelve patentees or persons in whom the letters patent were so vested, gave and granted twelve other similar exclusive licenses to use and exercise the patent right and invention in twelve several districts other than the said city of Bristol, and places within thirty-five miles thereof, of which said twelve licenses eleven were granted severally to eleven individuals (that is to say, each to one distinct person), and the twelfth was granted to a certain partnership, consisting of thirteen persons.

The districts covered by the licenses are parts of England only—they do not comprise the whole of England.

The Court returned the following certificate (*a*).

"We have heard this case argued by counsel, and considered the same, and are of opinion:—

"*First*, That the grant of the first-mentioned exclusive license to the said Philip Protheroe and Samuel Guppy, did not invalidate the letters patent.

"*Second*, That the assignment to and vesting of the said first-mentioned license in the said partnership of more than twelve persons, did not invalidate the letters patent.

"*Third*, That the grant of the said twelve last-mentioned exclusive licenses, nor any of them, did not invalidate the said letters patent.

"*Fourth*, That if all the grantees of all the licenses were to coalesce and become jointly interested in such

(*a*) Protheroe *v.* May, 5 M. & W. 687.

licenses, the letters patent would not be thereby invalidated.

"*Fifth*, That the letters patent would not be invalidated, if the districts covered by the licenses had included the whole of England, Wales, and Berwick-upon-Tweed.

"*Sixth*, That they would not have been so, if such districts had included the whole of England, Wales, Berwick-upon-Tweed, and the Colonies."

Chap. VIII.

Of the infringement of a Patent, and the remedies for that Injury.

What amounts to an Infringement (*a*).—In an action on the case (*b*) for infringing a patent for a new and improved process or manufacture of silk, the infringement alleged in the declaration was, that the defendant had, directly and indirectly, made, used, and put in practice the said invention and counterfeited the same. The Court held, that the allegation was supported by proof that the defendant had ordered silk to be manufactured by certain parties by the plaintiff's process and had afterwards received and sold the same.

The case of *Manton* v. *Manton* (*c*) was confirmed by the case of *Gillett* v. *Wilby* (*d*), that the infringement

(*a*) See p. 230 of The Practical Treatise, 2d Ed.
(*b*) Gibson and another *v.* Brand, 4 Manning & G. 179.
(*c*) Practical Treatise, 2d Ed. p. 231.
(*d*) 9 Car. & P. 334.

may be of a part only of the invention; that was an action for the infringement of a patent for certain improvements in a cabriolet. The general issue, with other pleas as to want of novelty, was pleaded, and the Court held that although all the improvements claimed must be shewn to be new, yet it need not be proved that the defendant's cabriolet was an imitation of the whole of them, but an imitation of one was sufficient to maintain the action.

The remedy at Common Law—The Pleadings (*a*).—The proper parties to the suit will be those who have the interest in the patent.

By an agreement not under seal, between the plaintiff and A., B., and C. of the one part, and the defendant of the other part, reciting that the plaintiff had obtained a patent for an improvement in furnaces and was solely interested in another patent invention that the plaintiff and A. had obtained a patent for another invention, the plaintiff and B. for another, and the plaintiff and C. for another, it was agreed between the said parties that for the considerations therein mentioned, it should be lawful for the defendants exclusively to use, manufacture, and sell, any or all of the said patent inventions within certain limits, during the continuance of the several patents on certain terms; viz. that an office and warehouse should be prepared for the sale of articles connected with the inventions, and that books of account of the sale of each of the inventions should be kept there by the defendants and be open at all times to the inspec-

(*a*) See p. 237 of The Practical Treatise, 2d Ed. The patentee and assignee cannot join in an action, unless they have a joint interest, and it must so appear on the pleadings.

tion of the parties thereto of the first part; and the defendants should pay to the plaintiff 400*l.* a-year as a consideration for the license for the sale, &c. of all the aforesaid patents, and that such sum should be charged as a payment by the defendants in their books of account, that they should pay A. a certain rateable sum on all machines used, &c. on his patent principle, that they should also pay the plaintiff a moiety of the net profit to arise from all the said inventions (except those in which B. and C. were interested) to the plaintiff, and B. two-thirds of the net profits to arise from theirs, and it was agreed that either of the parties might determine the agreement at the end of five, seven, or ten years. In an action on that agreement by the plaintiff *alone*, to recover a half-yearly payment of the 400*l.*, the defendants set out the plaintiff's patent for the improvement in furnaces, and pleaded, that it was not at the time of the grant a new invention as to the public use thereof in England, whereby the grant was void, which the plaintiff, at the time of the making the agreement well knew. The Court held on error, that the declaration was bad on the ground of variance, inasmuch as it stated the agreement to be made between the plaintiff and the defendants, whereas there were other parties to it of the first part beside the plaintiff, from whom the consideration for the defendants' promise moved as well as from the plaintiff; and they intimated that the action ought to have been jointly brought by all the parties to the agreement of the first part (*a*).

Again in another case (*b*). Where, in a declaration

(*a*) Chanter *v.* Leese, 5 Meeson & Welsby, 698. See this case for judgment below in 4 M. & W. 295. See the same case, ante, p. 38, on another point. (*b*) Galloway & Others *v.* Bleaden, 1 M. & G. 247.

the defendant was described as the secretary of a public company, and a cause of action against the company was set forth, the Court, after verdict for the plaintiff, refused to allow an amendment in the declaration by inserting—that the company were trading under letters patent of Her Majesty, empowering them to sue and be sued in the name of one of the two public officers to be appointed by them for that purpose, and that the defendant was one of such officers duly appointed to sue and be sued for and on behalf of the company, and duly registered as such officer, pursuant to 7 Wm. 4, and 1 Vict. c. 73, except upon the terms of the plaintiffs' paying the costs of the motion, and of a motion in arrest of judgment, and of foregoing the costs of the trial.

The Venue (*a*).—Formerly the actions for infringement of patents were always brought in the county of Middlesex: but occasionally the venue was afterwards laid in London, and now it is not uncommon for the venue to be placed in the country by the usual consent of the parties under a judge's order.

Pleas, &c. (*b*).—In an action for an infringement of a patent, a plea that the invention is not a new manufacture within the 21 Jac. 1, c. 3, involves the question, not only whether the alleged patent is new, but also whether it is a manufacture within the meaning of the statute (*c*).

In an action for infringing the plaintiff's patent a plea

(*a*) See p. 238 of The Practical Treatise, 2nd Edition.
(*b*) See p. 236 of The Practical Treatise, 2nd Edition.
(*c*) Walton *v* Bateman, 3 M. & G. 773.

founded on the sixth clause of 21 Jac. 1, c. 3, that the said invention "*was not*" at the time of making the patent "a new manufacture within this realm within the true intent and meaning of the act" was held by the Court to be bad for *ambiguity* (*a*).

A plea in an action on the case (*b*) for infringing a patent set out the specification *in hæc verba*, and alleged that the plaintiffs did not inrol any instrument other than that set out, and that such instrument did not particularly describe the nature of the invention. The jury having found a verdict for the plaintiffs upon their traverse of this plea, the Court held that the judgment could not be arrested upon the ground of the specification being otherwise defective.

The Statement of Objections under 5 *&* 6 *Wm.* 4, c. 83 (*c*).—If the notice of objections delivered by a defendant with his pleas in an action for the infringement of a patent be not sufficiently specific, the plaintiff's course is to apply to a judge at Chambers for an order for the delivery of a more specific notice; but if he omit to do so, he cannot object to the generality of the notice at the trial; the only question then is, whether the notice is sufficiently large to include the objections relied on by the defendant (*d*).

A particular of objections delivered by the defendant in an action for infringing a patent right, must be precise and definite. It is not sufficient to say that the improve-

(*a*) Spilsbury and another *v.* Clough and another, 2 Q. B. Rep. 466.
(*b*) Gibson and another *v.* Brand, 4 M. & G. 179.
(*c*) See page 239 of The Practical Treatise, 2nd Ed.
(*d*) Neilson and others *v.* Harford and others, 8 M. & W. 806.

ments, or some of them, have been used before; the defendant should point out which have been used. (*a*)

To a declaration for the infringement of a patent, the defendant pleaded, that the nature of the invention, and the manner in which it was performed, were not particularly described in the specification, and also that the invention was not new; and the objections delivered with the pleas under 5 & 6 Wm. 4, c. 83, s. 5, stated first, that the specification did not sufficiently describe the nature of the invention, and the manner in which it was to be performed; and secondly, that the invention was not new, and had been wholly or in part used and made public before the obtaining of the letters patent. The Court held, that the first of these objections was sufficient; but that the second was bad, and ought to have pointed out what portions of the alleged invention were previously in use (*b*).

As to the evidence.—It seems, that if an invention for which a patent is granted would, if put into practice, be useful, an action for the infringement of the patent may be maintained, although the plaintiff's invention has never been put into actual use, except by the defendant, when he infringed the patent (*c*). In that case which was an action for infringing a patent for blocks for pavement, the plaintiff claimed as his invention that his block was bevilled both inwards and outwards on the same side of the block, and it was alleged that

(*a*) Fisher *v.* Dewick, 4 Bing. New Cases, 706; 6 Scott, 587; 6 Dowl. Prac. Cases, 739.

(*b*) Heath *v.* Unwin, 10 M. & W. 684.

(*c*) Macnamara *v.* Hulse, 1 C. & M. 471. The objections must not go beyond the pleas.

the defendants' blocks were an imitation of the plaintiff's, for two of the defendants' blocks were equivalent to one of the plaintiff's, the Court held that it was for the jury to say whether the defendants' blocks were in effect the same as the plaintiff's, although no single block of the defendants' was bevilled both inwards and outwards on the same side.

To a declaration for the infringement of the plaintiff's patent "for certain improvements in cards for carding wool, cotton, &c., and for raising the pile of woollen and other cloths," the defendants, in their third plea, alleged that the invention was not new at the time of the granting of the patent; and the fourth plea, after setting out the plaintiff's specification in *hæc verba* (wherein it was stated that the improvement was applicable to sheet-cards and top cards) averred that such cards were ordinary cards at the time of the patent, and also that the plaintiff's invention was unfitted and useless for the purpose of such cards. Notices of objections, corresponding with the allegations in the pleas, were delivered in by the defendants, but none that pointed to the unfitness of the invention to form the subject of a patent (*a*).

At the trial, the judge in summing up left the points to the jury in the terms of the several issues, but gave no opinion as to the validity of the patent. He was then requested by the defendants' counsel to put two other questions to the jury, which were not distinctly raised by the issues, but he refused to do so. The Court held, first, that this refusal was proper. Secondly, that upon the issues (taking into consideration the notices of objections) the judge would not have been warranted in

(*a*) Walton *v.* Potter, 3 M. & G. 411.

giving any opinion as to the validity of the patent, in respect of the fitness of the invention to form the subject of a patent. Thirdly, that the statement of the specification in the fourth plea being merely matter of inducement, it could not be taken advantage of in arrest of judgment, upon the ground that the invention therein described was not the fit subject of a patent (*a*).

Costs (*b*).—Under the statute of 3 & 4 Vict. c. 24, s. 2, if the damages recovered be under 40*s*., it is necessary for the judge to certify at the time of the trial, in order to give the plaintiff his costs in an action on a patent (*c*).

By the third section of 5 & 6 Wm. 4, c. 83, *treble costs* were, under certain circumstances, given to the plaintiff. By the 5 & 6 Vict. c. 97, s. 2, it is enacted, in all cases in which treble costs were given, that a full and reasonable indemnity as to all costs, charges and expenses incurred in and about any action, suit, or other legal proceeding, shall be awarded in lieu of such treble costs.

The Certificate of the Judge (*d*).—The certificate given by a Judge under the Act, 5 & 6 Wm. 4, c. 83, s. 5, should be, as to the determination of each objection, of which notice has been given, and not as to the issues. (*e*)

(*a*) Semble, that the proper way to have raised that question would have been to aver that the alleged invention, as set out in the specification, was not a new manufacture, within the meaning of 21 Jac. 1, c. 3.

(*b*) See p. 247 of The Practical Treatise, 2nd Ed.

(*c*) Gillett *v.* Green, 7 M. & W. 347.

(*d*) See p. 249 of The Practical Treatise, 2nd Ed.

(*e*) Losh *v.* Hague, 5 M. & W. 387.

It was also held, that the validity of the patent might be considered as having come in question under the plea —that the alleged improvements were not new—so as to entitle the plaintiff to a certificate to that effect under the statute (*a*).

As to Injunctions in Equity (*b*).—The following decisions have been made respecting Injunctions :—

Although a patent is of long standing, yet if from the nature of the alleged invention, or the conflicting evidence, as to its novelty or its validity, appears to be doubtful; or if the evidence of exclusive possession be not satisfactory, the Court will not grant an injunction until the title has been established at law. After the patentee had obtained a verdict in an action brought to try the validity of the patent, the Court refused to grant an injunction to restrain the infringement of the patent on the ground that a rule nisi for a new trial had been obtained, and was pending in the court of law, and that the legal title of the patentee was therefore still undecided (*c*).

In August 1835 (*d*), a patentee filed a bill to restrain an alleged infringement of his patent, and the defendant having by his answer denied the validity of the patent, and also the fact of the alleged infringement, the plaintiff made no interlocutory application for an injunction, but went into evidence in support of his case, and in May, 1839, brought the cause to a hearing. The Master of the Rolls, being of opinion that the plaintiff upon the evidence had not made out a case which would have

(*a*) Gillett & Another *v.* Willby, 9 Carr. & P. 334.
(*b*) See p. 253 of The Practical Treatise, 2nd Ed.
(*c*) Collard *v.* Allison, 4 M. & C. 487.
(*d*) Bacon *v.* Jones, 4 M. & C. 433; and see same case, 1 Beavan, 382.

supported an injunction if applied for in the interlocutory stage, refused to give him an opportunity of establishing his title at law by retaining the bill, with liberty to bring an action, and dismissed the bill with costs; and the Lord Chancellor, on appeal, affirmed this decision.

Where the Court interferes by interlocutory injunction between parties at issue upon a legal right, it will accompany the injunction with a provision for putting the question immediately in a course of legal investigation (*a*).

Where an injunction has been granted, on an undertaking to try the right by action has been given, it must be brought and prosecuted promptly and diligently, or the Court will remove the injunction, unless the defendant has himself been supine in the cause (*b*).

The Decree.—For the practical difficulties in working out a decree, see *Crossley* v. *The Derby Gas Light Company* (*c*).

Chap. IX.

Of Letters Patent when Void, and the Manner of having them Cancelled.

What renders a Patent void (*d*).—In a late case it was attempted to raise the question that a patent was void

(*a*) Harman *v.* Jones, 1 Cr. & P. 299.
(*b*) Beckford *v.* Skewes, 4 Mynle & Cr. 498.
(*c*) 3 Mylne & C. 428.
(*d*) See p. 262 of The Practical Treatise, 2nd Edition.

because it created a monopoly, and was generally inconvenient, but it was not supported (*a*).

Proceedings by Scire Facias to Repeal a Patent (*b*).—These proceedings originate in the Petty Bag Office, but the writ is not granted as a matter of course (*c*), and the first step taken is to give instructions for the draft of the writ, which, having been settled by the counsel for the prosecution, is to be taken to the Attorney-General, who, thereupon grants his fiat, upon the prosecutor and two sureties entering into a bond of 1000*l.* conditioned to pay the defendant his *costs*, taxed as between attorney and client, if the verdict be given against the Crown.

List of Objections (*d*).—By the 5 & 6 Wm. 4, c. 83, the list of objections to be taken must be delivered by the prosecutor under a scire facias, as, by the defendant in an action for an infringement. Those objections must not go beyond the declaration (*e*).

In the case of a *scire facias* (*f*) to repeal a patent, the prosecutor having, while the record was in Chancery, filed notice of objections, under stat. 5 & 6 Wm. 4, c. 83, s. 5, namely, that other persons than the patentee had used the invention in England before the grant of the patent, the Court of Queen's Bench refused, on motion after the proceedings were before them, to order

(*a*) Gillett *v.* Wilby, 9 Carr. & P. 334.
(*b*) See p. 269 of The Practical Treatise, 2nd Edition.
(*c*) The Queen *v.* Neilson, Webster's Cases, 665.
(*d*) See p. 271 of The Practical Treatise, 2nd Ed.
(*e*) 1 Carr & M. 471. In an action, ante, p. 47.
(*f*) The Queen *v.* Walton, 2 Q. B. Rep. 969.

the delivery of a further particular stating the names and addresses of such persons.

Plea.—The expression—General Issue—in the Treatise has been misunderstood. It means that the allegations in the writ, if more than one, are met by general denials of the truth of each of them. The pleas, in fact, traverse severally each affirmation of the prosecutor (*a*), and are a series of general issues.

Costs of suit by scire facias.—Formerly no costs were paid, or received under a *scire facias*, but now a bond is entered into by the prosecutor to pay the costs of the defendant.

(*a*) See the Pleas in Rex *v.* Arkwright, printed case, p. 10.

SUPPLEMENT

TO COPYRIGHT.

CHAP. I.

OF COPYRIGHT IN GENERAL (*a*).

THE laws respecting the different kinds of copyright have undergone much alteration, and in every instance for the better, since the publication of the second edition of The Practical Treatise.

In the 5 & 6 Vict. c. 45, commonly called *Mr. Serjt. Talfourd's Copyright Act*, the term COPYRIGHT is defined to mean—the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the word is applied in that act.

The whole subject may now be divided as follows :

I. The Copyright Amendment Act (*b*).
II. The Dramatic Literary Property Act (*c*).
III. The Engraving Copyright Acts (*d*).
IV. The Sculpture Copyright Acts (*e*).
V. The Designs Copyright Acts (*f*).
VI. The International Copyright Acts (*g*).

(*a*) See p. 305 of The Practical Treatise, 2nd Ed.

(*b*) 5 & 6 Vict. c. 45, repealing 8 Anne, c. 19 ; 41 Geo. 3, c. 107, and 54 Geo. 3, c. 156.

(*c*) See 3 & 4 Wm. 4, c. 15, and sections 20, 21, and 22 of 5 & 6 Vict. c. 45.

(*d*) 8 Geo. 2, c. 13 ; 7 Geo. 3, c. 38 ; 17 Geo. 3, c. 57, and 6 & 7 Wm. 4, c. 59.

(*e*) 38 Geo. 3, c. 71, and 54 Geo. 3, c. 56.

(*f*) 5 & 6 Vict. c. 100, and 6 & 7 Vict. c. 65.

(*g*) 7 Vict. c. 12, repealing 1 & 2 Vict. c. 59.

The alterations are so numerous that a comprehensive view of the law of copyright will best be taken in a tabular form, of the different *terms* of copyright as they now exist.

	TERM OF COPYRIGHT.
I. BOOKS (5 & 6 Vict. c. 45. *including in that word* MAPS, CHARTS, AND PLANS):	
Of which the copyright belongs to the Crown	PERPETUAL.
Of which the copyright is given or bequeathed to the Universities of Oxford or Cambridge, the colleges within them; to the four Universities in Scotland; to Trinity College, Dublin; or to the Colleges of Eton, Westminster, or Winchester	PERPETUAL, while printed at their own presses, if the term be not limited in the donation.
In manuscript	PERPETUAL.
Published after the passing of the 5 & 6 Vict. c. 45, the 1st July, 1842.	*If published in the author's lifetime,* THE AUTHOR'S LIFE AND 7 YEARS AFTER HIS DEATH; OR 42 YEARS FROM THE TIME OF FIRST PUBLICATION. *If published after the author's death,* 42 YEARS FROM THE TIME OF FIRST PUBLICATION.
Published before the passing of the 5 & 6 V. c. 45, the 1st July, 1842, and having at that time subsisting copyright; provided that that copyright belong to the author or his representative, or have been transferred in consideration of natural love and affection; or, in case of any other kind of transfer, there be an agreement between the author or his representative and the actual proprietor to accept the benefits given by the 5 & 6 Vict. c. 45.	Ditto.

	Term of Copyright.
Books:	
Published before the passing of the 5 & 6 Vict. c. 45, the 1st July, 1842, and having at that time subsisting copyright; *in any other case than those above mentioned.*	The author's life, or 28 years from the time of first publication.
Published by license of the Privy Council, pursuant to the 5 & 6 Vict. c. 45, s. 5.	According to the conditions of the license.
Articles in Encyclopædias.	*If published in the author's lifetime,* the author's life, and 7 years after his death; or 42 years from the time of first publication. *If published after the author's death,* 42 years from the time of first publication.
Articles in Reviews, and periodicals to be published thercin.	Ditto; with this proviso, that after 28 years from the time of their first publication in the review or periodical, the author may publish them in a separate form.
II. Dramatic Pieces and Musical Compositions, right to the representation or performance of:	
While in manuscript.	Perpetual.
When published.	The author's life, and 7 years after his death; or 42 years from the time of first representation or performance.
III. Engravings and Prints.	28 years from the time of first publication.
IV. Sculptures, Models, or Casts.	14 years from the time of first publication; and, to the author, if he be living at the end of that period, 14 years more.
V. Designs:	
1st. *For ornamenting,*	
Articles in metal	3 years from the time of registration.
wood	3 years ditto.
glass	3 years ditto.
earthenware	3 years ditto.
Paper Hangings	3 years ditto.
Carpets (floor and oil-cloths (*a*)).	3 years ditto.

(*a*) Added by 6 & 7 Vict. c. 65, s. 5.

	Term of Copyright.	
Designs:		
Shawls (patterns printed)	9 months	ditto.
Shawls (ditto not printed)	ears	ditto.
Yarn, thread, or warp, (printed)	9 months	ditto.
Woven fabrics, not furnitures (patterns printed)	9 months	ditto.
Woven fabrics, furnitures (patterns printed)	3 years	ditto.
Woven fabrics (patterns not printed)	12 months	ditto.
Lace and all other articles	12 months	ditto.
2nd. *For articles of utility*,		
For the shape or configuration, &c.	3 years	ditto.
VI. International Copyright	For the same terms as above, (with the *exclusion* of designs) if the order in council so direct.	

Chap. II.

Of the different kinds of Literary Property—of Original Compositions.

A Book (*a*) *generally* (*b*).—The word, Book, in the construction of the *Copyright Amendment Act* (*c*) is, by that act, defined to mean and include "every volume, part, or division of a volume, pamphlet, sheet of letter press, sheet of music, map, chart, or plan, separately published."

Works in Manuscript (*d*).—The property in a work generally whilst it remains in manuscript has been discussed. There is an alteration with respect to Dramatic writings and Musical compositions whilst they remain in

(*a*) See p. 321 of The Practical Treatise, 2nd Edition.
(*b*) Id. 322.
(*c*) Sec. 2.
(*d*) See p. 325 of The Practical Treatise, 2nd Edition.

manuscript, which will be noticed hereafter under that division (*a*).

Lectures (*b*).—By the 5 & 6 Vict. c. 45, *Lectures* printed and published by the author or his assignee are protected by the same term of copyright as other literary productions. When lectures are orally delivered by their author they continue to be protected, and piratical publications of them are prevented, by the 5 & 6 Wm. 4, c. 65.

Of Foreign Publications and International Copyright (*c*).—Formerly an alien amy was entitled to the protection of the copyright law as to books *originally published* in this country, although he were residing out of it (*d*): and so was the assignee of a foreign composer (*e*), but it did not extend to works designed and executed abroad, and only published in Great Britain (*f*).

But by the statute 7 Vict. c. 12, called *The International Copyright Act*, the Act of 1 Vict. c. 59 is repealed, and it is enacted in the second section, that Her Majesty by order in Council may, as respects all books, prints, articles of sculpture, and other works of art to be defined in such order, first published in any foreign country to be named in such order, that the authors, inventors, designers, engravers, and makers thereof

(*a*) Post, p. 61.

(*b*) See p. 327 of The Practical Treatise, 2nd Edition.

(*c*) See p. 332 of The Practical Treatise, 2nd Edition.

(*d*) Bentley *v.* Foster, 10 Sim. 329.

(*e*) D'Almaine *v.* Boosey, 1 Y. & C. 288, and see Chapell *v.* Purday, 4 Y. & Coll. 485.

(*f*) Page *v.* Townsend, 5 Sim. 395.

respectively and their respective executors, administrators and assigns shall have the privilege of copyright therein during such period, or respective periods as shall be defined in such order, under certain restrictions (*a*).

A similar right is granted as to Dramatic pieces and Musical compositions (*b*).

Chap. III.

Of Particular Works on General Subjects.

An Encyclopædia (*c*).—By the eighteenth section of 5 & 6 Vict. c. 45, the proprietor of an Encyclopædia, who has employed and paid persons for composing parts of the work, has the copyright in such compositions to the full extent as authors under that act: but the original composers may after the interval of twenty-eight years publish any article separately, without the previous consent of the proprietor of the Encyclopædia.

Chap. IV.

Of Periodical Publications (*d*).

Of Reviews, Magazines, &c. (*e*).—All doubts, respecting a copyright in articles published in Reviews, Magazines, being vested in the publisher or proprietor of the work, have been removed by 5 & 6 Vict. c. 45 (*f*).

(*a*) See 7 Vict. c. 12, in Appendix.
(*b*) Id. s. 5.
(*c*) See p. 339 of The Practical Treatise, 2nd Edition.
(*d*) See p. 351 of The Practical Treatise, 2nd Edition.
(*e*) Id. 352.
(*f*) s. 18.

Newspapers (*a*).—The laws respecting Newspapers have only been changed as to the conduct which may be pursued respecting any *Libels* (*b*) which may be published in them. By the 6 & 7 Vict. c. 96, an *Apology* may be made and inserted in a subsequent Newspaper, and money may be paid into Court as amends.

Chap. V.

Of Musical and Dramatic Compositions (*c*).

The Dramatic Copyright Act, 3 Wm. 4, c. 15, has been enlarged by *The Copyright Amendment Act* (*d*).

The effect of the two acts combined, appears to be (*e*)

1. The author or assignee of a dramatic piece or musical composition, unprinted and unpublished, has a sole and perpetual right to its performance.

2. The author or assignee of a dramatic piece or musical composition, printed and published within *ten* years before the passing of that act, has the sole right of performance for the author's life, and seven years after his death: and if that term expire before *forty-two*

(*a*) See p. 355 of The Practical Treatise, 2nd Edition.

(*b*) Id. 361.

(*c*) See p. 384 of The Practical Treatise, 2nd Ed. Chap. VI. is an error for Chap. V.

(*d*) 5 & 6 Wm. 4, c. 45, s. 20. As to double costs, see 5 & 6 Vict. c. 97.

(*e*) See The Law of Copyright, by Peter Burke, Esq. Barrister at Law, p. 42.

years from the time of the first performance, then for such forty-two years: in case of the author's death before publication, the right will endure for forty-two years from the time of the first performance.

The registration and assignment of a play are also regulated by 5 & 6 Vict. c. 45 (*a*).

Theatres or Playhouses (*b*).—Theatres are now regulated by 6 & 7 Vict. c. 68, under which (s. 13) the Lord Chamberlain may take a fee not exceeding two guineas for the examination of a play.

Chap. VI.

Of the Fine Arts.

Engravings or Prints (*c*).—As to the evidence necessary to support an action for the piracy (*d*) of a print or engraving, the following decision has been made. In an action on the case (*e*) for pirating an engraving brought under the statute 17 Geo. 3, c. 57, which gives a right of action against any one who shall copy any print "in the whole, or in part, by varying, adding to, or diminishing from the main design," the judge, at the trial, directed the jury to consider whether the defendant's

(*a*) See s. 20, s. 22, and s. 24.
(*b*) See p. 387 of The Practical Treatise, 2nd Ed.
(*c*) Id. 395.
(*d*) Id. 404.
(*e*) Moore *v.* Clark, 9 M. & W. 692.

engraving was substantially a copy of the plaintiff's: and the Court held that the direction was correct.

Designs for articles of manufacture (*a*).

The statutes respecting designs have been repealed by the 5 & 6 Vict. c. 100. On that act, amended by the 6 & 7 Vict. c. 65, the copyright in designs rests.

This subject is now divided into two parts—one relating to *ornaments* under the 5 & 6 Vict. c. 100, and the other relating to *articles of utility* under 6 & 7 Vict. c. 65.

And, *first*, as to ORNAMENTS (*b*).

The Subject of the Copyright.—The copyright is given to any new and original design, (except designs for articles mentioned in the two statutes relating to sculpture), whether such new and original design be applicable to the ornamenting,

1. of any article of manufacture;
2. or of any substance, artificial or natural, or partly artificial and partly natural;

and whether the design be so applicable for

the pattern,
the shape or configuration,
the ornament,
or for any two or more of such purposes;

and by whatever means the design may be so applicable, whether by

(*a*) See p. 410 of The Practical Treatise, 2nd Ed.

(*b*) I have availed myself of an excellent analysis of the act made at p. 53 of A Treatise on the Law of Copyright, by Peter Burke, Esq., Barrister at Law, 1842.

printing, embroidery,
painting, weaving,
sewing, embossing,
modelling, engraving,
casting, staining,
or by any other means whatsoever, manual, mechanical, or chemical, separate or combined.

The Nature and Duration of the Copyright.—The copyright itself is this—The proprietor of every such above-mentioned design, not previously published in the United Kingdom or elsewhere, is to have the sole right, provided it be done in the United Kingdom, of applying the design to any of the above-mentioned articles or substances for the respective terms, as follow:—

1. *For Three Years*, in respect to the application of the design to ornamenting any article of manufacture contained in

Class 1. Articles composed wholly or chiefly of metal or mixed metals.
Class 2. Articles composed wholly or chiefly of wood.
Class 3. Articles composed wholly or chiefly of glass.
Class 4. Articles composed wholly or chiefly of earthenware.
Class 5. Paper Hangings.
Class 6. Carpets (*a*).
Class 8. Shawls, not comprised in Class 7.
Class 11. Woven Fabrics, composed of linen, cotton, wool, silk, or hair, or of any two or more of such

(*a*) Floor-cloths and oil cloths added by s. 5 of 6 & 7 Vict. c. 65.

materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics, such woven fabrics coming within the description technically called furnitures, and if the repeat of the design be more than twelve inches by eight inches.

2. *For Nine Calendar Months*, in respect of the application of the design to ornamenting any article of manufacture contained in

Class 7. Shawls, if the design be applied solely by printing, or by any other process by which colours are or may hereafter be produced on tissue or textile fabrics.

Class 9. Yarn, thread, or warp, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced.

Class 10. Woven fabrics, composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics, excepting the articles included in Class 11.

3. *For Twelve Calendar Months*, in respect of the application of the design to ornamenting any article of manufacture or substance contained in

Class 12. Woven fabrics, not comprised in any preceding class.

Class 13. Lace, and any article of manufacture or substance not comprised in any preceding class. (s. 3.)

The Conditions of Copyright are as follow :—

1. Registration of the design before its publication.
2. Specification, at the time of registration, of the number of the class of the article of manufacture or substance, in respect to its application to which the design is registered.
3. Registration, as proprietor of the design, of the name of the person registering.
4. Marking, after publication, on the article or substance to which the design is applied, at one end if the article be a woven fabric for printing, or at the end or edge, if it be of any other kind or substance, the letters R^{d}., together with such numbers or letters, and in such form, as correspond with the date of registration in the registrar's office. These marks may be put on the article, either on the material itself or on a label attached to it. (s. 4.)

Explanation of the Term "Proprietor."—The author of a new and original design is to be considered its proprietor, unless he have executed the work for another person for a good or a valuable consideration; in which case such person is to be considered the proprietor, and is entitled to registration in place of the author. Every person acquiring for a good or a valuable consideration a new and original design, or the right to its application to the above-mentioned articles or substances, either exclusively of any one else or otherwise, and every person upon whom the property in a design or the right to its application may devolve, shall be considered the proprietor of the design, in the respect in and to the extent which such property may have been acquired, but not otherwise. (s. 5.)

Transfer of Copyright.—Every person purchasing or otherwise acquiring the right to the entire or partial use of a design may enter his title in the register. Any writing purporting to be a transfer of the design, and signed by the proprietor, shall operate as an effectual transfer. On request, and on production of the written transfer, or, if the right be acquired otherwise than by purchase, on production of evidence to the registrar's satisfaction, the registrar is to insert the name of the new proprietor in the register. (s. 6). The same section gives forms in which the transfer and the requests to register may be made.

Registration (*a*).—*Appointment of a Registrar and other Officers.*—The lords of the committee of Privy Council for the consideration of all matters of trade and plantations may appoint a registrar of designs, and, if they see fit, a deputy registrar, clerks, officers, and servants, who are to hold their offices during the pleasure of the lords of the committee. Their salaries are to be fixed from time to time by the commissioners of the Treasury. The lords of the committee may, subject to the provisions of this act, make rules for regulating the execution of the duties of the registrar's office, and the registrar is to have an official seal. (s. 14).

Registrar's Duties.—The registrar is not to register a design, in respect of any application of it, unless he be furnished, for each application, with,

1. two copies, drawings, or prints of the design; accompanied with

(*a*) The rules published by Mr. Bland, the registrar, are given in the Appendix.

2. the name of every person claiming to be proprietor, or of the style or title of the firm under which such proprietor trades, with his place of abode or of carrying on his business, or other place of address; and,
3. the number of the class in respect of which the registration is made.

The registrar is to register all such copies, drawings, and prints, from time to time successively as he has received them, and upon every one of them he is to affix a number corresponding to such succession. One copy, drawing, or print he is to retain and file in his office; the other he is to return to the person who has forwarded it to him. In order to give ready access to the registered copies of designs, the registrar is to class them, and to keep a proper index of each class. (s. 15).

Certificate of Registration.—Upon or attached to every copy, drawing, or print of an original design returned to the person registering, and upon or attached to every one received for the purpose of registration, or of the transfer being certified thereon, or attached thereto, the registrar is to certify under his hand—

1. that the design has been registered:
2. the date of registration:
3. the name of the registered proprietor, or the style or title of the firm under which he may trade, with his place of abode or of carrying on his business, or other place of address:
4. the number of the design, together with such numbers and letters, and in such form as the registrar shall employ, to denote or correspond with the date of registration.

A certificate so made on every original design or its copy, purporting to be signed by the registrar or deputy registrar, and purporting to have the registrar's seal of office affixed to it, is, in the absence of contrary evidence, to be sufficient proof of,

1. the due registration of the design, and the name of the propietor mentioned in the certificate ;
2. the commencement of the period of registry ;
3. the proprietorship of the person named in the certificate as proprietor ;
4. the originality of the design ; and,
5. the fact, that the provisions of this act, and of any rule under which the certificate appears to be made, have been complied with.

Any writing purporting to be such certificate is, in the absence of contrary evidence, receivable in evidence, without proof of the handwriting of the signature, or of the seal of office, or of the person signing being the registrar or deputy registrar. (s. 16).

Inspection of Registered Designs.—Every person may inspect any design whose copyright has expired, on payment of the appointed fee. But no design whose copyright has not expired shall be open to the inspection of any one except the proprietor of the design, a person with written authority from him, or a person specially authorized by the registrar ; and then only in presence of the registrar or some person holding an appointment under this act, and not so as to take a copy of the design or part of it, nor without payment of the appointed fee. There is, however, this provision, that the registrar may give to any person applying to him, and producing a particular design with its registration mark, or pro-

ducing the registration mark alone, a certificate stating whether there exist a copyright of the design; and if there do, the particular article in respect to which such copyright exists, the term of the copyright, the date of its registration, and the name and address of its registered proprietor. (s. 17).

Fees (*a*).—The commissioners of the Treasury are from time to time to fix the fees payable for the services performed by the registrar, which fees are to go to defray the expenses and salaries of the registering establishment, and the balance to the consolidated fund. The commissioners are also to regulate how such fees are to be received, kept, and accounted for; they may also remit or dispense with the payment of fees in any cases where they may think it expedient. It is moreover provided, that

the fee for registering a design to be applied to any woven fabric in classes 7, 9, or 10, is not to exceed one shilling:

the fee for registering a design to be applied to a paper hanging is not to exceed ten shillings:

the fee to the registrar for a certificate relative to the existence or expiration of a copyright in a design printed on woven fabric, yarn, thread, or warp, or printed, embossed, or worked on any paper hanging, to a person exhibiting a piece-end of a registered pattern with the registration mark upon it, is not to exceed two shillings and sixpence. (s. 18).

Penalty for Extortion.—If the registrar or any person

(*a*) The list of the fees is given in the Appendix.

employed under him demand or receive any gratuity or reward, whether in money or otherwise, except his authorized salary or remuneration, he shall forfeit for every offence 50*l.* to any party suing for it by action of debt in the Court of Exchequer at Westminster. He is also, for such offence, liable to be suspended or dismissed, and to be rendered incapable of holding any situation in the registration office, as the commissioners of the Treasury see fit. (s. 19).

Cancellation or Amendment of Registration.—In a suit in equity relative to a design, instituted by its proprietor, or by a person lawfully entitled to it, if it appear to the satisfaction of the judge that the design has been registered in the name of a person not the proprietor, or not lawfully entitled, the judge may, in his discretion, by decree or order, direct the registration to be cancelled, in which case it becomes void; or the name of the proprietor or person lawfully entitled to be substituted in the register for that of the wrongful proprietor or claimant, and this to be done in the manner directed in case of the transfer of a design. The judge may make what order he thinks fit respecting the costs of cancellation or substitution, and the proceedings to effect them. The registrar, on service of the official copy of the decree or order, and on payment of the proper fee, is to comply with the tenor of the decree or order, and to make the cancellation or substitution as the case may be. (s. 10).

Penalty for wrongfully using Marks.—It is unlawful to apply to a design which has not been registered, or

to an article to which a design when registered has not been applied within the United Kingdom, or to an article after the expiration of copyright, the marks required by this act, or any marks corresponding with them. If any person do unlawfully apply any such marks, or publish, sell, or expose for sale, with a guilty knowledge, an article or substance having unlawful marks, he shall forfeit, for every offence, a sum not exceeding five pounds, to be recovered by any person proceeding for it by any of the ways directed with respect to penalties for piracy. (s. 11).

Piracy of Designs.—During the existence of a right to the entire or partial use of a design no person shall, without the registered proprietor's written license or consent, do any of the following acts, with regard to any articles or substances in respect of which the copyright of the design is in force; viz.—

No person shall apply the design, or a fraudulent imitation of it, for the purpose of sale, to ornamenting any article of manufacture, or any substance, artificial or natural, or partly artificial and partly natural.

No person shall publish, sell, or expose for sale, any article or substance to which such design or fraudulent imitation is applied, after having either verbally, in writing, or otherwise received from any source other than the proprietor knowledge that consent to such application has not been given; or after having been served with, or having had left at his premises, a written notice to the same effect, signed by the proprietor or his agent. (s. 7)

Penalties for Piracy.—A person committing any of the above acts of piracy is to forfeit, for every offence, a sum not less than five and not more than thirty pounds to the proprietor of the design in respect of whose right the offence is committed. (s. 8).

The proprietor may recover the penalty,

in *England*, by an action of debt, or on the case, against the offender; or summarily before two magistrates having jurisdiction where the offender resides. The section (s. 8) directs, in the summary proceeding, the mode of process and of recovering the penalties and costs by distress: it also gives forms of information and conviction. The aggregate amount of penalties, however, for offences in respect of one design, committed by one person up to the time of proceedings being instituted, shall not exceed one hundred pounds. (s. 8). By the 13th section, in such summary proceedings, the magistrates may award payment of costs to the prevailing party, and may grant a warrant for enforcing payment against the summoning party, if unsuccessful, in the same manner as any penalty with costs is recoverable under this act:

in *Scotland*, by action before the Court of Session in ordinary form; or by summary action before the sheriff of the county where the offence is committed, or the offender resides. The section directs, in the summary proceeding, the mode of process and the recovery of the penalties by poinding. If the sheriff dismiss the action, and assoilzie the defender, he may find the complainer liable in expenses; and his judgment is final:

in *Ireland*, by action in a superior court of law at Dublin: or by civil bill in the Civil Bill Court of the county or place where the offence is committed. (s. 8).

Notwithstanding the remedies above given, the proprietor injured may, *if he elect to do so*, bring an action for the recovery of the damages which he has sustained from the piracy of his design. (s. 9).

Limitation of Actions.—No action or other proceeding for an offence or injury under this act shall be brought after the expiration of twelve calendar months from the commission of the offence. (s. 12).

Costs.—In every action or other proceeding for an offence or injury under this act, the prevailing party shall receive his full costs. (s. 12).

And, secondly, as to ARTICLES OF UTILITY.

By the 6 & 7 Vict. c. 65, a copyright for *three years* is given to the author or proprietor of any new and original design, for the *shape* or *configuration* either of the whole or of any part of any *article* of manufacture, *having reference to some purpose of utility*, whether such article be made in metal or any other substance.

To obtain that copyright or protection, it is necessary

1. That the design should be registered.
2. That after registration, every article of manufacture published by the proprietor, and made according to such design, or for which such design is used, should have upon it the word REGISTERED, *with the date* of registration (*a*).

(*a*) The directions for making the registration are given in the Appendix.

CHAP. VII.

Of the Persons and Corporations interested in the Publication of Books.

The Author and his Assignee (*a*).—By the 5 & 6 Vict. c. 45, s. 25, all copyright is made personal property; the assignment of it, or license to use it, must be in writing, and may be registered at Stationers' Hall. The assignment of the copyright becomes perfect by an entry "of such assignment and the name and place of abode of the assignee."

The proprietor of a registered copyright may, by an entry in the book of registry, assign his interest without being liable to a *stamp duty* (*b*).

The Title may lapse (*c*).—If the proprietor of a copyright in a book refuse, after the death of the author, to republish it, or to allow its republication, the Judicial committee of the Privy Council may license the complainant to publish the book in such manner, and according to such conditions as they may think fit to impose.

The Company of Stationers (*d*).—The registration at Stationers' Hall is now regulated by the 11th section of

(*a*) See p. 423 of The Practical Treatise, 2nd Ed.

(*b*) Sec. 13 of 5 & 6 Vict. c. 45. A great concession by the Government, by which the copyright in small books, as pieces of music, is secured without expense. Many musical publishers had several hundred works unprotected before that time.

(*c*) Id. sec. 5.

(*d*) See p. 448 of The Practical Treatise, 2nd Ed.

the 5 & 6 Vict. c. 45, as to books, and the assignments of them; and as to dramatic and musical pieces, whether in manuscript or otherwise, and the licenses affecting such copyright.

The registry is made of

1. the title of the book;
2. the time of its first publication;
3. the name and place of abode of its publisher;
4. the name and place of abode of the proprietor of the copyright of the book, or of any portion of such copyright.

The Universities (*a*).—A copy of every book (if demanded in writing within twelve months) is to be presented to the Bodleian library at *Oxford*, the public library at *Cambridge*, the Library of Advocates at *Edinburgh*, and to the library of Trinity College, *Dublin*. It must be a copy upon the paper of which the largest number of copies of the book or edition is printed for sale (*b*).

The rights of the universities of Oxford and Cambridge, of the four universities of Scotland, of Trinity College, Dublin, and of the colleges of Eton, Westminster, and Winchester are preserved (*c*).

Booksellers (*d*)—They must be careful to avoid the importation of unlawfully printed books, under the penalties of the 15th section of the 5 & 6 Vict. c. 45.

(*a*) See p. 453 of The Practical Treatise, 2nd Ed.
(*b*) 5 & 6 Vict. c. 45, s. 8 and 9.
(*c*) Id. sec. 27.
(*d*) See p. 469 of The Practical Treatise, 2nd Ed.

CHAP. VIII.

OF THE REMEDIES FOR AN INFRINGEMENT OF A COPYRIGHT (*a*).

No proprietor of a copyright (except dramatic pieces), commencing after the 10th of June, 1833, can sue or proceed for any infringement before making an entry of it at Stationers' Hall (*b*); but the omission does not affect the copyright in the book, but only the right to sue or proceed for the infringement.

Piracy (*c*).—A special action on the case may be maintained against any person, who shall

1. print or cause to be printed, either for sale or exportation, any book in which there shall be a subsisting copyright, without the consent in writing of the proprietor;
2. or import for sale or hire any such unlawfully printed book from parts beyond the sea;
3. or, with a guilty knowledge, sell, publish, or expose to sale or hire, or cause to be sold, published, or exposed to sale or hire, or have in possession for sale or hire, any such book so unlawfully printed or imported without the consent of the proprietor.

Summary proceedings for Importation, &c. of pirated Books.—If any person import or cause to be imported or brought for sale or hire, any pirated book into

(*a*) See p. 474 of The Practical Treatise, 2d Ed.
(*b*) 5 & 6 Vict. c. 45, s. 24.
(*c*) Id. s. 15. See Campbell *v.* Scott, 11 Sim. 31.

the British dominions, or shall knowingly, sell, publish, or expose to sale or let to hire, or have in his possession for sale or hire, any such book, then the book shall be forfeited and may be seized and destroyed by any officer of the custom or excise, and the offender may be convicted in the penalty of ten pounds and double the value of every copy of the book (*a*).

A party injured is entitled to the pirated copies or to damages for their detention (*b*).

By a Custom-house Act (*c*), the importation of pirated books is prohibited in every case, whether for sale *or otherwise*.

Action on the case for damages (*d*).—All actions, suits, bills, indictments, or informations for any offence committed against the Copyright Amendment Act, must be commenced within twelve months after the commission of the offence (*e*).

Plea.—The defendant may plead *the general issue*, and give the special matter in evidence (*f*).

List of objections.—On pleading to an action, the defendant must deliver a notice in writing of any objections on which he means to rely on the trial of the action (*g*).

(*a*) 5 & 6 Vict. c. 45, s. 17.

(*b*) Id. s. 23.

(*c*) 5 & 6 Vict. c. 47, s. 23, and see sect. 25, as to the notice by the Author to the Commissioners of Customs.

(*d*) See p. 482 of The Practical Treatise, 2nd Ed.

(*e*) 5 & 6 Vict. c. 45, s. 26. (*f*) Id.

(*g*) See id. sec. 16, for the particulars required in that notice.

The proceedings in Equity.—Injunction (*a*).—Before a party can move for an injunction, he must have registered the work at Stationers' Hall (*b*).

An injunction to restrain the piracy of a publication to which the plaintiffs would have been otherwise entitled, was refused on the ground of delay in making the application (*c*), and a constructive knowledge, was imputed to the plaintiffs by the Court, of an infringement of their copyright by the defendants.

The defendant, in a publication on modern English poetry with biographical sketches and selections, had introduced six short poems, and parts of longer poems of the plaintiff, which he alleged had been introduced only for illustration: a Court of Equity restrained the publication as being an infringement of the plaintiff's copyright (*d*).

In a suit to restrain the piracy of the plaintiff's work, the injunction had been continued until the title was decided by an action which was afterwards discontinued at the instance of the defendant, who was willing to pay the costs of the bill as between party and party, which offer was refused by the plaintiff. The Court held, that the plaintiff being entitled to an answer to settle the question of title, his claim to costs as between solicitor and client on agreeing to waive the answer and the account, was not unreasonable; and therefore he, on the defendant's refusal, was entitled to the full costs of the suit, including those of the answer (*e*).

(*a*) See p. 486 of The Practical Treatise, 2nd Ed.
(*b*) 5 & 6 Vict. c. 45, s. 24.
(*c*) Lewis *v.* Chapman, 3 Beavan's Rep. 133.
(*d*) Campbell *v.* Scott, 11 Sim. 31.
(*e*) Kelly *v.* Hooper, 1 Y. & C. 197.

Proceedings before the Judicial Committee (*a*).—If the proprietor of a copyright in a work shall refuse after the death of the author to republish it, or to allow the republication of it, the Judicial Committee of the Privy Council may license the petitioner to publish the work on such conditions as they may think fit to impose.

(*a*) 5 & 6 Vict. c. 45, s. 5.

APPENDIX.

5 & 6 Vict. c. 45.

An Act to amend the Law of Copyrights.

[1st *July*, 1842.]

Whereas it is expedient to amend the law relating to copyright, and to afford greater encouragement to the production of literary works of lasting benefit to the world: 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 the passing of this act an act passed in the eighth year of the reign of her 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;" and also an act passed in the forty-first year of the reign of his Majesty king George the third, 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 therein mentioned;" and also an act passed in the fifty-fourth year of the reign of his Majesty king George the third, intituled, "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," be and the same are hereby repealed, except so far as the continuance of either of them may be necessary for carrying on or giving effect to any proceedings at law or in

Repeal of former acts; 8 Anne, c. 19.

41 G. 3, c. 107.

54 G. 3, c. 156.

equity pending at the time of passing this act, or for enforcing any cause of action or suit, or any right or contract, then subsisting.

Interpretation of act.

II. And be it enacted, that in the construction of this act the word "book" shall be construed to mean and include every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan separately published; that the words "dramatic piece" shall be construed to mean and include every tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment; that the word "copyright" shall be construed to mean the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is herein applied; that the words "personal representative" shall be construed to mean and include every executor, administrator, and next of kin entitled to administration; that the word "assigns" shall be construed to mean and include every person to whom the interest of an author in copyright shall be vested, whether derived from such author before or after the publication of any book, and whether acquired by sale, gift, bequest, or by operation of law, or otherwise; that the words "British dominions" shall be construed to mean and include all parts of the united kingdom of Great Britain and Ireland, the islands of Jersey and Guernsey, all parts of the East and West Indies, and all the colonies, settlements, and possessions of the Crown which now are or hereafter may be acquired; and that whenever in this act, in describing any person, matter, or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include and to be applied to several persons as well as one person, and females as well as males, and several matters or things as well as one matter or thing, respectively, unless there shall be something in the subject or context repugnant to such construction.

Endurance of term of copyright in any book hereafter to be published in the lifetime of the author;

III. And be it enacted, that the copyright in every book which shall after the passing of this act be published in the lifetime of its author shall endure for the natural life of such author, and for the further term of seven years, commencing at the time of his death, and shall be the property of such author and his assigns: provided always, that if the said term of seven years shall expire before the end of forty-two years from the first publication of such book, the copyright shall in that case endure for such period of forty-two years; and that the copyright in every book which shall be published after the death of its author shall endure for the

if published after the author's death.

term of forty-two years from the first publication thereof, and shall be the property of the proprietor of the author's manuscript from which such book shall be first published, and his assigns.

In cases of subsisting copyright, the term to be extended, except when it shall belong to an assignee for other consideration than natural love and affection; in which case it shall cease at the expiration of the present term, unless its extension be agreed to between the proprietor and the author.

IV. And whereas it is just to extend the benefits of this act to authors of books published before the passing thereof, and in which copyright still subsists; be it enacted, that the copyright which at the time of passing this act shall subsist in any book theretofore published (except as hereinafter mentioned) shall be extended and endure for the full term provided by this act in cases of books thereafter published, and shall be the property of the person who at the time of passing this act shall be the proprietor of such copyright; provided always, that in all cases in which such copyright shall belong in whole or in part to a publisher or other person who shall have acquired it for other consideration than that of natural love and affection, such copyright shall not be extended by this act, but shall endure for the term which shall subsist therein at the time of passing of this act, and no longer, unless the author of such book, if he shall be living, or the personal representative of such author, if he shall be dead, and the proprietor of such copyright, shall, before the expiration of such term, consent and agree to accept the benefits of this act in respect of such book, and shall cause a minute of such consent in the form in that behalf given in the schedule to this act annexed to be entered in the book of registry herein-after directed to be kept, in which case such copyright shall endure for the full term by this act provided in cases of books to be published after the passing of this act, and shall be the property of such person or persons as in such minute shall be expressed.

Judicial committee of the privy council may license the republication of books which the proprietor refuses to republish after death of the author.

V. And whereas it is expedient to provide against the suppression of books of importance to the public; be it enacted, that it shall be lawful for the judicial committee of her Majesty's privy council, on complaint made to them that the proprietor of the copyright in any book after the death of its author has refused to republish or to allow the republication of the same, and that by reason of such refusal such book may be withheld from the public, to grant a license to such complainant to publish such book, in such manner and subject to such conditions as they may think fit, and that it shall be lawful for such complainant to publish such book according to such license.

Copies of books

VI. And be it enacted, that a printed copy of the whole of every

published after the passing of this act, and of all subsequent editions, to be delivered within certain times at the British Museum.

book which shall be published after the passing of this act, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same shall be published, and also of any second or subsequent edition which shall be so published with any additions or alterations, whether the same shall be in letter press, or in the maps, prints, or other engravings belonging thereto, and whether the first edition of such book shall have been published before or after the passing of this act, and also of any second or subsequent edition of every book of which the first or some preceding edition shall not have been delivered for the use of the British Museum, bound, sewed, or stitched together, and upon the best paper on which the same shall be printed, shall, within one calendar month after the day on which any such book shall first be sold, published, or offered for sale within the bills of mortality, or within three calendar months if the same shall first be sold, published, or offered for sale in any other part of the united kingdom, or within twelve calendar months after the same shall first be sold, published, or offered for sale in any other part of the British dominions, be delivered, on behalf of the publisher thereof, at the British Museum.

Mode of delivering at the British Museum.

VII. And be it enacted, that every copy of any book which under the provisions of this act ought to be delivered as aforesaid shall be delivered at the British Museum between the hours of ten in the forenoon and four in the afternoon on any day except Sunday, Ash Wednesday, Good Friday, and Christmas day, to one of the officers of the said Museum, or to some person authorized by the trustees of the said Museum to receive the same, and such officer or other person receiving such copy is hereby required to give a receipt in writing for the same, and such delivery shall to all intents and purposes be deemed to be good and sufficient delivery under the provisions of this act.

A copy of every book to be delivered within a month after demand to the officer of the Stationers' Company for the following libraries: the Bodleian at Oxford, the public library

VIII. And be it enacted, that a copy of the whole of every book, and of any second or subsequent edition of every book containing additions and alterations, together with all maps and prints belonging thereto, which after the passing of this act shall be published, shall, on demand thereof in writing, left at the place of abode of the publisher thereof at any time within twelve months next after the publication thereof, under the hand of the officer of the Company of Stationers who shall from time to time be appointed

by the said company for the purposes of this act, or under the hand of any other person thereto authorized by the persons or bodies politic and corporate, proprietors and managers of the libraries following, (*videlicit*,) the Bodleian library at Oxford, the public library at Cambridge, the library of the Faculty of Advocates at Edinburgh, the library of the college of the holy and undivided Trinity of queen Elizabeth near Dublin, be delivered, upon the paper of which the largest number of copies of such book or edition shall be printed for sale, in the like condition as the copies prepared for sale by the publisher thereof respectively, within one month after demand made thereof in writing as aforesaid, to the said officer of the said company of stationers for the time being, which copies the said officer 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 officer is hereby required to give a receipt in writing for the same, and within one month after any such book shall be so delivered to him as aforesaid to deliver the same for the use of such library.

at Cambridge, the Faculty of Advocates at Edinburgh, and that of Trinity college Dublin.

IX. Provided also, and be it enacted, that if any publisher shall be desirous of delivering the copy of such book as shall be demanded on behalf of any of the said libraries at such library, it shall be lawful for him to deliver the same at such library, free of expense, to such librarian or other person authorized to receive the same (who is hereby required in such case to receive and 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 officer of the Stationers' Company.

Publishers may deliver the copies to the libraries, instead of at the Stationers' Company.

X. And be it enacted, that if any publisher of any such book, or of any second or subsequent edition of any such book, shall neglect to deliver the same, pursuant to this act, he shall for every such default forfeit, besides the value of such copy of such book or edition which he ought to have delivered, a sum not exceeding five pounds to be recovered by the librarian or other officer (properly authorized) of the library for the use whereof such copy should have been delivered, in a summary way, on conviction before two justices of the peace for the county or place where the publisher making default shall reside, or by action of debt or other proceeding of the like nature, at the suit of such librarian or other officer, in any court of record in the united kingdom, in which

Penalty for default in delivering copies for the use of the libraries.

action, if the plaintiff shall obtain a verdict, he shall recover his costs reasonably incurred, to be taxed as between attorney and client.

Book of registry to be kept at Stationers' Hall.

XI. And be it enacted, that a book of registry, wherein may be registered, as herein-after enacted, the proprietorship in the copyright of books, and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licenses affecting such copyright, shall be kept at the hall of the Stationers' Company, by the officer appointed by the said company for the purposes of this act, and shall at all convenient times be open to the inspection of any person, on payment of one shilling for every entry which shall be searched for or inspected in the said book; and that such officer shall, whenever thereunto reasonably required, give a copy of any entry in such book, certified under his hand, and impressed with the stamp of the said company, to be provided by them for that purpose, and which they are hereby required to provide, to any person requiring the same, on payment to him of the sum of five shillings; and such copies so certified and impressed shall be received in evidence in all courts, and in all summary proceedings, and shall be *primâ facie* proof of the proprietorship or assignment of copyright or license as therein expressed, but subject to be rebutted by other evidence, and in the case of dramatic or musical pieces shall be *primâ facie* proof of the right of representation or performance, subject to be rebutted as aforesaid.

Making a false entry in the book of registry, a misdemeanor.

XII. And be it enacted, that if any person shall wilfully make or cause to be made any false entry in the registry book of the Stationers' Company, or shall wilfully produce or cause to be tendered in evidence any paper falsely purporting to be a copy of any entry in the said book, he shall be guilty of an indictable misdemeanor, and shall be punished accordingly.

Entries of copyright may be made in the book of registry.

XIII. And be it enacted, that after the passing of this Act it shall be lawful for the proprietor of copyright in any book heretofore published, or in any book hereafter to be published, to make entry in the registry book of the Stationers' Company of the title of such book, the time of the first publication thereof, the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the copyright of the said book, or of any portion of such copyright, in the form in that behalf given in the schedule to this act annexed, upon pay-

ment of the sum of five shillings to the officer of the said company; and that it shall be lawful for every such registered proprietor to assign his interest, or any portion of his interest therein, by making entry in the said book of registry of such assignment, and of the name and place of abode of the assignee thereof, in the form given in that behalf in the said schedule, on payment of the like sum; and such assignment so entered shall be effectual in law to all intents and purposes whatsoever, without being subject to any stamp or duty, and shall be of the same force and effect as if such assignment had been made by deed.

Persons aggrieved by any entry in the book of registry may apply to a court of law in term, or judge in vacation, who may order such entry to be varied or expunged.

XIV. And be it enacted, That if any person shall deem himself aggrieved by any entry made under colour of this act in the said book of registry, it shall be lawful for such person to apply by motion to the Court of Queen's Bench, Court of Common Pleas, or Court of Exchequer, in Term time, or to apply by summons to any judge of either of such courts in vacation, for an order that such entry may be expunged or varied; and that upon any such application by motion or summons to either of the said courts, or to a judge as aforesaid, such court or judge shall make such order for expunging, varying, or confirming such entry, either with or without costs, as to such court or judge shall seem just; and the officer appointed by the Stationers' Company for the purposes of this act shall, on the production to him of any such order for expunging or varying any such entry, expunge or vary the same according to the requisitions of such order.

Remedy for the piracy of books by action on the case.

XV. And be it enacted, That if any person shall, in any part of the British dominions, after the passing of this Act, print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing of the proprietor thereof, or shall import for sale or hire any such book so having been unlawfully printed from parts beyond the sea, or, knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose to sale or hire, or cause to be sold, published, or exposed to sale or hire, or shall have in his possession, for sale or hire, any such book, so unlawfully printed or imported, without such consent as aforesaid, such offender shall be liable to a special action on the case at the suit of the proprietor of such copyright, to be brought in any court of record in that part of the British dominions in which the offence shall be committed: provided always, that in Scotland such

offender shall be liable to an action 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.

In actions for piracy the defendant to give notice of the objections to the plaintiff's title on which he means to rely.

XVI. And be it enacted, that after the passing of this act, in any action brought within the British dominions against any person for printing any such book for sale, hire, or exportation, or for importing, selling, publishing, or exposing to sale or hire, or causing to be imported, sold, published, or exposed to sale or hire any such book, the defendant, on pleading thereto, shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action; and if the nature of his defence be, that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person who he alleges to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when and the place where such book was first published, otherwise the defendant in such action shall not at the trial or hearing of such action be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the copyright therein; and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the copyright therein, than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time, and place of publication with the title, time, and place specified in such notice.

No person, except the proprietor, &c. shall import into the British dominions for sale or hire any

XVII. And be it enacted, that after the passing of this act it shall not be lawful for any person, not being the proprietor of the copyright, or some person authorized by him, to import into any part of the united kingdom, or into any other part of the British dominions, for sale or hire, any printed book first composed or

written or printed and published in any part of the said United Kingdom, wherein there shall be copyright, and reprinted in any country or place whatsoever out of the British dominions; and if any person, not being such proprietor or person authorized as aforesaid, shall import or bring, or cause to be imported or brought, for sale or hire, any such printed book, into any part of the British dominions, contrary to the true intent and meaning of this act, or shall knowingly sell, publish, or expose to sale or let to hire, or have in his possession for sale or hire, any such book, then every such book shall be forfeited, and shall be seized by any officer of customs or excise, and the same shall be destroyed by such officer; and every person so offending, being duly convicted thereof before two justices of the peace for the county or place in which such book shall be found, shall also for every such offence forfeit the sum of ten pounds, and double the value of every copy of such book which he shall so import or cause to be imported into any part of the British dominions, or shall knowingly sell, publish, or expose to sale or let to hire, or shall cause to be sold, published, or exposed to sale or let to hire, or shall have in his possession for sale or hire, contrary to the true intent and meaning of this act, five pounds to the use of such officer of customs or excise, and the remainder of the penalty to the use of the proprietor of the copyright in such book.

book first composed, &c. within the United Kingdom, and reprinted elsewhere, under penalty of forfeiture thereof, and also of 10*l.* and double the value.

Books may be seized by officers of customs or excise.

XVIII. And be it enacted, that when any publisher or other person shall, before or at the time of the passing of this act, have projected, conducted, and carried on, or shall hereafter project, conduct, and carry on, or be the proprietor of any encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, or any book whatsoever, and shall have employed or shall employ any persons to compose the same, or any volumes, parts, essays, articles, or portions thereof, for publication in or as part of the same, and such work, volumes, parts, essays, articles, or portions shall have been or shall hereafter be composed under such employment, on the terms that the copyright therein shall belong to such proprietor, projector, publisher, or conductor, and paid for by such proprietor, projector, publisher, or conductor, the copyright in every such encyclopædia, review, magazine, periodical work, and work published in a series of books or parts, and in every volume, part, essay, article, and portion so composed and paid for, shall be the property of such proprietor, projector, publisher, or

As to the copyright in encyclopædias, periodicals and works published in a series, reviews, or magazines.

other conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of copyright therein as is given to the authors of books by this act; except only that in the case of essays, articles, or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature, after the term of twenty-eight years from the first publication thereof respectively the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this act; provided always, that during the term of twenty-eight years the said proprietor, projector, publisher, or conductor shall not publish any such essay, article, or portion separately or singly without the consent previously obtained of the author thereof, or his assigns: provided also, that nothing herein contained shall alter or affect the right of any person who shall have been or who shall be so employed as aforesaid to publish any such his composition in a separate form, who by any contract, express or implied, may have reserved or may hereafter reserve to himself such right; but every author reserving, retaining, or having such right shall be entitled to the copyright in such composition when published in a separate form, according to this act, without prejudice to the right of such proprietor, projector, publisher, or conductor as aforesaid.

Proviso for authors who have reserved the right of publishing their articles in a separate form.

Proprietors of encyclopædias, periodicals and works published in series, may enter at once at Stationers' Hall, and thereon have the benefit of the registration of the whole.

XIX. And be it enacted, that the proprietor of the copyright in any encyclopædia, review, magazine, periodical work, or other work published in a series of books or parts, shall be entitled to all the benefits of the registration at Stationers' Hall under this act, on entering in the said book of registry the title of such encyclopædia, review, periodical work, or other work published in a series of books or parts, the time of the first publication of the first volume, number, or part thereof, or of the first number or volume first published after the passing of this act in any such work which shall have been published heretofore, and the name and place of abode of the proprietor thereof, and of the publisher thereof, when such publisher shall not also be the proprietor thereof.

The provisions of 3 & 4 W. 4, c. 15, extended to musical compositions, and the term of copyright, as provided by

XX. And whereas an act was passed in the third year of the reign of his late Majesty, to amend the law relating to dramatic literary property, and it is expedient to extend the term of the sole liberty of representing dramatic pieces given by that act to the full time by this act provided for the continuance of copyright: and

whereas it is expedient to extend to musical compositions the benefits of that act, and also of this act; be it therefore enacted, that the provisions of the said act of his late Majesty, and of this act, shall apply to musical compositions, and that the sole liberty of representing or performing, or causing or permitting to be represented or performed, any dramatic piece or musical composition, shall endure and be the property of the author thereof, and his assigns, for the term in this act provided for the duration of copyright in books; and the provisions hereinbefore enacted in respect of the property of such copyright, and of registering the same, shall apply to the liberty of representing or performing any dramatic piece or musical composition, as if the same were herein expressly re-enacted and applied thereto, save and except that the first public representation or performance of any dramatic piece or musical composition shall be deemed equivalent, in the construction of this act, to the first publication of any book: provided always, that in case of any dramatic piece or musical composition in manuscript, it shall be sufficient for the person having the sole liberty of representing or performing, or causing to be represented or performed the same, to register only the title thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor thereof, and the time and place of its first representation or performance.

this act, applied to the liberty of representing dramatic pieces and musical compositions.

XXI. And be it enacted, that the person who shall at any time have the sole liberty of representing such dramatic piece or musical composition shall have and enjoy the remedies given and provided in the said act of the third and fourth years of the reign of his late Majesty king William the Fourth, passed to amend the laws relating to dramatic literary property, during the whole of his interest therein, as fully as if the same were re-enacted in this act.

Proprietors of right of dramatic representations shall have all the remedies given by 3 & 4 W. 4, c. 15.

XXII. And be it enacted, that no assignment of the copyright of any book consisting of or containing a dramatic piece or musical composition shall be holden to convey to the assignee the right of representing or performing such dramatic piece or musical composition, unless an entry in the said registry book shall be made of such assignment, wherein shall be expressed the intention of the parties that such right should pass by such assignment.

Assignment of copyright of a dramatic piece not to convey the right of representation.

XXIII. And be it enacted, that all copies of any book wherein there shall be copyright, and of which entry shall have been made in the said registry book, and which shall have been unlawfully

Books pirated shall become the property of the proprietor

of the copyright and may be recovered by action.

printed or imported without the consent of the registered proprietor of such copyright, in writing under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright, and who shall be registered as such, and such registered proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same, or damages for the detention thereof, in an action of detinue, from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action of trover.

No proprietor of copyright commencing after this act shall sue or proceed for any infringement before making entry in the book of registry.

XXIV. And be it enacted, that no proprietor of copyright in any book which shall be first published after the passing of this act shall maintain any action or suit, at law or in equity, or any summary proceeding, in respect of any infringement of such copyright, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made in the book of registry of the Stationers' Company, of such book, pursuant to this act: provided always, that the omissions to make such entry shall not affect the copyright in any book, but only the right to sue or proceed in respect of the infringement thereof as aforesaid: provided also, that nothing herein contained shall prejudice the remedies which the proprietor of the sole liberty of representing any dramatic piece shall have by virtue of the act passed in the third year of the reign of his late Majesty king William the Fourth to amend the laws relating to dramatic literary property, or of this act, although no entry shall be made in the book of registry aforesaid.

Proviso for dramatic pieces.

Copyright shall be personal property.

XXV. And be it enacted, that all copyright shall be deemed personal property, and shall be transmissible by bequest, or, in case of intestacy, shall be subject to the same law of distribution as other personal property, and in Scotland shall be deemed to be personal and moveable estate.

General issue.

XXVI. And be it 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 defendant or 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 shall 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: and that all

Limitation of actions;

actions, suits, bills, indictments, or informations for any offence

that shall be committed against this act shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of none effect; provided that such limitation of time shall not extend or be construed to extend to any actions, suits, or other proceedings which under the authority of this act shall or may be brought, sued, or commenced for or in respect of any copies of books to be delivered for the use of the British Museum, or of any one of the four libraries herein before mentioned.

not to extend to actions, &c. in respect of the delivery of books.

XXVII. Provided always, and be it enacted, that nothing in this act contained shall affect or alter the rights of the two universities of Oxford and Cambridge, the colleges or houses of learning within the same, the four universities in Scotland, the college of the holy and undivided Trinity of queen Elizabeth near Dublin, and the several colleges of Eton, Westminster, and Winchester, in any copyrights heretofore and now vested or hereafter to be vested in such universities and colleges respectively, anything to the contrary herein contained notwithstanding.

Saving the rights of the universities, and the colleges of Eton, Westminster, and Winchester.

XXVIII. Provided also, and be it enacted, that nothing in this act contained shall affect, alter, or vary any right subsisting at the time of passing of this act, except as herein expressly enacted; and all contracts, agreements, and obligations made and entered into before the passing of this act, and all remedies relating thereto, shall remain in full force, any thing herein contained to the contrary notwithstanding.

Saving all subsisting rights, contracts, and engagements.

XXIX. And be it enacted, that this act shall extend to the united kingdom of Great Britain and Ireland, and to every part of the British dominions.

Extent of the act.

XXX. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of Parliament.

Act may be amended this session.

SCHEDULE to which the preceding act refers.

No. 1.

FORM of MINUTE of CONSENT to be entered at Stationers' Hall.

We, the undersigned, *A. B.* of the author of a certain book, intituled *Y. Z.* [*or* the personal representative of the author,

as the case may be,] and *C. D.* of do hereby certify, that we have consented and agreed to accept the benefits of the act passed in the fifth year of the reign of her Majesty queen Victoria, cap. , for the extension of the term of copyright therein provided by the said act, and hereby declare that such extended term of copyright therein is the property of the said *A. B.* or *C. D.*

Dated this day of 18 .
Witness (Signed) *A. B.*
C. D.

To the registering officer appointed by the Stationers' Company.

No. 2.

Form of requiring Entry of Proprietorship.

I, *A. B.* of do hereby certify, that I am the proprietor of the copyright of a book, intituled *Y. Z.*, and I hereby require you to make entry in the register book of the Stationers' Company of my proprietorship of such copyright, according to the particulars underwritten.

Title of Book.	Name of Publisher, and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
Y. Z.		*A. B.*	

Dated this day of 18 .
Witness, *C. D.* (Signed) *A. B.*

No. 3.

ORIGINAL ENTRY of PROPRIETORSHIP of COPYRIGHT of a BOOK.

Time of making the entry.	Title of Book.	Name of the publisher, and place of publication.	Name and place of abode of the proprietor of the copyright.	Date of first publication.
	Y. Z.	*A. B.*	*C. D.*	

No. 4.

FORM of CONCURRENCE of the PARTY assigning in any BOOK previously registered.

I, *A. B.* of being the Assigner of the Copyright of the Book hereunder described, do hereby require you to make Entry of the Assignment of the Copyright therein.

Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
Y. Z.	*A. B.*	*C. D.*

Dated this Day of 18 .

(Signed) *A. B.*

No. 5.

FORM of ENTRY of ASSIGNMENT of COPYRIGHT in any BOOK previously registered.

Date of entry.	Title of book.	Assigner of the Copyright.	Assignee of Copyright.
	[*Set out the title of the book, and refer to the page of the registry book in which the original entry of the copyright thereof is made.*]	*A. B.*	*C. D.*

5 & 6 Vict. c. 100.

An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture.

[10th *August*, 1842.]

Whereas by the several acts mentioned in the schedule (A.) to this act annexed, there was granted, in respect of the woven fabrics therein mentioned, the sole right to use any new and original pattern for printing the same during the period of three calendar months: and whereas by the act mentioned in the schedule (B.) to this act annexed, there was granted, in respect of all articles, except lace, and except the articles within the meaning of the acts herein-before referred to, the sole right of using any new and original design, for certain purposes, during the respective periods therein mentioned; but forasmuch as the protection afforded by the said acts in respect of the application of designs to certain articles of manufacture is insufficient, it is expedient to extend the same, but upon the conditions herein-after expressed; now, for that purpose, and for the purpose of consolidating the provisions of the said acts, 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,

Commencement of act, and repeal of former acts.

that this act shall come into operation on the first day of September one thousand eight hundred and forty-two, and that thereupon all the said acts mentioned in the said schedules (A.) and (B.) to this act annexed shall be and they are hereby repealed.

Proviso as to existing copyrights.

II. Provided always, and be it enacted, that notwithstanding such repeal of the said acts, every copyright in force under the same shall continue in force till the expiration of such copyright; and with regard to all offences or injuries committed against any such copyright before this act shall come into operation, every penalty imposed and every remedy given by the said acts, in relation to any such offence or injury, shall be applicable as if such acts had not been repealed; but with regard to such offences or injuries committed against any such copyright after this act shall come into operation, every penalty imposed and every remedy given by this act in relation to any such offence or injury

shall be applicable as if such copyright had been conferred by *this act.*

III. And with regard to any new and original design (except for sculpture and other things within the provisions of the several acts mentioned in the schedule (C.) to this act annexed), whether such design be applicable to the ornamenting of any article of manufacture, or of any substance, artificial or natural, or partly artificial and partly natural, and that whether such design be so applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means such design may be so applicable, whether by printing, or by painting, or by embroidery, or by weaving, or by sewing, or by modelling, or by casting, or by embossing, or by engraving, or by staining, or by any other means whatsoever, manual, mechanical, or chemical, separate or combined; be it enacted, that the proprietor of every such design, not previously published either within the united kingdom of Great Britain and Ireland, or elsewhere, shall have the sole right to apply the same to any articles of manufacture, or to any such substances as aforesaid, provided the same be done within the united kingdom of Great Britain and Ireland, for the respective terms herein-after mentioned, such respective terms to be computed from the time of such design being registered according to this act; (that is to say,) Grant of copyright.

In respect of the application of any such design to ornamenting any article of manufacture contained in the first, second, third, fourth, fifth, sixth, eighth, or eleventh of the classes following, for the term of three years:

In respect of the application of any such design to ornamenting any article of manufacture contained in the seventh, ninth, or tenth of the classes following, for the term of nine calendar months:

In respect of the application of any such design to ornamenting any article of manufacture or substance contained in the twelfth or thirteenth of the classes following, for the term of twelve calendar months:

Class 1.—Articles of manufacture composed wholly or chiefly of any metal or mixed metals:

Class 2.—Articles of manufacture composed wholly or chiefly of wood:

Class 3.—Articles of manufacture composed wholly or chiefly of glass:

Class 4.—Articles of manufacture composed wholly or chiefly of earthenware:

Class 5.—Paper hangings:

Class 6.—Carpets:

Class 7.—Shawls, if the design be applied solely by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics:

Class 8.—Shawls not comprised in Class 7.

Class 9.—Yarn, thread, or warp, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced:

Class 10.—Woven fabrics, composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics; excepting the articles included in Class 11:

Class 11.—Woven fabrics, composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics, such woven fabrics being or coming within the description technically called furnitures, and the repeat of the design whereof shall be more than twelve inches by eight inches:

Class 12.—Woven fabrics, not comprised in any preceding Class:

Class 13.—Lace, and any article of manufacture or substance not comprised in any preceding class.

Condition of copyright.

IV. Provided always, and be it enacted, that no person shall be entitled to the benefit of this act, with regard to any design in respect of the application thereof to ornamenting any article of manufacture, or any such substance, unless such design have before

Registration.

publication thereof been registered according to this act, and unless at the time of such registration such design have been registered in respect of the application thereof to some or one of the articles of manufacture or substances comprised in the above-mentioned classes, by specifying the number of the class in respect of which

such registration is made, and unless the name of such person shall be registered according to this act as a proprietor of such design, and unless after publication of such design every such article of manufacture, or such substance to which the same shall be so applied, published by him, hath thereon, if the article of manufacture be a woven fabric for printing, at one end thereof, or, if of any other kind or such substance as aforesaid, at the end or edge thereof, or other convenient place thereon, the letters "R^d," together with such number or letter, or number and letter, and in such form as shall correspond with the date of the registration of such design according to the registry of designs in that behalf; and such marks may be put on any such article of manufacture or such substance, either by making the same in or on the material itself of which such article or such substance shall consist, or by attaching thereto a label containing such marks.

Marks denoting a registered design.

V. And be it enacted, that the author of any such new and original design shall be considered the proprietor thereof, unless he have executed the work on behalf of another person for a good or a valuable consideration, in which case such person shall be considered the proprietor, and shall be entitled to be registered in the place of the author; and every person acquiring for a good or a valuable consideration a new and original design, or the right to apply the same to ornamenting any one or more articles of manufacture, or any one or more such substances as aforesaid, either exclusively of any other person or otherwise, and also every person upon whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise.

The term "proprietor" explained.

VI. And be it enacted, that every person purchasing or otherwise acquiring the right to the entire or partial use of any such design may enter his title in the register hereby provided, and any writing purporting to be a transfer of such design and signed by the proprietor thereof shall operate as an effectual transfer; and the registrar shall, on request, and the production of such writing, or in the case of acquiring such right by any other mode than that of purchase on the production of any evidence to the satisfaction of the registrar, insert the name of the new proprietor in the register; and the following may be the form of such transfer, and of such request to the registrar:

Transfer of copyright and register thereof.

Form of Transfer, and authority to register.

'I *A. B.* author [*or* proprietor] of design, No. having 'transferred my right thereto, [*or, if such transfer be partial,*] 'so far as regards the ornamenting of [*describe the articles 'of manufacture or substances, or the locality with respect to 'which the right is transferred,*] to *B. C.* of do hereby 'authorize you to insert his name on the register of designs 'accordingly.'

Form of Request to register.

'I *B. C.*, the person mentioned in the above transfer, do request 'you to register my name and property in the said design as 'entitled [*if to the entire use*] to the entire use of such design, '[*or if to the partial use,*] to the partial use of such design, so 'far as regards the application thereof [*describe the articles of 'manufacture, or the locality in relation to which the right is 'transferred.*]'

But if such request to register be made by any person to whom any such design shall devolve otherwise than by transfer, such request may be in the following form:

'I *C. D.*, in whom is vested by [*state bankruptcy or otherwise*] the Design, No. [*or if such devolution be of a par- 'tial right*, so far as regards the application thereof] to [*describe 'the articles of manufacture or substance, or the locality in rela- 'tion to which the right has devolved*].'

Piracy of designs.

VII. And for preventing the piracy of registered designs, be it enacted, that during the existence of any such right to the entire or partial use of any such design no person shall either do or cause to be done any of the following acts with regard to any articles of manufacture, or substances, in respect of which the copyright of such design shall be in force, without the licence or consent in writing of the registered proprietor thereof; (that is to say,)

No person shall apply any such design, or any fraudulent imitation thereof for the purpose of sale, to the ornamenting of

any article of manufacture, or any substance, artificial or natural, or partly artificial and partly natural:

No person shall publish, sell, or expose for sale any article of manufacture, or any substance, to which such design, or any fraudulent imitation thereof, shall have been so applied, after having received, either verbally or in writing, or otherwise from any source other than the proprietor of such design, knowledge that his consent has not been given to such application, or after having been served with or had left at his premises a written notice signed by such proprietor or his agent to the same effect.

Recovery of penalties for piracy.

VIII. And be it enacted, that if any person commit any such act he shall for every offence forfeit a sum not less than five pounds and not exceeding thirty pounds to the proprietor of the design in respect of whose right such offence has been committed: and such proprietor may recover such penalty as follows:

In England, either by an action of debt or on the case against the party offending, or by summary proceeding before two justices having jurisdiction where the party offending resides; and if such proprietor proceed by such summary proceeding, any justice of the peace acting for the county, riding, division, city, or borough where the party offending resides, and not being concerned either in the sale or manufacture of the article of manufacture, or in the design to which such summary proceeding relates, may issue a summons requiring such party to appear on a day and at a time and place to be named in such summons, such time not being less than eight days from the date thereof; and every such summons shall be served on the party offending, either in person or at his usual place of abode; and either upon the appearance or upon the default to appear of the party offending, any two or more of such justices may proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party offending, or upon the oath or affirmation of one or more credible witnesses, which such justices are hereby authorized to administer, may convict the offender in a penalty of not less than five pounds or more than thirty pounds, as aforesaid, for each offence, as to such justices doth seem fit; but

the aggregate amount of penalties for offences in respect of any one design committed by any one person, up to the time at which any of the proceedings herein mentioned shall be instituted, shall not exceed the sum of one hundred pounds; and if the amount of such penalty or of such penalties, and the costs attending the conviction, so assessed by such justices, be not forthwith paid, the amount of the penalty or of the penalties, and of the costs, together with the costs of the distress and sale, shall be levied by distress and sale of the goods and chattels of the offender, wherever the same happen to be in England; and the justices before whom the party has been convicted, or, on proof of the conviction, any two justices acting for any county, riding, division, city, or borough in England, where goods and chattels of the person offending happen to be, may grant a warrant for such distress and sale; and the overplus, if any, shall be returned to the owner of the goods and chattels, on demand; and every information and conviction which shall be respectively laid or made in such summary proceeding before two justices under this act may be drawn or made out in the following forms respectively, or to the effect thereof, *mutatis mutandis*, as the case may require:

Form of Information.

'BE it remembered, that on the at
'in the county of *A. B.* of in
'the county of [*or C. D.* of in the
county of at the instance and on the behalf of
'*A. B.* of in the county of] cometh
'before us and two of her
'Majesty's justices of the peace in and for the county of
, and giveth us to understand that the said *A. B.*
'before and at the time when the offence herein-after men-
'tioned was committed, was the proprietor of a new and ori-
'ginal design for [*here describe the design*], and that within
'twelve calendar months last past, to wit, on the at
' in the county of *E. F.* of
'in the county of did [*here describe the offence*],
'contrary to the form of the act passed in the

'year of the reign of her present Majesty, intituled "An Act
'to consolidate and amend the laws relating to the copyright
'of designs for ornamenting articles of manufacture.'

Form of Conviction.

'BE it remembered, that on the day of
'in the year of our Lord at
'in the county of *E. F.* of in the
'county aforesaid is convicted before us and
' two of her Majesty's justices of the peace
'for the said county, for that he the said *E. F.* on the
'day of in the year at
'in the county of did [*here describe the offence*]
'contrary to the form of the statute in that case made and
'provided; and we the said justices do adjudge that the said
'*E. F.* for his offence aforesaid hath forfeited the sum of
' to the said *A. B.*'

In Scotland, by action before the court of session in ordinary form, or by summary action before the sheriff of the county where the offence may be committed or the offender resides, who, upon proof of the offence or offences, either by confession of the party offending or by the oath or affirmation of one or more credible witnesses, shall convict the offender and find him liable in the penalty or penalties aforesaid, as also in expenses; and it shall be lawful for the sheriff, in pronouncing such judgment for the penalty or penalties and costs, to insert in such judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by poinding: provided always, that it shall be lawful to the sheriff, in the event of his dismissing the action and assoilzieing the defender, to find the complainer liable in expenses; and any judgment so to be pronounced by the sheriff in such summary application shall be final and conclusive, and not subject to review by advocation, suspension, reduction, or otherwise:

In Ireland, either by action in a superior court of law at Dublin or by civil bill in the civil bill court of the county or place where the offence was committed.

Proviso as to action for damages.

IX. Provided always, and be it enacted, that notwithstanding the remedies hereby given for the recovery of any such penalty as aforesaid, it shall be lawful for the proprietor in respect of whose right such penalty shall have been incurred (if he shall elect to do so) to bring such action as he may be entitled to for the recovery of any damages which he shall have sustained, either by the application of any such design or of a fraudulent imitation thereof, for the purpose of sale, to any articles of manufacture or substances, or by the publication, sale, or exposure to sale, as aforesaid, by any person, of any article or substance to which such design or any fraudulent imitation thereof shall have been so applied, such person knowing that the proprietor of such design had not given his consent to such application.

Registration may in some cases be cancelled or amended.

X. And be it enacted, that in any suit in equity which may be instituted by the proprietor of any design or the person lawfully entitled thereto, relative to such design, if it shall appear to the satisfaction of the judge having cognizance of such suit that the design has been registered in the name of a person not being the proprietor or lawfully entitled thereto, it shall be competent for such judge, in his discretion, by a decree or order in such suit to direct either that such registration be cancelled (in which case the same shall thenceforth be wholly void), or that the name of the proprietor of such design, or other person lawfully entitled thereto, be substituted in the register for the name of such wrongful proprietor or claimant, in like manner as in herein-before directed in case of the transfer of a design, and to make such order respecting the costs of such cancellation or substitution, and of all proceedings to procure and effect the same, as he shall think fit; and the registrar is hereby authorized and required, upon being served with an official copy of such decree or order, and upon payment of the proper fee, to comply with the tenor of such decree or order, and either cancel such registration or substitute such new name, as the case may be.

Penalty for wrongfully using marks denoting a registered design.

XI. And be it enacted, that unless a design applied to ornamenting any article of manufacture or any such substance as aforesaid be so registered as aforesaid, and unless such design so registered shall have been applied to the ornamenting such article or substance within the United Kingdom of Great Britain and Ireland, and also after the copyright of such design in relation to such article or substance shall have expired, it shall be unlawful

to put on any such article or such substance, in the manner herein-before required with respect to articles or substances whereto shall be applied a registered design, the marks herein-before required to be so applied, or any marks corresponding therewith or similar thereto; and if any person shall so unlawfully apply any such marks, or shall publish, sell, or expose for sale any article of manufacture, or any substance with any such marks so unlawfully applied, knowing that any such marks have been unlawfully applied, he shall forfeit for every such offence a sum not exceeding five pounds, which may be recovered by any person proceeding for the same by any of the ways herein-before directed with respect to penalties for pirating any such design.

Limitation of actions.

XII. And be it enacted, that no action or other proceeding for any offence or injury under this act shall be brought after the expiration of twelve calendar months from the commission of the offence; and in every such action or other proceeding the party who shall prevail shall recover his full costs of suit or of such other proceeding.

Justices may order payment of costs in cases of summary proceeding.

XIII. And be it enacted, that in the case of any summary proceeding before any two justices in England such justices are hereby authorized to award payment of costs to the party prevailing, and to grant a warrant for enforcing payment thereof against the summoning party, if unsuccessful, in the like manner as is herein-before provided for recovering any penalty with costs against any offender under this act.

Registrar, &c. of designs to be appointed.

XIV. And for the purpose of registering designs for articles of manufacture, in order to obtain the protection of this act, be it enacted, that the lords of the committee of Privy Council for the consideration of all matters of trade and plantations may appoint a person to be a registrar of designs for ornamenting articles of manufacture, and, if the lords of the said committee see fit, a deputy registrar, clerks, and other necessary officers and servants; and such registrar, deputy registrar, clerks, officers, and servants, shall hold their offices during the pleasure of the lords of the said committee; and the commissioners of the treasury may from time to time fix the salary or remuneration of such registrar, deputy registrar, clerks, officers, and servants; and, subject to the provisions of this act, the lords of the said committee may make rules for regulating the execution of the duties of the office of the said registrar; and such registrar shall have a seal of office.

Registrar's duties.

XV. And be it enacted, that the said registrar shall not register any design in respect of any application thereof to ornamenting any articles of manufacture or substances, unless he be furnished, in respect of each such application, with two copies, drawings, or prints of such design, accompanied with the name of every person who shall claim to be the proprietor, or of the style or title of the firm under which such proprietor may be trading, with his place of abode or place of carrying on his business, or other place of address, and the number of the class in respect of which such registration is made; and the registrar shall register all such copies, drawings, or prints, from time to time successively, as they are received by him for that purpose; and on every such copy, drawing, or print he shall affix a number corresponding to such succession; and he shall retain one copy, drawing, or print, which he shall file in his office, and the other he shall return to the person by whom the same has been forwarded to him; and in order to give ready access to the copies of designs so registered, he shall class such copies of designs, and keep a proper index of each class.

Certificate of registration of design.

XVI. And be it enacted, that upon every copy, drawing, or print of an original design so returned to the person registering as aforesaid, or attached thereto, and upon every copy, drawing, or print thereof received for the purpose of such registration, or of the transfer of such design being certified thereon or attached thereto, the registrar shall certify under his hand that the design has been so registered, the date of such registration, and the name of the registered proprietor, or the style or title of the firm under which such proprietor may be trading, with his place of abode or place of carrying on his business, or other place of address, and also the number of such design, together with such number or letter, or number and letter, and in such form as shall be employed by him to denote or correspond with the date of such registration; and such certificate made on every such original design, or on such copy thereof, and purporting to be signed by the registrar or deputy registrar, and purporting to have the seal of office of such registrar affixed thereto, shall in the absence of evidence to the contrary, be sufficient proof, as follows,

Of the design, and of the name of the proprietor therein mentioned, having been duly registered; and

Of the commencement of the period of registry; and

Of the person named therein as proprietor being the proprietor; and

Of the originality of the design; and

Of the provisions of this act, and of any rule under which the certificate appears to be made, having been complied with:

And any such writing purporting to be such certificate shall, in the absence of evidence to the contrary, be received as evidence, without proof of the handwriting of the signature thereto, or of the seal of office affixed thereto, or of the person signing the same being the registrar or deputy registrar.

Inspection of registered designs.

XVII. And be it enacted, that every person shall be at liberty to inspect any design whereof the copyright shall have expired, paying only such fee as shall be appointed by virtue of this act in that behalf; but with regard to designs whereof the copyright shall not have expired, no such design shall be open to inspection, except by a proprietor of such design or by any person authorized by him in writing, or by any person specially authorized by the registrar, and then only in the presence of such registrar or in the presence of some person holding an appointment under this act, and not so as to take a copy of any such design or of any part thereof, nor without paying for every such inspection such fee as aforesaid: provided always, that it shall be lawful for the said registrar to give to any person applying to him, and producing a particular design, together with the registration mark thereof, or producing such registration mark only, a certificate stating whether of such design there be any copyright existing, and if there be, in respect to what particular article of manufacture or substance such copyright exists, and the term of such copyright, and the date of registration, and also the name and address of the registered proprietor thereof.

Application of fees of registration.

XVIII. And be it enacted, that the commissioners of the treasury, shall from time to time fix fees to be paid for the services to be performed by the registrar, as they shall deem requisite, to defray the expenses of the said office, and the salaries or other remuneration of the said registrar and of any other persons employed under him, with the sanction of the commissioners of the treasury, in the execution of this act: and the balance, if any, shall be carried to the consolidated fund of the united kingdom, and be paid accordingly into the receipt of her Majesty's exchequer at Westminster; and the commissioners of the treasury may regu-

late the manner in which such fees are to be received, and in which they are to be kept, and in which they are to be accounted for, and they may also remit or dispense with the payment of such fees in any cases, where they may think it expedient so to do: provided always, that the fee for registering a design to be applied to any woven fabric, mentioned or comprised in classes 7, 9, or 10, shall not exceed the sum of one shilling; that the fee for registering a design to be applied to a paper hanging shall not exceed the sum of ten shillings; and that the fee, to be received by the registrar for giving a certificate relative to the existence or expiration of any copyright in any design printed on any woven fabric, yarn, thread, or warp, or printed, embossed, or worked on any paper hanging, to any person exhibiting a piece end of a registered pattern, with the registration mark thereon, shall not exceed the sum of two shillings and sixpence.

Penalty for extortion.

XIX. And be it enacted, that if either the registrar or any person employed under him either demand or receive any gratuity or reward, whether in money or otherwise, except the salary or remuneration authorized by the commissioners of the treasury, he shall forfeit for every such offence fifty pounds to any person suing for the same by action of debt in the Court of Exchequer at Westminster; and he shall also be liable to be either suspended or dismissed from his office, and rendered incapable of holding any situation in the said office, as the commissioners of the treasury see fit.

Interpretation of act.

XX. And for the interpretation of this act, be it enacted, that the following terms and expressions, so far as they are not repugnant to the context of this act, shall be construed as follows: (that is to say,) the expression "commissioners of the treasury" shall mean the lord high treasurer for the time being, or the commissioners of her Majesty's treasury for the time being, or any three or more of them; and the singular number shall include the plural as well as the singular number; and the masculine gender shall include the feminine gender as well as the masculine gender.

Alteration of act.

XXI. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of Parliament.

SCHEDULES referred to by the foregoing Act.

SCHEDULE (A.)

DATE OF ACTS.	TITLE.
27 Geo. 3. c. 38. (1787.)	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.
29 Geo. 3. c. 19. (1789.)	An Act for continuing 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.
34 Geo. 3. c. 23. (1794.)	An Act for amending and making perpetual 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.
2 Vict. c. 13. (1839.)	An Act for extending the copyright of designs for calico printing to designs for printing other woven fabrics.

SCHEDULE (B.)

DATE OF ACT.	TITLE.
2 Vict. c. 17. (1839.)	An Act to secure to proprietors of designs for articles of manufacture the copyright of such designs for a limited time.

SCHEDULE (C.)

DATE OF ACTS.	TITLE.
38 Geo. 3. c. 71. (1798.)	An Act for encouraging the art of making new models and casts of busts and other things therein mentioned.
54 Geo. 3. c. 56. (1814.)	An Act to amend and render more effectual an act for encouraging the art of making new models and casts of busts and other things therein mentioned, and for giving further encouragement to such arts.

6 & 7 Vict. c. 65.

An Act to amend the Laws relating to the Copyright of Designs.

[22d *August*, 1843.]

5 & 6 Vict. c. 100.

Whereas by an act passed in the fifth and sixth years of the reign of her present Majesty, intituled "An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture," there was granted to the proprietor of any new and original design, with the exceptions therein mentioned, the sole right to apply the same to the ornamenting of any article of manufacture or any such substance as therein described during the respective periods therein mentioned: and whereas it is expedient to extend the protection afforded by the said act to such designs hereinafter mentioned, not being of an ornamental character, as are not included therein: be it therefore 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,

Commencement of act.

that this act shall come into operation on the first day of September one thousand eight hundred and forty-three.

Grant of copyright.

II. And with regard to any new or original design for any article of manufacture having reference to some purpose of utility, so far as such design shall be for the shape or configuration of such article, and that whether it be for the whole of such shape or configuration or only for a part thereof, be it enacted, that the proprietor of such design not previously published within the united kingdom of Great Britain and Ireland or elsewhere shall have the sole right to apply such design to any article, or make or sell any article according to such design, for the term of three years, to be computed from the time of such design being registered according

Proviso.

to this act: provided always, that this enactment shall not extend to such designs as are within the provisions of the said act, or of two other acts passed respectively in the thirty-eighth and fifty-fourth years of the reign of his late Majesty king George the

38 G. 3. c. 71.

Third and intituled respectively, "An Act for encouraging the Art of making new Models and Casts of Busts, and other Things

54 G. 3. c. 56.

therein mentioned, and An Act to amend and render more effectual an Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned."

Conditions of copyright.

III. Provided always, and be it enacted, that no person shall be entitled to the benefit of this act unless such design have before publication thereof been registered according to this act, and unless the name of such person shall be registered according to this act as a proprietor of such design, and unless after publication of such design every article of manufacture made by him according to such design, or on which such design is used, hath thereon the word "registered," with the date of registration.

Penalty for wrongfully using marks denoting a registered design.

IV. And be it enacted, that unless a design applied to any article of manufacture be registered either as aforesaid or according to the provisions of the said first mentioned act, and also after the copyright of such design shall have expired, it shall be unlawful to put on any such article the word "registered," or to advertise the same for sale as a registered article; and if any person shall so unlawfully publish, sell, or expose or advertise for sale any such article of manufacture, he shall forfeit for every such offence a sum not exceeding five pounds nor less than one pound, which may be recovered by any person proceeding for the same by any of the remedies hereby given for the recovery of penalties for pirating any such design.

Floor or oil cloths included in class six.

V. And be it enacted, that all such articles of manufacture as are commonly known by the name of floor cloths or oil cloths, shall henceforth be considered as included in class six in the said first-mentioned act in that behalf mentioned, and be registered accordingly.

Certain provisions of 5 & 6 Vict. c. 100, to apply to this act.

VI. And be it enacted, that all and every the clauses and provisions contained in the said first-mentioned act, so far as they are not repugnant to the provisions contained in this act, relating respectively to the explanation of the term proprietor, to the transfer of designs, to the piracy of designs, to the mode of recovering penalties, to actions for damages, to cancelling and amending registrations, to the limitation of actions, to the awarding of costs, to the certificate of registration, to the fixing and application of fees of registration, and to the penalty for extortion, shall be applied and extended to this present act as fully and effectually and to all intents and purposes, as if the said several clauses and provisoes had been particularly repeated and re-enacted in the body of this act.

Appointment of registrar, &c.

VII. And be it enacted, that so much of the said first-mentioned act as relates to the appointment of a registrar of designs for

ornamenting articles of manufacture, and other officers, as well as to the fixing of the salaries for the payment of the same, shall be and the same is hereby repealed; and for the purpose of carrying into effect the provisions as well of this act as of the said first-mentioned act, the lords of the committee of the privy council for the consideration of all matters of trade and plantations may appoint a person to be registrar of designs for articles of manufacture, and, if the lords of the said committee see fit, an assistant registrar and other necessary officers and servants; and such registrar, assistant registrar, officers, and servants shall hold their offices during the pleasure of the lords of the said committee; and such registrar shall have a seal of office; and the commissioners of her Majesty's treasury may from time to time fix the salary or other remuneration of such registrar, assistant registrar, and other officers and servants; and all the provisions contained in the said first-mentioned act, and not hereby repealed, relating to the registrar, deputy registrar, clerks and other officers and servants thereby appointed and therein named, shall be construed and held to apply respectively to the registrar, assistant registrar, and other officers and servants to be appointed under this act.

Registrar's duties.

VIII. And be it enacted, that the said registrar shall not register any design for the shape or configuration of any article of manufacture as aforesaid unless he be furnished with two exactly similar drawings or prints of such design, with such description in writing as may be necessary to render the same intelligible according to the judgment of the said registrar, together with the title of the said design, and the name of every person who shall claim to be proprietor, or of the style or title of the firm under which such proprietor may be trading, with his place of abode, or place of carrying on business, or other place of address; and every such drawing or print, together with the title and description of such design, and the name and address of the proprietor aforesaid, shall be on one sheet of paper or parchment, and on the same side thereof; and the size of the said sheet shall not exceed twenty-four inches by fifteen inches; and there shall be left on one of the said sheets a blank space on the same side on which are the said drawings, title, description, name, and address, of the size of six inches by four inches, for the certificate herein mentioned; and the said drawings or prints shall be made on a proper geometric scale: and the said description shall set forth such part or parts of the

Drawings.

said design (if any) as shall not be new or original; and the said registrar shall register all such drawings or prints from time to time as they are received by him for that purpose; and on every such drawing or print he shall affix a number corresponding to the order of succession in the register, and he shall retain one drawing or print which he shall file at his office, and the other he shall return to the person by whom the same has been forwarded to him; and in orc to give a ready access to the designs so registered he shall ke p a proper index of the titles thereof.

Discretionary power as to registry vested in the registrar.

IX. And be it enacted, that if any design be brought to the said registrar to be registered under the said first-mentioned act, and it shall appear to him that the samc ought to be registered under this present act, it shall be lawful for the said registrar to refuse to register such design otherwise than under the present act and in the manner hereby provided: and if it shall appear to the said registrar that the design brought to be registered under the said first mentioned act or this act is not intended to be applied to any article of manufacture, but only to some label, wrapper, or other covering in which such article might be disposed for sale, or that such design is contrary to public morality or order, it shall be lawful for the said registrar, in his discretion, wholly to refuse to register such design: *provided always, that the lords of the said* committee of privy council may, on representation made to them by the proprietor of any design so wholly refused to be registered as aforesaid, if they shall see fit, direct the said registrar to register such design, whereupon and in such case the said registrar shall be and is hereby required to register the same accordingly. *Proviso.*

Inspection of index of titles of designs, &c.

X. And be it enacted, that every person shall be at liberty to inspect the index of the titles of the designs, not being ornamental designs, registered under this act, and to take copies from the same, paying only such fees as shall be appointed by virtue of this act in that behalf; and every person shall be at liberty to inspect any such design, and to take copies thereof, paying such fee as aforesaid; but no design whereof the copyright shall not have expired shall be open to inspection, except in the presence of such registrar, or in the presence of some person holding an appointment under this act, and not so as to take a copy of such design, nor without paying such fee as aforessid.

Interpretation of act.

XI. And, for the interpretation of this act, be it enacted, that the following terms and expressions, so far as they are not repug-

nant to the context of this act, shall be construed as follows; (that is to say,) the expression "commissioners of the treasury" shall mean the lord high treasurer for the time being, or the commissioners of her Majesty's treasury of the united kingdom of Great Britain and Ireland for the time being, or any three or more of them; and the singular number shall include the plural as well as the singular number, and the masculine gender shall include the feminine gender as well as the masculine gender.

XII. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of Parliament

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7 Vict. cap. 12.

An Act to amend the Law relating to International Copyright.
[10th *May*, 1844.]

1 & 2 Vict. c. 59.

Whereas by an act passed in the session of Parliament held in the first and second years of the reign of her present Majesty, intituled "An Act for securing to Authors in certain Cases the Benefit of international Copyright" (and which act is hereinafter, for the sake of perspicuity, designated as "the International Copyright Act"), her Majesty was empowered by order in council to direct that the authors of books which should after a future time, to be specified in such order in council, be published in any foreign country, to be specified in such order in council, and their executors, administrators, and assigns, should have the sole liberty of printing and reprinting such books within the British dominions for such term as her Majesty should by such order in council direct, not exceeding the term which authors, being British subjects, were then, (that is to say) at the time of passing the said act, entitled to in respect of books first published in the united kingdom; and the said act contains divers enactments securing to authors and their representatives the copyright in the books to which any such order in council should extend: and whereas an act was passed in the session of Parliament held in the fifth and sixth years of the reign of her present Majesty, intituled "An Act

5 & 6 Vict. c. 45.

to amend the Law of Copyright" (and which act is herein-after, for the sake of perspicuity, designated as "the Copyright Amendment Act"), repealing various acts therein mentioned relating to the copyright of printed books, and extending, defining, and securing to authors and their representatives the copyright of books: and whereas an act was passed in the session of Parliament held in the third and fourth years of the reign of his late Majesty King William the Fourth, intituled "An Act to amend the Laws relating to Dramatic Literary Property" (and which act is herein-after, for sake of perspicuity, designated as "the Dramatic Literary Property Act"), whereby the sole liberty of representing or causing to be represented any dramatic piece in any place of dramatic entertainment in any part of the British dominions, which should be composed and not printed or published by the author thereof or his assignee, was secured to such author or his assignee; and by the said act it was enacted, that the author of any such production which should thereafter be printed and published, or his assignee, should have the like sole liberty of representation until the end of twenty-eight years from the first publication thereof: and whereas by the said Copyright Amendment Act the provisions of the said Dramatic Literary Property Act and of the said Copyright Amendment Act were made applicable to musical compositions; and it was thereby also enacted, that the sole liberty of representing or performing, or causing or permitting to be represented or performed, in any part of the British dominions, any dramatic piece or musical composition, should endure and be the property of the author thereof and his assigns for the term in the said Copyright Amendment Act provided for the duration of the copyright in books, and that the provisions therein enacted in respect of the property of such copyright should apply to the liberty of representing or performing any dramatic piece or musical composition; and whereas under or by virtue of the four several acts next herein-after mentioned; (that is to say,) an act 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 or Engravers during the time therein mentioned;" an act passed in the seventh year of his late Majesty King George the Third, intituled "An Act to amend and render more effectual an Act made in the Eighth Year of the Reign of

3 & 4 W. 4. c. 15.

8 G. 2. c. 13.

7 G. 3. c. 38.

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
17 G. 3. c. 57. in certain Prints;" an act passed in the seventeenth year of the reign of his late Majesty King George the Third, intituled "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;" and an act passed in the session of Parliament held in the sixth and seventh years of the reign of his
6 & 7 W. 4. c. 59. late Majesty King William the Fourth, intituled "An Act to extend the Protection of Copyright in Prints and Engravings to Ireland;" (and which said four several acts are herein-after, for the sake of perspicuity, designated as the Engraving Copyright Acts;) every person who invents or designs, engraves, etches, or works in mezzotinto or chiaro-oscuro, or from his own work, design, or invention causes or procures 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, and every person who engraves, etches, or works in mezzotinto or chiaro-oscuro, or causes to be engraved, etched, or worked, any print taken from any picture, drawing, model, or sculpture, either ancient or modern, notwithstanding such print shall not have been graven or drawn from the original design of such graver, etcher, or draftsman, is entitled to the copyright of such print for the term of twenty-eight years from the first publishing thereof; and by the said several Engraving Copyright Acts it is provided that the name of the proprietor shall be truly engraved on each plate, and printed on every such print, and remedies are provided for the infringement of such copyright: and whereas under and by virtue of an act passed in the thirty-
8 G. 3. c. 71. eighth year of the reign of his late Majesty King George the Third, intituled "An Act for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned,"
54 G. 3. c. 56. and of an act passed in the fifty-fourth year of the reign of his late Majesty King George the Third, intituled "An Act to amend and render more effectual an Act of his present Majesty, for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned, and for giving further encouragement to such Arts," (and which said acts are, for the sake of perspicuity,

herein-after designated as the Sculpture Copyright Acts,) every person who makes or causes to be made any new and original sculpture, or model or copy or cast of the human figure, any bust or part of the human figure clothed in drapery or otherwise, any animal or part of any animal combined with the human figure or otherwise, any subject, being matter of invention in sculpture, any alto or basso relievo, representing any of the matters aforesaid, or any cast from nature of the human figure or part thereof, or of any animal or part thereof, or of any such subject representing any of the matters aforesaid, whether separate or combined, is entitled to the copyright in such new and original sculpture, model, copy, and cast, for fourteen years from first putting forth and publishing the same, and for an additional period of fourteen years in case the original maker is living at the end of the first period; and by the said acts it is provided that the name of the proprietor, with the date of the publication thereof, is to be put on all such sculptures, models, copies, and casts, and remedies are provided for the infringement of such copyright: and whereas the powers vested in Her Majesty by the said International Copyright Act are insufficient to enable her Majesty to confer upon authors of books first published in foreign countries copyright of the like duration, and with the like remedies for the infringement thereof, which are conferred and provided by the said Copyright Amendment Act with respect to authors of books first published in the British dominions; and the said International Copyright Act does not empower her Majesty to confer any exclusive right of representing or performing dramatic pieces or musical compositions first published in foreign countries upon the authors thereof, nor to extend the privilege of copyright to prints and sculpture first published abroad; and it is expedient to vest increased powers in her Majesty in this respect, and for that purpose to repeal the said International Copyright Act, and to give such other powers to her Majesty, and to make such further provisions, as are herein-after contained: be it therefore 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 the said recited act herein designated as the International Copyright Act shall be and the same is hereby repealed.

Repeal of International Copyright Act.

II. And be it enacted, that it shall be lawful for her Majesty, Her Majesty,

by order in council, may direct that authors, &c. of works first published in foreign countries shall have copyright therein within her Majesty's dominions.

by any order of her Majesty in council, to direct that, as respects all or any particular class or classes of the following works, (namely,) books, prints, articles of sculpture, and other works of art, to be defined in such order, which shall after a future time, to be specified in such order, be first published in any foreign country to be named in such order, the authors, inventors, designers, engravers, and makers thereof respectively, their respective executors, administrators, and assigns, shall have the privilege of copyright therein during such period or respective periods as shall be defined in such order, not exceeding, however, as to any of the above-mentioned works, the term of copyright which authors, inventors, designers, engravers, and makers of the like works respectively first published in the united kingdom may be then entitled to under the herein-before recited acts respectively, or under any acts which may hereafter be passed in that behalf.

If the order applies to books, the copyright law as to books first published in this country shall apply to the books to which the order relates with certain exceptions.

III. And be it enacted, that in case any such order shall apply to books, all and singular the enactments of the said Copyright Amendment Act, and of any other act for the time being in force with relation to the copyright in books first published in this country, shall, from and after the time so to be specified in that behalf in such order, and subject to such limitation as to the duration of the copyright as shall be therein contained, apply to and be in force in respect of the books to which such order shall extend, and which shall have been registered as herein-after is provided, in such and the same manner as if such books were first published in the united kingdom, save and except such of the said enactments, or such parts thereof, as shall be excepted in such order, and save and except such of the said enactments as relate to the delivery of copies of books at the British Museum, and to or for the use of the other libraries mentioned in the said Copyright Amendment Act.

If the order applies to prints, sculptures, &c., the copyright law as to prints or sculptures first published in this country shall apply to the prints, sculptures, &c. to which such order relates.

IV. And be it enacted, that in case any such order shall apply to prints, articles of sculpture, or to any such other works of art as aforesaid, all and singular the enactments of the said Engraving Copyright Acts and the said Sculpture Copyright Acts, or of any other act for the time being in force with relation to the copyright in prints or articles of sculpture first published in this country, and of any act for the time being in force with relation to the copyright in any similar works of art first published in this country, shall, from and after the time so to be specified in that behalf

in such order, and subject to such limitation as to the duration of the copyright as shall be therein contained respectively, apply to and be in force in respect of the prints, articles of sculpture, and other works of art to which such order shall extend, and which shall have been registered as herein-after is provided, in such and the same manner as if such articles and other works of art were first published in the united kingdom, save and except such of the said enactments or such parts thereof as shall be excepted in such order.

Her Majesty may by order in council, direct that authors and composers of dramatic pieces and musical compositions first publicly represented and performed in foreign countries shall have similar rights in the British dominions.

V. And be it enacted, that it shall be lawful for her Majesty, by any order of her Majesty in council, to direct that the authors of dramatic pieces and musical compositions which shall after a future time, to be specified in such order, be first publicly represented or performed in any foreign country to be named in such order, shall have the sole liberty of representing or performing in any part of the British dominions such dramatic pieces or musical compositions during such period as shall be defined in such order, not exceeding the period during which authors of dramatic pieces and musical compositions first publicly represented or performed in the united kingdom may for the time be entitled by law to the sole liberty of representing and performing the same: and from and after the time so specified in any such last-mentioned order the enactments of the said Dramatic Literary Property Act and of the said Copyright Amendment Act, and of any other act for the time being in force with relation to the liberty of publicly representing and performing dramatic pieces or musical compositions, shall, subject to such limitation as to the duration of the right conferred by any such order as shall be therein contained, apply to and be in force in respect of the dramatic pieces and musical compositions to which such order shall extend, and which shall have been registered as herein-after is provided, in such and the same manner as if such dramatic pieces and musical compositions had been first publicly represented and performed in the British dominions, save and except such of the said enactments or such parts thereof as shall be excepted in such order.

Particulars to be observed as to registry and to delivery of copies.

VI. Provided always, and be it enacted, that no author of any book, dramatic piece or musical composition, or his executors, administrators, or assigns, and no inventor, designer, or engraver of any print, or maker of any article of sculpture, or other work of art, his executors, administrators, or assigns, shall be entitled

to the benefit of this act, or of any order in council to be issued in pursuance thereof, unless, within a time or times to be in that behalf prescribed in each such order in council, such book, dramatic piece, musical composition, print, article of sculpture, or other work of art, shall have been so registered, and such copy thereof shall have been so delivered as herein-after is mentioned; (that is to say,) as regards such book, and also such dramatic piece or musical composition, (in the event of the same having been printed,) the title to the copy thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor of the copyright thereof, the time and place of the first publication, representation, or performance thereof, as the case may be, in the foreign country named in the order in council under which the benefits of this act shall be claimed, shall be entered in the register book of the Company of Stationers in London, and one printed copy of the whole of such book, and of such dramatic piece or musical composition, in the event of the same having been printed, and of every volume thereof, upon the best paper upon which the largest number or impression of the book, dramatic piece, or musical composition shall have been printed for sale, together with all maps and prints relating thereto, shall be delivered to the officer of the Company of Stationers at the Hall of the said company; and as regards dramatic pieces and musical compositions in manuscript, the title to the same, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor of the right of representing or performing the same, and the time and place of the first representation or performance thereof in the country named in the order in council under which the benefit of the act shall be claimed, shall be entered in the said register book of the said Company of Stationers in London; and as regards prints, the title thereof, the name and place of abode of the inventor, designer, or engraver thereof, the name of the proprietor of the copyright therein, and the time and place of the first publication thereof in the foreign country named in the order in council under which the benefits of the act shall be claimed, shall be entered in the said register book of the said Company of Stationers in London, and a copy of such print, upon the best paper upon which the largest number or impressions of the print shall have been printed for sale, shall be delivered to the officer of the Company of Stationers at the Hall

of the said company; and as regards any such article of sculpture or any such other work of art as aforesaid, a descriptive title thereof, the name and place of abode of the maker thereof, the name of the proprietor of the copyright therein, and the time and place of its first publication in the foreign country named in the order in council under which the benefit of this act shall be claimed shall be entered in the said register book of the said Company of Stationers in London; and the officer of the said Company of Stationers receiving such copies so to be delivered as aforesaid shall give a receipt in writing for the same, and such delivery shall to all intents and purposes be a sufficient delivery under the provisions of this act.

In case of books published anonymously, the name of the publisher to be sufficient.

VII. Provided always, and be it enacted, that if a book be published anonymously, it shall be sufficient to insert in the entry thereof in such register book the name and place of abode of the first publisher thereof, instead of the name and place of abode of the author thereof, together with a declaration that such entry is made either on behalf of the author or on behalf of such first publisher, as the case may require.

The provisions of the Copyright Amendment Act as regards entries in the register book of the Company of Stationers, &c. to apply to entries under this act.

VIII. And be it enacted, that the several enactments in the said Copyright Amendment Act contained with relation to keeping the said register book, and the inspection thereof, the searches therein, and the delivery of certified and stamped copies thereof, the reception of such copies in evidence, the making of false entries in the said book, and the production in evidence of papers falsely purporting to be copies of entries in the said book, the applications to the courts and judges by persons aggrieved by entries in the said book, and the expunging and varying such entries, shall apply to the books, dramatic pieces, and musical compositions, prints, articles of sculpture, and other works of art, to which any order in council issued in pursuance of this act shall extend, and to the entries and assignments of copyright and proprietorship therein, in such and the same manner as if such enactments were here expressly enacted in relation thereto, save and except that the forms of entry prescribed by the said Copyright Amendment Act, may be varied to meet the circumstances of the case, and that the sum to be demanded by the officer of the said Company of Stationers for making any entry required by this act shall be one shilling only.

As to expunging or

IX. And be it enacted, that every entry made in pursuance of

varying entry grounded in wrongful first publication.

this act of a first publication shall be primâ facie proof of a rightful first publication; but if there be a wrongful first publication, and any party have availed himself thereof to obtain an entry of a spurious work, no order for expunging or varying such entry shall be made unless it be proved to the satisfaction of the court or of the judge taking cognizance of the application for expunging or varying such entry, first, with respect to a wrongful publication in a country to which the author or first publisher does not belong, and in regard to which there does not subsist with this country any treaty of international copyright, that the party making the application was the author or first publisher, as the case requires; second, with respect to a wrongful first publication either in the country where a rightful first publication has taken place, or in regard to which there subsists with this country a treaty of international copyright, that a court of competent jurisdiction in any such country where such wrongful first publication has taken place has given judgment in favour of the right of the party claiming to be the author or first publisher.

Copies of books wherein copyright is subsisting under this act, printed in foreign countries other than those wherein the book was first published prohibited to be imported.

X. And be it enacted, that all copies of books wherein there shall be any subsisting copyright under or by virtue of this act, or of any order in council made in pursuance thereof, printed or reprinted in any foreign country except that in which such books were first published, shall be and the same are hereby absolutely prohibited to be imported into any part of the British dominions, except by or with the consent of the registered proprietor of the copyright thereof, or his agent authorized in writing, and if imported to the contrary to this prohibition the same and the importers thereof shall be subject to the enactments in force relating to goods prohibited to be imported by any act relating to the customs; and as respects any such copies so prohibited to be imported, and also as respects any copies unlawfully printed in any place whatsoever of any books wherein there shall be any such subsisting copyright as aforesaid, any person who shall in any part of the British dominions import such prohibited or unlawfully printed copies, or who, knowing such copies to be so unlawfully imported or unlawfully printed, shall sell, publish, or expose to sale or hire, or shall cause to be sold, published, or exposed to sale or hire, or have in his possession for sale or hire, any such copies so unlawfully imported or unlawfully printed, such offender shall be liable to a special action on the case at the suit of the proprietor of such

copyright, to be brought and prosecuted in the same courts and in the same manner, and with the like restrictions upon the proceedings of the defendant, as are respectively prescribed in the said Copyright Amendment Act with relation to actions thereby authorized to be brought by proprietors of copyright against persons importing or selling books unlawfully printed in the British dominions.

Officer of Stationers' Company to deposit books, &c. in the British Museum.

XI. And be it enacted, that the said officer of the said Company of Stationers shall receive at the Hall of the said company every book, volume, or print so to be delivered as aforesaid, and within one calendar month after receiving such book, volume, or print shall deposit the same in the library of the British Museum.

Second or subsequent editions.

XII. Provided always and be it enacted, that it shall not be requisite to deliver to the said officer of the said Stationers' Company any printed copy of the second or of any subsequent edition of any book or books so delivered as aforesaid, unless the same shall contain additions or alterations.

Orders in council may specify different periods for different foreign countries and for different classes of works.

XIII. And be it enacted, that the respective terms to be specified by such orders in council respectively for the continuance of the privilege to be granted in respect of works to be first published in foreign countries may be different for works first published in different foreign countries and for different classes of such works; and that the times to be prescribed for the entries to be made in the register book of the Stationers' Company, and for the deliveries of the books and other articles to the said officer of the Stationers' Company, as hereinbefore is mentioned, may be different for different foreign countries and for different classes of books or other articles.

No order in council to have any effect unless it states that reciprocal protection is secured.

XIV. Provided always, and be it enacted, that no such order in council shall have any effect unless it shall be therein stated, as the ground for issuing the same, that due protection has been secured by the foreign power so named in such order in council for the benefit of parties interested in works first published in the dominions of her Majesty similar to those comprised in such order.

Orders in council to be published in Gazette, and to have same effect as this act.

XV. And be it enacted, that every order in council to be made under the authority of this act shall as soon as may be after the making thereof by her Majesty in council be published in the *London Gazette*, and from the time of such publication shall have the same effect as if every part thereof was included in this act.

Orders in council to be laid before Parliament.

XVI. And be it enacted, that a copy of every order of her Majesty in council made under this act shall be laid before both houses of Parliament within six weeks after issuing the same, if Parliament be then sitting, and if not, then within six weeks after the commencement of the then next session of Parliament.

Orders in council may be revoked.

XVII. And be it enacted, that it shall be lawful for her Majesty by an order in council from time to time to revoke or alter any order in council previously made under the authority of this act, but nevertheless without prejudice to any rights acquired previously to such revocation or alteration.

Translations.

XVIII. Provided always, and be it enacted, that nothing in this act contained shall be construed to prevent the printing, publication, or sale of any translation of any book the author whereof and his assigns may be entitled to the benefit of this act.

Authors of works first published in foreign countries not entitled to copyright except under this act.

XIX. And be it enacted, that neither the author of any book, nor the author or composer of any dramatic piece or musical composition, nor the inventor, designer, or engraver of any print, nor the maker of any article of sculpture, or of such other work of art as aforesaid, which shall after the passing of this act be first published out of her Majesty's dominions, shall have any copyright therein respectively, or any exclusive right to the public representation or performance thereof, otherwise than such (if any) as he may become entitled to under this act.

Interpretation clause.

XX. And be it enacted, that in the construction of this act the word "book" shall be construed to include "volume," "pamphlet," "sheet of letter-press," "sheet of music," "map," "chart," or "plan;" and the expression "articles of sculpture" shall mean all such sculptures, models, copies, and casts as are described in the said Sculpture Copyright Acts, and in respect of which the privileges of copyright are thereby conferred; and the words "printing" and re-printing," shall include engraving and any other method of multiplying copies; and the expression "her Majesty," shall include the heirs and successors of her Majesty; and the expressions "order of her Majesty in council," "order in council," and "order," shall respectively mean order of her Majesty acting by and with the advice of her Majesty's most honourable privy council; and the expression "officer of the Company of Stationers' shall mean the officer appointed by the said Company of Stationers for the purposes of the said Copyright Amendment Act; and in describing any persons or things any word importing the plural

number shall mean also one person or thing, and any word importing the singular number shall include several persons or things, and any word importing the masculine shall include also the feminine gender; unless in any of such cases there shall be something in the subject or context repugnant to such construction.

XXI. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of Parliament. Act may be repealed this session.

COPYRIGHT OF DESIGNS.

No. 1.

ARTICLES OF ORNAMENT.

Office of the Registrar of Designs,
35, Lincoln's Inn Fields.

By the Consolidated Designs Copyright Act, 5 & 6 Vict. c. 100, *commencing its operation the* 1st September, 1842, a Copyright or Property is given to the Authors or Proprietors of Original Designs for ornamenting any article of manufacture or substance, for the various Terms specified in the following classes :—

Class.	*Article.*	*Copyright.*
1.	Articles in Metal	3 years
2.	Articles in Wood	3 „
3.	Articles in Glass	3 „
4.	Articles in Earthenware	3 „
5.	Paper Hangings	3 „
6.	Carpets, Floorcloths, and Oil Cloths	3 „
7.	Shawls (patterns printed)	9 months
8.	Shawls (patterns not printed)	3 years
9.	Yarn, Thread or Warp (printed)	9 months
10.	Woven Fabrics, not Furnitures (patterns printed)	9 „
11.	Woven Fabrics, Furnitures (patterns printed)	3 years
12.	Woven Fabrics (patterns not printed)	12 months
13.	Lace and all other Articles	12 months

DIRECTIONS FOR REGISTERING.

All persons wishing to register a Design, must bring or send to the Registrar's Office two exactly similar copies thereof, for each Class under which the same is proposed to be registered, together with the proper fees. These copies may consist, either of portions of the manufactured articles, when such can conveniently be done (as in the case of *Paper Hangings, Calico Prints, &c.*), or else of Prints or Drawings, (which, whether coloured or not, must be correct representations of the Design,) when the article is of such a nature as not to admit of being pasted in a book. These copies must be accompanied with the name and address, *distinctly written or printed*, of the Proprietor or Proprietors, or with the title of the firm under which he or they may be trading, and the place of carrying on business, and *also with the number of that one of the above Classes*, in respect of which such Design is intended to be registered. After the Design has been registered, one of the two copies will be filed at the Office, and the other returned to the Proprietor, with a Certificate annexed, on which will appear the Mark to be placed on each article of manufacture on which the Design is used.

A Design may be registered in respect of one or more of the above Classes according as it is intended to be employed in one or more species of manufacture, but two separate copies must be furnished, and a separate fee paid on account of each separate Class, and all such registrations must be made at the same time.

In case of the transfer of a registered Design, a copy must be transmitted to the Registrar, together with the forms which can be procured at the Office, properly filled up and signed, the transfer will then be registered, and the copy returned with a Certificate annexed.

All communications for the registration of Designs may be made either through the General Post, directed to "The Registrar of Designs, Designs Office, London," (and parcels so directed containing Designs, are not restricted in weight to 16 ounces,) or by any other mode of conveyance; and provided the carriage be paid, and the proper fees, or a Post-Office Order for payment, be enclosed, the Designs will be duly registered, and the certified copies returned to the Proprietor free of expense.

The Registrar's Office, No. 35, Lincoln's Inn Fields, is open

every day, between the hours of 10 in the Morning and 4 in the Afternoon. Designs and Transfers are registered from 11 until 3.

The following are the fees ordered to be paid by the Treasury:—

TABLE OF FEES.

REGISTERING DESIGNS:—

Copyright.	£	s.	d.
Class 1. . 3 years . .	3	0	0
Class 2. . do . .	1	0	0
Class 3. . do . .	1	0	0
Class 4. . do . .	1	0	0
Class 5. . do . .	0	10	0
Class 6. . do . .	1	0	0
Class 7. . 9 months .	0	1	0
Class 8. . 3 years . .	1	0	0
Class 9. . 9 months .	0	1	0
Class 10. . do . .	0	1	0
Class 11. . 3 years . .	0	5	0
Class 12. 12 months	0	5	0

Copyright.	£	s.	d.
Class 13. 12 months	0	5	0
Transfer	1	0	0
Certifying Design same as Registration Fee, but for Class 1.	1	0	0
Cancellation or Substitution	1	0	0
Search	0	2	6
Inspection of Designs of which the Copyright has expired each Class	0	1	0

Directions for Registering articles of utility under the Act 6 & 7 Vict. c. 65, may be procured at the Office.

No. 2.

DESIGNS FOR ARTICLES OF UTILITY.

Designs' Office.
35, *Lincoln's Inn Fields.*

By the Act 5 & 6 Vict. c. 100, a copyright is given for such Designs for Articles of Manufacture as are of an *Ornamental* Character only; by the new Act 6 & 7 Vict. c. 65, commencing its operation on the 1st of September, 1843, a Copyright of THREE YEARS is given to the Author or Proprietor of any new and original Design *for the shape or configuration either of the whole or of part of any Article of Manufacture having reference to some purpose of utility*, whether such article be made in Metal or any other Substance.

To obtain this protection, it is necessary—

1st.—That the Design should be registered.

2nd.—That after registration, every Article of Manufacture published by the Proprietor, and made according to such Design, or on which such Design is used, should have upon it the word "REGISTERED," *with the date of registration.*

In case of Piracy of a Design so registered, the same remedies are given, and the same penalties imposed (from £5 to £30 for each offence) as under the Act 5 & 6 Vict. c. 100, and all the provisions contained in the latter Act relating to the Transfer of *Ornamental* Designs, in case of purchase or devolution of a Copyright, are made applicable to those *useful* Designs registered under this Act.

In addition to this, a penalty of not more than £5 nor less than £1 is imposed upon all persons marking, selling, or advertising for sale any Article as "Registered," unless the Design for such Article has been registered under one of the *above-mentioned Acts.*

DIRECTIONS FOR REGISTERING AND SEARCHING.

REGISTERING.

Persons registering a Design for purposes of utility, must bring or send to the Registrar's Office TWO EXACTLY SIMILAR Drawings or Prints thereof, made on a proper geometric scale, together with the name and address of the Proprietor or Proprietors, or the title of the Firm under which he or they may be trading; also the *Title* of the Design, and *such description in writing* as may be necessary, either to make it intelligible or to explain which parts may not be new or original. These two drawings or copies must, together with the title, name, &c., be on two separate sheets of paper or parchment, only one side of which must be written or drawn upon. Each of these sheets must not exceed in size 24 inches by 15 inches, and on one of the two sheets, and on the same side as the drawings, &c., there *must be left a blank space*, of the size of 6 inches by 4 inches, upon which the Certificate of Registration will be placed.

After the Design has been registered, one of the drawings will be filed at the Office, and the other returned to the Proprietor duly stamped and certified.

In case of the *transfer* of a registered Design, a copy, on one sheet of paper, with a blank space left for the Certificate, must be

transmitted to the Registrar, together with the forms of application (which may be procured at the Office), properly filled up and signed; the transfer will then be registered, and the certified copy returned.

SEARCHES.

An Index of the Titles and Proprietors of all the registered Designs for articles of utility is kept at the Registrar's Office, and may be inspected by any person, and extracts made from it.

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No. 4.

Designs' Office,
12th September, 1843.

The Certificates of those Designs which are received for registration under the 6 & 7 Vict. c. 65, will be ready for delivery by 3 o'clock on the day following. No certificate can be delivered the day on which the Design is brought to the office.

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THE END.

Ex. H. A. A.

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