LAW AND PRACTICE

OF

PATENTS FOR INVENTIONS.

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A CONCISE TREATISE

ON THE

LAW AND PRACTICE OF PATENTS

FOR

INVENTIONS.

CONSISTING OF THE

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

The New Rules,

AND NUMEROUS NOTES AND CASES.

BY

CLEMENT HIGGINS,

BARRISTER-AT-LAW.

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TABLE OF CASES.

Names of Cases.	Where reported.	Where cited in this Book.
Adair v. Young ..... (V.-C. B.) 1879	11 Ch. D. 136; 40 L. T. Rep., N. S. 598	103
—— v. —— ..... (C. A.) 1879	11 Ch. D. 138; 40 L. T. Rep., N. S. 599	103
—— v. —— ..... (V.-C. B.) 1879	12 Ch. D. 13	98
—— v. —— ..... (V.-C. B.) 1879	W. N. 1879, p. 8	94
—— v. —— ..... (C. A.) 1879	12 Ch. D. 15; 28 W. R. 85; 41 L. T. Rep., N. S. 361	94
Adams' Patent, In re 1853	21 L. T. Rep. 38; 1 W. R. 259	54
Adamson's Patent, In re .. 1856	6 De G., M. & G. 420; 25 L. J., Ch. 456; 4 W. R. 473	137
Alcock's Patent, In re 1832	Cit. 4 M. & Cr. 511; 1 Web. P. C. 432	43
Allan's Patent, In re 1867	L. R.. 1 P. C. 507; 4 Moo. P. C. C., N. S. 443	144
Allen v. Rawson 1845	1 C. B. 551	8, 128
Amies v. Kelsey 1852	1 B. C. C. 123; 16 Jur. 1047; 22 L. J., Q. B. 84; 20 L. T. Rep. 115; 1 W. R. 54	100, 101
Arnold v. Bradbury ..... (L. C.) 1871	L. R., 6 Ch. 706	18
Aveling v. McLaren	17 Ch. D. 139 (n.)	94
Axmann v. Lund 1874	L. R., 18 Eq. 330; 43 L. J., Ch. 655; 22 W. R. 789; 31 L. T. Rep., N. S. 119	62, 107
Bacon v. Jones 1839	4 My. & Cr. 433	98
—— v. Spottiswoode ..1839	1 Beav. 382	105
Badische Anilin und Soda Fabrik v. Levinstein	24 Ch. D. 156; 48 L. T. Rep., N. S. 822; 52 L. J., Ch. 704	131
Bailey v. Roberton 1878	3 App. Cas. 1055; 38 L. T. Rep., N. S. 854; 27 W. R. 17	14, 34, 130, 140
—— v. Taylor 1825	1 Russ. & M. 73	103
——, Ex parte 1872	L. R., 8 Ch. 60; 42 L. J., Ch. 264; 21 W. R. 31; 27 L. T. Rep., N. S. 430	38, 39, 43
Bainbridge v. Wigley .... (N. P.) 1810	Par. Rep. Pat. 1829, p. 197; 18 Rep. Arts. 127; 1 Carp. P. C. 270	30

Names of Cases.	Where reported.	Where cited in this Book.
Baird *v.* Moule's Patent Earth Closet	17 Ch. D. 139 (n.)	94
Bakewell's Patent, In re .. 1862	15 Moo. P. C C. 385	144
Barker *v.* Grace 1847	1 Exch. 339; 17 L. J., Exch. 122 ..	111
Barrett *v.* Vernon ..... (V.-C. B.) 1876	35 L. T. Rep., N. S. 755; 25 W. R. 343	112
Bateman's Patent, In re .. 1854	Macr. P. C. 116	51
Bates and Redgate, Ex parte 1869	L. R., 4 Ch. 577; 38 L. J., Ch. 501; 17 W. R. 900; 21 L. T. Rep., N. S. 410	9, 39
Batley *v.* Kynock 1874	L. R., 19 Eq. 229; 31 L. T. Rep., N. S. 573	84
——— *v.* ——— 1874	L. R. 19, Ex. 90	100
——— *v.* ——— 1875	L. R., 20 Eq. 632; 33 L. T. Rep., N. S. 45	95
Baxter *v.* Combe ..... (M. R.) 1850	1 Ir. Ch. R. 234	99
Beard *v.* Egerton 1846	3 C. B. 97; 10 Jur. 643; 15 L. J., C. P. 270	8, 30
——— *v.* ——— 1849	8 C. B. 165; 13 Jur. 1004; 19 L. J., C. P., 96; M. Dig. 75	20
Beck's Patent, In re ..1784	1 Bro. C. C. 578; 1 Web. P. C. 430 ..	52
Bentley *v.* Fleming ..... (N. P.) 1844	1 C. & K. 587	136
——— *v.* Keighley ..1844	1 D. & L. 944; 7 M. & G. 652; 8 Scott, N. R. 372; 13 L. J., C. P. 167	84, 89, 90
Berdan's Patent, In re .... (M. R.) 1875	L. R., 20 Eq. 346; 44 L. J., Ch. 544	54
Bergmann *v.* Macmillan ..	17 Ch. D. 423	61
Besseman *v.* Wright ..1858	6 W. R. 719	61
Betts *v.* De Vitre ..... (V.-C.) 1864	11 L. T. Rep., N. S. 533; 11 Jur., N. S. 9; 5 N. R. 165: 34 L. J., Ch. 289	105
——— *v.* ——— ..... (V.-C) 1865	12 L. T. Rep., N. S. 51; 34 L. J. Ch. 291	103
——— *v.* ——— ..... (L. C.) 1868	L. R., 3 Ch. 429; 37 L. J., Ch. 325; 18 L. T. Rep., N. S. 165; 16 W. R. 529	135
——— *v.* ——— ..... (H. L.) 1873	L. R., 6 H. L. 319; 21 W. R. 705 ..	102, 103
——— *v.* Gallais 1870	L. R., 10 Eq. 392; 18 W. R. 945; 22 L. T. Rep., N. S. 841	102, 104
——— *v.* Menzies (V.-C.) 1857	3 Jur., N. S. 857	97
——— *v.* ——— (Q. B.) 1858	27 L. J., Q. B. 154	139
——— *v.* ——— (Q. B.) 1859	1 Ell. & Bl. 900; 28 L. J., Q. B. 361; 5 Jur., N. S. 1164	138
——— *v.* ——— ..... (Ex. Ch.) 1860	30 L. J., Q. B. 81; 6 Jur., N. S. 1290; 3 L. T. Rep., N. S. 237; 1 Ell. & Bl. 1020	25, 139
——— *v.* ——— (H. L.) 1862	10 H. L. Cas. 117; 31 L. J., Q. B. 233; 9 Jur., N. S. 29; 11 W. R., 1; 7 L. T. Rep., N. S. 110	25, 139

Names of Cases.	Where reported.	Where cited in this Book.
Betts *v.* Neilson (V.-C.) 1865	12 L. T. Rep., N. S. 489, 13 W. R. 804; 6 N. R. 221	99, 100, 102, 109, 139
—— *v.* —— (L. J.) 1865	11 Jur., N. S. 679; 34 L. J., Ch. 537; 13 W. R., 1028; 3 De G., J. & S. 82; 12 L. T. Rep., N. S. 719	99, 100, 102, 109, 139
—— *v.* —— (L. C.) 1868	L. R., 3 Ch. 429; 37 L. J., Ch. 321; 18 L. T. Rep., N. S. 159; 16 W. R. 524	99, 100, 102, 109, 136, 139
—— *v.* —— (H. L.) 1871	L. R., 5 H. L. 1; 40 L. J. Ch. 317; 19 W. R. 1121	99, 100, 102, 109, 139
—— *v.* Walker 1850	14 Q. B. 363	85, 131
—— *v.* Willmott ..... (V.-C.) 1870	18 W. R. 946	108
—— *v.* —— ..... (L. C.) 1871	L. R., 6 Ch. 239; 19 W. R. 369; 25 L. T. Rep., N. S. 188	60, 99, 108, 111
Bickford *v.* Skewes ..... (L. C.) 1837	1 Web. P. C. 211	97
—— *v.* —— ..... (V.-C.) 1838	1 Web. P. C. 211	97
—— *v.* —— ..... (L. C.) 1839	4 My. & Cr. 498; 8 L. J., Ch. 188 ..	99
—— *v.* —— ..... (Q. B.) 1841	1 Q. B. 938; 1 G. & D. 736; 6 Jur. 167; 10 L. J., Q. B. 302; 1 Web. P. C. 214	17, 26
Birch *v.* Mather	22 Ch. D. 629	90
Blamond's Patent, In re .. 1860	3 L. T. Rep., N. S. 800	54
Bloxam *v.* Elsee ..... (N. P.) 1825	1 C. & P. 558; Ry. & Moo. 187; 1 Carp. P. C. 434	21
—— *v.* —— ..... (K. B.) 1827	6 B. & C. 169; 9 Dow. & Ry. 215; 1 Web. P. C. 132 (n.); 1 Carp. P. C. 440	8, 19, 30
Booth *v.* Kennard 1856	1 H. & N. 527; 26 L. J., Exch. 23; 3 Jur., N. S. 21; 28 L. T. Rep. 160; 5 W. R. 85	127
—— *v.* —— 1857	2 H. & N. 84; 26 L. J., Exch. 305; 5 W. R. 607; 29 L. T. Rep. 163	20
Boulton *v.* Bull (C. P.) 1795	2 H. Bl. 463; Dav. P. C. 162; 1 Carp. P. C. 117	7, 21, 130, 131, 133
—— *v.* —— (Ch.) 1796	3 Ves. 140	98
Bovill *v.* Crate 1865	L. R., 1 Eq. 388	98
—— *v.* Finch 1870	L. R., 5 C. P. 523; 39 L. J., C. P. 277; 18 W. R. 1071; 23 L. T. Rep., N. S. 151	117
—— *v.* Goodier ..... (M. R.) 1865	L. R., 1 Eq. 35; 35 Beav. 204; 35 L. J., Ch. 174; 13 L. T. Rep., N. S. 489; 14 W. R. 91	81
—— *v.* —— ..... (M. R.) 1866	35 Beav. 427; L. R., 2 Eq. 195; 35 L. J., Ch. 432	97
—— *v.* —— ..... (M. R.) 1867	36 L. J., Ch. 360	94
—— *v.* Hedley 1864	17 C. B., N. S. 435; 10 L. T. Rep., N. S. 650; 4 N. R. 464	106
—— *v.* Keyworth ..1857	7 Ell. & Bl. 725; 3 Jur., N. S. 817; 5 W. R. 686; 29 L. T. Rep. 194	110, 129

Names of Cases.	Where reported.	Where cited in this Book.
Bovill *v.* Moore (L. C.) 1815	2 Coop. 56 (n.)	100
——— *v.* ———(N.P.) 1816	Dav. P. C 361	16, 21
——— *v.* Pimm 1856	11 Exch. 718	111
Bramah *v.* Hardcastle ..... (N. P.) 1789	Holroyd, 81; 1 Carp. P C. 168; 1 Web. P. C. 44 (n.)	142
Bridson *v.* Benecke 1849	12 Beav. 1; 34 Lond. Jour. 295	98, 99
Brook *v.* Aston 1857	8 El. & B. 478; 4 Jur., N. S. 279; 27 L. J., Q. B. 145; 6 W. R. 42	132
—— *v.* ——(Ex. Ch.) 1859	5 Jur., N. S. 1025; 28 L. J., Q. B. 175	128
Brunton *v.* Hawkes .. 1821	4 B. & Ald. 541; 1 Carp. P. C. 405 ..	30, 128, 142
Bulnois *v.* Mackenzie .. 1837	4 Bing. N. C. 127; 6 Dowl. 215; 1 Web. P. C. 260; 5 Scott, 419	84, 85, 87, 89
Bush *v.* Fox ..(N. P.) 1852	Macrory's P. C. 152; 23 L. J., Exch. 257	128
—— *v.* ——(Ex. Ch.) 1854	Macrory's P. C. 166; 23 L. J., Exch. 257	128
—— *v.* —— ..(H. L.) 1856	5 H. L. Cas. 707; 2 Jur., N. S. 1029; 25 L. J., Exch. 251; Macrory's P. C. 178	132, 139
Caldwell *v.* Vanvlissengen .. 1851	9 Hare, 415; 16 Jur. 115; 21 L. J., Ch. 97	109, 121
Campion *v.* Benyon .. 1821	3 B. & R. 5; 6 B. Mo. 71	16, 30
Cannington *v.* Nuttall .... (H. L.) 1871	L. R., 5 H. L. 205; 40 L. J., Ch. 739	53, 128
Carpenter *v.* Smith ..... (N. P.) 1841	1 Web. P. C. 530	17, 136, 137, 141
——— *v.* ——— .. 1842	9 M. & W. 300; 1 Web. P. C. 540; 11 L. J., Exch. 213	137, 138
——— *v.* Walker	1 Web. P. C. 268 (n.)	87
Chambers *v.* Crichley .. 1864	33 Beav. 374	63
Chanter *v.* Dewhurst .. 1844	12 M. & W. 823; 13 L. J., Exch. 198	60
——— *v.* Johnson 1845	14 L. J., Exch. 289; 14 M. & W. 408	60
——— *v.* Leese 1838	4 M. & W. 295; 1 H. & H. 224	62
——— *v.* ——— ..... (Ex. Ch.) 1839	5 M. & W. 698; 9 L. J., Exch. 327 ..	62
Chappel *v.* Purday 1845	14 M. & W. 318	8
Cheavin *v.* Walker 1876	5 Ch. D. 850; 46 L. J., Ch. 265; 35 L. T. Rep., N. S. 757	9
Chollet *v.* Hoffman 1857	7 Ell. & Bl. 686; 26 L. J., Q. B. 249; 3 Jur., N. S. 935; 5 W. R. 573; 29 L. T. Rep. 158	64, 86
Clark *v.* Adie ..(V.-C.) 1873	21 W. R. 456	63
—— *v.* —— .. (L. J.) 1873	21 W. R. 764	63
—— *v.* —— (First appeal) (L. JJ.) 1875	L. R. 10 Ch. 667; 45 L. J., Ch. 228; 33 L. T. Rep., N. S. 295	109
—— *v.* —— ..(H. L.) 1877	2 App. Cas. 315; 46 L. J., Ch. 585; 36 L. T. Rep., N. S. 923; 26 W. R. 45	18, 109, 129
—— *v.* ——(Second appeal) (V.-C. B.) 1876	3 Ch. D. 134; 24 W. R. 1007	23
—— *v.* —— ..(C. A.) 1876	3 Ch. D. 141; 35 L. T. Rep., N. S. 349	22, 24
—— *v.* —— ..(H. L.) 1877	2 App. Cas. 423; 46 L. J., Ch. 598; 37 L. T. Rep., N. S. 1; 46 W. R. 47	24, 25, 62

Names of Cases.	Where reported.	Where cited in this Book.
Clark *v.* Fergusson 1859	1 Gif. 184	97
Cochrane *v.* Smethurst 1816	1 Stark. 205; Dav. P. C. 354	29
Collard *v.* Allison 1839	4 My. & Cr. 487	99
Cook *v.* Pearce 1843	12 L. J., Q. B. 187; 8 Q. B. 1044; 7 Jur. 764	28
——*v.*——(Ex. Ch.) 1844	8 Q. B. 1054; 8 Jur. 499; 13 L. J., Q. B. 189	28
Cooper *v.* Whittingham	15 Ch. D. 507	96
Copeland *v.* Webb 1862	11 W. R. 134; 1. N. R. 119	98
Copley's Patent, In re ..1861	31 L. J., Ch. 333; 8 Jur., N. S. 106; 5 L. T. Rep., N. S. 387	43
Cornish *v.* Keene .. .. (N. P.) 1835	1 Web. P. C. 501; 2 Carp. P. C. 314	135, 136, 137, 144
——*v.*——(C. P.) 1837	3 Bing. N. C. 570; 4 Scott, 337; 2 Hodges, 281; 6 L. J., C. P. 225; 1 Web. P. C. 513; 2 Carp. P. C. 371; 6 Rep. Arts, 4th Series, 102	136
Craig and Macfarlane's Application	Prac. Mech. Jour., 3rd Series, Vol. 4, p. 366	40
Crane *v.* Price 1842	4 M. & G. 580; 1 Web. P. C. 393; 5 Scott, N. R. 338; 12 L. J., C. P. 81; 2 Carp. P. C. 669; 18 Rep. Arts, 4th Series, 102	129, 135
Croll *v.* Edge 1850	9 C. B. 479; 14 Jur. 553; 19 L. J., C. P. 261	30
Crompton *v.* Ibbotson 1828	Dan. & Lloyd, 33; 1 Web. P. C. 83; 1 Carp. P. C. 460	16, 17
Crossley *v.* Beverley .. .. (N. P.) 1829	3 C. & P. 513; Mo. & Mal. 283; 1 Web. P. C. 106	24
—— *v.* —— .. .. (K. B.) 1829	9 B. & C. 63; 1 Web. P. C. 112	16
—— *v.* —— .. .. (Ch.) 1829	1 Web. P. C. 119; 1 Russ. & My. 166	100
—— *v.* Derby Gas Co. .. (L. C.) 1834	4 L. J., Ch. 25; 1 Web. P. C. 119..	104
—— *v.* —— .. .. (L. C.) 1838	3 My. & Cr. 428	103
—— *v.* Dixon .. .. (H. L.) 1863	10 H. L. Cas. 293; 9 Jur., N. S. 607; 32 L. J., Ch. 617; 11 W. R. 716; 8 L. T. Rep., N. S. 260; 1 N. R. 540	60, 61
—— *v.* Potter .. .. (N. P.) 1853	Macr. P. C. 240	29, 143
—— *v.* Tomey 1876	2 Ch. D. 533; 34 L. T. Rep., N. S. 476	81, 90
Curtis *v.* Cutts 1839	8 L. J., Ch. 184; 2 Coop. C. C. 60 (n.)	97
—— *v.* Platt (V.-C.) 1863	19 Newt. Lond. Jour., N. S. 44; 8 L. T. Rep., N. S. 657; 3 Ch. D. 138 (n.)	83, 85, 87, 88 93
—— *v.* —— (C. P.) 1864	33 L. J., C. P. 255; 10 Jur., N. S. 523; 10 L. T. Rep., N. S. 383; 4 N. L. 152	1
—— *v.* —— (L. C.) 1864	11 L. T. Rep., N. S. 245; 3 Ch. D. 138 (n.)	127
—— *v.* —— (H. L.) 1866	35 L. J., Ch. 852; L. R., 1 H. L. 337	81, 108, 111

Names of Cases.	Where reported.	Where cited in this Book.
Cutler's Patent, In re..1839	4 My. & Cr. 510; 1 Web. P. C. 418..	43
Dance's Patent, In re.....	Prac. Mech. Jour., 2nd Series, Vol. 6, p. 298	38
Dangerfield *v.* Jones ..1865	13 L. T. Rep., N. S. 142	17, 62, 149
Darcy *v.* Allin.....1602	Noy. R. 173; 1 Web. P. C. 1	140
Davenport *v.* Jepson ..1862	1 N. R. 173, 307	101
——— *v.* Goldberg..1865	5 N. R. 484; 2 Hem. & M. 282	97
——— *v.* Rylands ..1865	L. R., 1 Eq. 302; 35 L. J., Ch. 204; 14 L. T. Rep., N. S. 53; 14 W. R. 243	102, 104, 105, 106
Daw *v.* Eley ..(V.-C.) 1865	L. R., 1 Eq. 38; 13 L. T. Rep., N. S. 399; 14 W. R. 48	94
—— *v.* —— ..(V.-C.) 1865	L. R., 3 Eq. 500 (n.); 14 W. R. 126; 13 L. T. Rep., N. S. 339	18, 21
—— *v.* —— ..(V.-C.) 1867	L. R., 3 Eq. 496: 36 L. J., Ch. 482; 15 L. T. Rep., N. S. 559	135
De la Rue *v.* Dickinson 1857	7 E. & B. 738; 3 Jur. N. S. 841; 5 W. R. 704; 29 L. T. Rep. 194	108
Derosne *v.* Fairie ..... (N. P.) 1835	1 Mo. & Rob. 457; 1 Web. P. C. 154	23
——— *v.* ——— ..... (Exch.) 1835	5 Tyr. 393; 2 Cr. M. & R. 476; 1 Web. P. C. 158; 1 Gale, 109	14
Deering's Patent, In re 1880	13 Ch. D. 393; 42 L. T. Rep., N. S. 634	9, 38, 39
Dismore's Patent, in re 1853	18 Beav. 538	54
Dixon *v.* London Small Arms Company (Q. B.) 1875 ..	31 L. T. Rep., N. S. 830; L. R., 10 Q. B. 130; 44 L. J., Q. B. 63	77
——— *v.* ———(C.A.) 1876	1. Q. B. D. 384; 46 L. J., Q. B. 617; 35 L. T., Rep., N. S. 138; 24 W. R. 766	77
——— *v.* ——— ..... (H. L.) 1876	1 App. Cas. 632; 46 L. J., Q. B. 617; 35 L. T. Rep., N. S. 559; 25 W. R. 142	77
Dolland's Patent.....1758	Cit. 2 H. Bl. 469, 470, 487; Dav. P. C. 170, 171, 172, 199; 1 Web. P. C. 43; 1 Carp. P. C. 28	71, 135
Dudgeon *v.* Thomson..1874	22 W. R. 465; 30 L. T. Rep., N. S. 244	97
——— *v.* ——— ..... (H. L.) 1877	3 App. Cas. 34.....	22, 26, 57, 58, 111
Dunnicliff *v.* Mallett ..1859	7 C. B., N. S. 209; 1 L. T. Rep., N. S. 514; 6 Jur. N. S. 252; 29 L. J., C. P. 70: 8 W. R. 260	61
Dyer, Ex parte 1812	Holroyd 59; Par. Rep. Pat. 1829, p. 197	9
Edgeberry *v.* Stevens 1691	2 Salk. 447; 1 Web. P. C. 35; Comb. 84; Dav. P. C. 36; 1 Carp. P. C. 35	8, 139
Edison Telephone Co. *v.* Indin Rubber Co.	17 Ch. D. 137	94
Edwards *v.* Normandy 1864	12 W. R. 548: 3 N. R. 562	103
Electric Telegraph Company *v.* Brett (C. P.) 1851	10 C. B. 838; 20 L. J., C. P. 123; 15 Jur. 579	22, 23, 24, 109, 112
——— *v.* Nott .... (C. P.) 1847	4 C. B. 462; 11 Jur. 590; 16 L. J., C. P. 174	84

Names of Cases.	Where reported.	Where cited in this Book.
Electric Telegraph Company v. Nott (L. C.) 1847	2 Coop. 41	99
Elliott v. Aston (N. P.) 1840	1 Web. P. C. 222.....	136
—— v. Turner ..... (Ex. Ch.) 1845	2 C. B. 446; 15 L. J., C. P. 49.....	23
Ellwood v. Christy..... (C. P. 1864)	17 C. B., N. S. 754; 34 L. J., C. P. 130; 13 W. R. 54; 11 L. T. Rep., N. S. 342; 10 Jur. N. S. 1079; 5 N. R. 12	118
—— v. —— ..... (C. P.) 1865	13 W. R. 498; 18 C. B., N. S. 494; 34 L. J., C. P. 130; 5 N. R. 312	104
Elmslie v. Boursier....1869	L. R. 9 Eq. 217; 39 L. J., Ch. 328; 18 W. R. 665	110
Fawcett's Patent, In re 1852	2 De G. M. & G. 439; 19 L. T. Rep. N. S. 237	42
Feather v. Reg. 1865	6 B. & S. 357; 35 L. J., Q. B. 200; 12 L. T. Rep., N. S. 114	76
Felton v. Greaves ..... (N. P.) 1829	3 C. & P. 611	23
Finnegan v. James.....	L. R. 19 Eq. 72	81, 93
Fisher v. Dewick ..... (N. P.) 1838	Cit. 8 Q. B. 1056.....	20
—— v. —— ..... (C. P.) 1838	4 Bing. N. C. 706; 6 Dowl. 739; 1 Web. P. C. 264; 6 Scott, 587; 1 Arn. 282; 7 L. J., C. P. 279	84
—— v. —— ..... (C. P.) 1838	1 Web. P. C. 551 (n.).....	87, 92
Flower v. Lloyd ..... (V.-C. B.) 1876	W. N. 1876, pp. 169, 230	100
—— v. —— ..... (Field, J.) 1876	Solicitors' Jour. 1876, p. 860	88
—— v. —— ..... (C. A.) 1876	45 L. J., Ch. 746; 25 W. R. 17; 35 L. T. Rep., N. S. 454	85, 87, 89
—— v. —— ..... (V.-C. B.) 1877	W. N., 1877, p. 71	111
—— v. —— ..... (V.-C. B.) 1877	36 L. T. Rep., N. S. 444	99
—— v. —— ..... (C. A.) 1877	W. N. 1877, p. 132.....	111
Fox, Ex parte.....1812	1 V. & B. 67; 1 Web. P. C. 431	43, 130
—— v. Dellestable....1866	15 W. R. 194	102
Foxwell v. Bostock ..... (L. C.) 1864	12 W. R. 723; 10 L. T. Rep., N. S. 144; 4 De G., J. & S. 77	17, 34, 53
—— v. Webster ..... (V.-C.) 1863	4 De G., J. & S. 77; 9 L. T. Rep., N. S. 528; 12 W. R. 186; 10 Jur., N. S. 137; 3 N. R. 103, 180	21, 34, 57
Frearson v. Loe (M. R.) 1878	9 Ch. D. 48; 27 W. R., 183	99, 108, 142, 144
Fritz v. Hobson	14 Ch. D. 542	102
Galloway v. Bleaden ..... (N. P.) 1839	1 Web. P. C. 521	136
—— v. —— .. 1839	1 Web. P. C. 268 (n.).....	87

Names of Cases.	Where reported.	Where cited in this Book.
Gamble *v.* Kurtz.....1846	3 C. B. 425	19, 112
Gardner *v.* Broadbent 1856	2 Jur., N. S. 1041; 4 W. R. 767	97
George *v.* Beaumont ..1815	27 Rep. Arts, 2nd Series, 252; 1 Carp. P. C. 295	103
Gething's Patent, In re 1874	L. R., 9 Ch. 633	41, 110
Gibson *v.* Brand ..... (N. P.) 1841	1 Web. P. C. 627.....	7
——— *v.* ——— ..... (C. P.) 1842	4 M. & G. 179; 4 Scott, N. R. 844; 1 Web. P. C. 631; 11 L. J., C. P. 177	142
Gillett *v.* Green 1841	7 M. & W. 347; 9 Dowl. 219; 1 Web. P. C. 271; 10 L. J., Exch. 124	106
——— *v.* Wilby ..... (N. P.) 1839	2 C. & P. 334; 1 Web. P. C. 270.....	85, 105
Goucher *v.* Clayton..... (V.-C.) 1865	11 Jur., N. S. 107; 34 L. J., Ch. 239; 13 W. R. 336; 11 L. T. Rep., N. S. 732	62
——— *v.* ——— ..... (V.-C.) 1865	11 Jur., N. S. 462; 13 L. T., Rep., N. S. 115; 34 L. J., Ch. 239; 13 W. R. 336	110
Graham *v.* Campbell	7 Ch. D. 490.....	96
Greaves *v.* Eastern Counties Railway 1859	1 Ell. & Ell. 961; 28 L. J., Q. B. 290; 5 Jur., N. S. 733	94, 105
Green's Patent, In re..1857	24 Beav. 145	66
Grover and Baker Sewing Machine Company *v.* Millard 1862	8 Jur., N. S. 713	63
——— *v.* Wilson 1870	W. N. 1870, p. 78	89
Hadden *v.* Smith 1847	17 L. J., Ch. 43	103
Hall *v.* Boot & Jarvis..... (N. P.) 1822	1 Web. P. C. 100; 1 Carp. P. C. 423	
——— *v.* Conder (C. P.) 1857	2 C. B., N. S. 22; 3 Jur., N. S. 366; 26 L. J., C. P. 138; 5 W. R. 491	118
——— *v.* ——— ..... (Ex. Ch.) 1857	3 Jur., N. S. 963; 5 W. R. 742; 2 C. B., N. S. 53; 26 L. J., C.P. 288	118
Halsey *v.* Brotherhood	15 Ch. D. 514; 43 L. T. Rep., N. S. 366	107
Hancock *v.* Moulton ..1852	Johnson's Patentee's Manual, 3rd ed. p. 208; M. Dig. 506	99
——— *v.* Bewley 1860	John. 601	61
Harmer *v.* Playne ..... (Ch.) 1807	14 Ves. 130	97
Harrison *v.* Anderston Foundry Co. (H. L.) 1876	1 App. Cas. 574	22, 109
Harrison's Patent, In re 1874	L. R., 9 Ch. 631	39
Hartley's Case.....	2 H. Bl. 493.....	128
Harwood *v.* Great Northern Railway Co. (Q. B.) 1860	29 L. J., Q. B. 193; 6 Jur., N. S. 993	126, 133
——— *v.* ——— .... (Ex. Ch.) 1862	31 L. J., Q. B. 198; 8 Jur. N. S. 1126; 6 L. T. Rep., N. S. 190; 10 W. R. 422	130, 133
——— *v.* ——— .... (H. L.) 1865	11 H. L. Cas. 654; 35 L. J., Q. B. 27; 12 L. T. Rep., N. S. 771; 14 W. R. 1	130, 131, 132, 136, 137

Names of Cases.	Where reported.	Where cited in this Book.
Hassall *v.* Wright 1870	L. R., 10 Eq. 509; 18 W. R. 821; 40 L. J., Ch. 145	64, 65
Hastings *v.* Brown 1853	1 E. & B. 450; 22 L. J., Q. B. 161; 17 Jur. 647	17, 21
Haworth *v.* Hardcastle 1834	1 Web. P. C. 480; 4 M. & Sc. 720; 1 Bing. N. C. 182; 3 L. J., C. P. 311	144
Heath *v.* Smith (Q. B.) 1854	3 Ell. & Bl. 256; 2 C. L. R. 1584; 18 Jur. 601; 23 L. J., Q. B. 166; 2 Web. P. C. 268	9, 136, 137, 141
——— *v.* Unwin .....(Exch.) 1842	10 M. & W. 684; 2 D., N. S. 482; 6 Jur. 1068; 12 L. J., Exch. 46; 1 Web. P. C. 551	92
——— *v.* ——— .....(N. P.) 1843	2 Web. P. C. 216	112
——— *v.* ——— .....(Exch.) 1845	2 Web. P. C. 221; 14 L. J., Exch. 153; 13 M. & W. 583	112
——— *v.* ——— .....(V.-C.) 1847	16 L. J., Ch. 283; 15 Sim. 552.....	99, 104
——— *v.* ——— .....(Ex. Ch.) 1852	22 L. J., C. P. 7; 2 Web. P. C. 236; 12 C. B. 522	15
——— *v.* ——— .....(H. L.) 1855	5 H. L. Cas. 505; 16 C. B. 713; 25 L. J., C. P. 8; 3 W. R. 625	23, 24, 112
Hennessey *v.* Bohmann	W N., 1877, p. 14	96
Henry, Ex parte 1872	L. R., 8 Ch. 167; 42 L. J., Ch. 363; 21 W. R. 233	9, 40
Henson, Ex parte 1832	1 Web. P. C. 432; 4 My. & Cr. 511; 2 Lond. Jour., C. S. 32	38, 41
Herbert's Patent, In re 1867	L. R., 1 C. P. 399; 4 Moo. P. C. C., N. S. 300	144
Herbert and Smyth, In re .. 1866	L. R., 1 Ch. 518; 14 L. T. Rep., N.S. 842	45
Hough *v.* Chamberlain .... (M. R.) 1877	25 W. R. 742	63
——— *v.* Magill ..... (M. R.) 1877	W. N. 1877, p. 62	98
Hourteloup's Patent, In re .. 1836	1 Web. P. C. 553.....	139
Higgs *v.* Godwin 1858	27 L. J., Q. B. 421; 5 Jur., N. S. 97; Ell. Bl. & Ell. 529	108, 127
Hill *v.* Thompson ..... (L. C.) 1817	3 Mer. 622; 1 Web. P. C. 229	97
——— *v.* ——— ..... (L. C.) 1817	3 Mer. 626; 1 Web. P. C. 235	26, 128, 143, 144
——— *v.* ——— .....(C. P.) 1818	2 B. Mcc. 424; 8 Taut. 375; 1 Web. P. C. 239	30, 110, 135, 142
Hills *v.* Evans (L. C.) 1862	31 L. J., Ch. 457; 8 Jur., N. S. 525; 6 L. T. Rep., N. S. 90; 4 De G., F. & J. 288	23, 25, 102, 139
——— *v.* Liverpool Gas Light Company 1862	9 Jur., N. S. 140; 32 L. J., Ch. 28; 7 L. T. Rep., N. S. 537	113
——— *v.* London Gas Light Company 1857	27 L. J., Ex. 60	23

Names of Cases.	Where reported.	Where cited in this Book.
Hills *v.* London Gas Light Company (after new trial) 1860	5 H. & N. 312; 29 L. J., Ex. 409 ..	7, 23, 25, 128, 131, 136, 140
Hinks *v.* Safety Lighting Company (M. R.) 1876	4 Ch. D. 607; 46 L. J., Ch. 185; 36 L. T. Rep., N. S. 391	15, 22, 27, 144
Holland *v.* Fox (Q. B.) 1853	1 W. R. 448; 1 C. L. Rep. 440	88
——— *v.* ——— (Q. B.) 1854	2 C. L. R. 1576; 3 Ell. & Bl. 977; 1 Jur., N. S. 13; 23 L. J., Q. B. 357	103
Holmes *v.* London and North Western Railway Company 1852	Macrory's P. C. 13; 22 L. J., C. P. 57; 12 C. B. 831	18
Honiball *v.* Bloomer .. .. .. (N. P.) 1854	2 Web. P. C. 199	141
——— *v.* ——— .. 1854	10 Exch. 536; 1 Jur. N. S. 188; 24 L. J., Exch. 11; 3 W. R. 71; 3 C. L. Rep. 167; M. Dig. 46	95
Hornblower *v.* Boulton 1799	8 T. R. 95; Dav. P. C. 221; 1 Carp. P. C. 156	130, 133
Horsley and Knighton's Patent, In re (M. R.) 1869	L. R., 8 Eq. 475; 17 W. R. 1054; 21 L. T. Rep., N. S. 345; 39 L. J., Ch. 157	66
——— (L. J.) 1869	L. R., 4 Ch. 784; 17 W. R. 1000	66
Horton *v.* Mabon .. .. (C. P.) 1862	12 C. B., N. S. 437; 31 L. J., C. P. 255; 10 W. R. 582; 6 L. T. Rep., N. S. 289	129, 133
——— *v.* ——— .. .. (Ex. Ch.) 1864	16 C. B., N. S. 141; 12 W. R. 491; 9 L. T. Rep., N. S. 815; 4 N. R. 66	131, 133
Household Iron Company *v.* Neilson (N. P.) 1842	Web. P. C. 676	15
——— *v.* ——— .. .. (H. L.) 1843	9 C. & F. 788; 1 Web. P. C. 673	131, 133, 135, 136
Huddart *v.* Grimshaw .. .. (N. P.) 1803	Dav. P. C. 265; 1 Web. P. C. 85; 1 Carp. P. C. 200	17, 128
Hull *v.* Bolland 1856	1 H. & N. 134; 25 L. J., Exch. 304 ..	93
Hullett *v.* Hague 1831	2 B. & Ad. 370	135, 141
Johnson's Patent, In re	13 Ch. D. 398 (n.)	44
———, ———	5 Ch. D. 503: 46 L. J., Ch. 555	54
Jones *v.* Berger 1843	5 M. & G. 208; 1 Web. P. C. 544; 6 Scott, N. R. 238; 7 Jur. 883; 12 L. J., C. P. 179	85, 88, 90, 92
—— *v.* Lees 1856	25 L. J., Exch. 241	82, 101
—— *v.* ——— 1856	1 H. & N. 189; 2 Jur., N. S. 645; 26 L. J., Exch. 9	63
—— *v.* Pearce (Ch.) .. 1831	2 Coop. 58	98
—— *v.* ——— (N. P.) 1832	1 Web. P. C. 122; 1 Carp. P. C. 524; 1 Lon. Jour., C. S. 215	108, 138
—— *v.* Pratt 1861	6 H. & N. 697; 7 Jur., N. S. 978; 30 L. J., Exch. 365; 9 W. R. 696; 4 L. T. Rep., N. S. 411	84
Jordan *v.* Moore 1866	L. R., 1 C. P. 624; 12 Jur., N. S. 766; 35 L. J., C. P. 268; 14 W. R. 769	18

Names of Cases.	Where reported.	Where cited in this Book.
Jupe *v.* Pratt 1837	1 Web. P. C. 145	131, 133
Kay *v.* Marshall (L. C) 1836	1 My. & Cr. 373; 2 Web. P. C. 39 ..	97
—— *v.* —— ..... (C. P.) 1839	5 Bing. N. C. 492; 7 Scott, 548; 2 Arn. 78; 8 L. J., C. P. 261; 2 Web. P. C. 71	133, 142
—— *v.* —— ..... (H. L.) 1841	8 Cl. & Fin. 245; West, 682; 5 Jur. 1023; 2 Web. P. C. 79	129, 138
Kernot *v.* Potter 1862	3 De G., F. & J. 447	103
Kynock *v.* National Arms Co. .....(C. A.) 1877	37 L. T. Rep., N. S. 31; 26 W. R. 22	53
Lamb *v.* Nottingham Manufacturing Co.	Cited L. R. 19, Eq. 230	83
Lawes *v.* Purser 1856	6 E. & B. 930; 26 L. J., Q. B. 25; 3 Jur. N. S. 182; 28 L. T. Rep. 84; 5 W. R. 43	62
Leaf *v.* Topham 1845	14 M. & W. 146; 14 L. J., Exch. 231	92
Lewis *v.* Davis (N. P.) 1829	3 C. & P. 502; 1 Web. P. C. 488; 1 Carp. P. C. 471	128, 144
—— *v.* Marling (N. P.) 1829	4 C. & P. 52; 1 Web. P. C. 490; 1 Carp. P. C. 475	135, 138
—— *v.* —— (K. B.) 1829	10 B. & C. 22; 4 C & P. 56; 5 M. & R. 66; 1 Web. P. C. 493; 1 Carp. P. C. 478	7, 16, 23, 135, 138, 144
Lister *v.* Leather ..... (V.-C.) 1857	3 Jur., N. S. 433	58
—— *v.* —— ..... (Q. B.) 1857	8 E. & B. 1004; 3 Jur., N. S. 811; 5, 18, W. R. 603; 29 L. T. Rep. 142	17, 91, 130, 135
—— *v.* —— ..... (Ex. Ch.) 1858	8 E. & B. 1031; 27 L. J., Q. B. 295; 4 Jur., N, S. 947	18, 26, 109
—— *v.* —— ..... (V.-C.) 1858	4 K. & J. 425	105
London and Leicester Hosiery Co. *v.* Higham	Not reported	91
Losh *v.* Hague (V.-C.) 1837	1 Web. P. C. 200; 2 Coop. 59 (n.) ..	97, 99
—— *v.* —— (N. P.) 1838	1 Web. P. C. 202.....	131, 141, 144
—— *v.* —— (Exch.) 1838	1 Web. P. C. 203 (n.)	85
—— *v.* —— (Exch.) 1839	7 D. P. C. 495; 5 M. & W. 387; 3 Jur. 409; 8 L. J., Ex. 251; 7 Dowl. 495	95
Lovell *v.* Hicks ..... (Ex. Eq.) 1836	5 L. J., Ex. Eq. 101; 2 Y. & C. 46 ..	118
—— *v.* —— ..... (Ex. Eq.) 1837	2 Y. & C. 472	62
Lowe's Patent, In re ..1856	25 L. J., Ch. 454; 4 W. R. 429.....	9, 38, 39
Lucas's Patent 1854	Macr. P. C. 235	59
M'Cormick *v.* Gray 1861	7 H. & N. 25; 31 L. J., Ex. 42; 9 W. R. 809; 4 L. T. Rep., N. S. 832	110
Macintosh *v.* Everington ..	6 Rep. Arts, N. S. 317, 365	130
M'Kean's Patent, In re 1859	1 De G., F. & J. 2; 8 W. R. 1; 1 L. T. Rep., N. S. 19	43, 45
Mackelcan *v.* Rennie ..1862	13 C. B., N. S. 52	12
Macnamara *v.* Hulse ..... (N. P.) 1842	Car. & M. 471; 2 Web. P. C. 128 (n.)	15, 85

Names of Cases.	Where reported.	Where cited in this Book.
Manceaux, Ex parte ..1870	L. R., 5 Ch. 518; 18 W. R. 854	39, 41, 42
Mangnall *v.* Benecke	See Bridson *v.* Benecke.	
Manton *v.* Manton .... (N. P.) 1815	Dav. P. C. 333; 1 Carp. P. C. 278 ..	17, 143
——— *v.* Parker 1814	Dav. P. C. 327; 1 Web. P. C. 192 (n.)	143
Marsden *v.* The Saville Street Foundry Co. 1878	3 Exch. D. 203; 39 L. T. Rep., N. S. 100; 26 W. R., 784	8, 9, 10, 117
Mathers *v.* Green .... (M. R.) 1865	34 L. J., Ch. 298; 13 W. R. 421; 12 L. T. Rep., N. S. 66; 5 N. R. 358; 34 Beav. 170	9, 61
——— *v.* ——— .... (L. C.) 1865	35 L. J., Ch. 1; 11 Jur., N. S. 845; 14 W. R. 17; 13 L. T. Rep., N. S. 420; L. R., 1 Ch. 29	9, 61
Mayne *v.* Maltby	3 T. R. 438	59
Meadows *v.* Kirkman .. 1860	29 L. J., Exch. 205	101
Medlock's Patent, In re 1865	22 Newt. Lond Jour., N. S. 69	55
Melhuish *v.* Milton	24 W. R. 679	96
Milligan *v.* Marsh 1856	2 Jur., N. S. 1083	9
Minter *v.* Mower .... (N. P.) 1835	1 Web. P. C. 138	135
——— *v.* ——— .... (K. B.) 1837	6 A. & E. 735; 1 N. & P. 595; W. W. & D. 262; 1 Web. P. C. 142; 6 L. J., K. B. 183	19, 138
——— *v.* Wells (N. P.) 1834	1 Web. P. C. 127; 1 Carp. P. C. 622	8
——— *v.* ——— (Exch.) 1834	5 Tyr. 163; 1 C. M. & R. 505; 1 Web. P. C. 134; 1 Carp. P. C. 639; 4 L. J., Ex. 2	131
——— *v.* Williams 1835	4 Ad. & Ell. 251; 1 Web. P. C. 135; 5 Nev. & M. 647; 1 H. & W. 585; 5 L. J., K. B. 60	110
Mitchell *v.* Barker 1851	39 Lond. Jour. 531	98
Mitchell's Patent, In re 1867	L. R., 2 Ch. 343	41
Morey's Patent, In re .. 1858	25 Beav. 581; 6 W. R. 612	66
Morgan *v.* Fuller 1866	L. R., 2 Eq. 296, 297; 14 L. T. Rep., N. S. 353; 14 W. R. 497	85, 88
——— *v.* Seaward .... (V.-C.) 1835	1 Web. P. C. 167	101
——— *v.* ——— .... (N. P.) 1836	1 Web. P. C. 170; 1 Carp. P. C. 37 ..	15, 21, 140
——— *v.* ——— .... (Exch.) 1837	2 M. & W. 544; Mur. & H. 55; 1 Jur. 527; 1 Web. P. C. 187; 1 Carp. P. C. 96; 6 L. J., Ex. 153	28, 138, 141, 143, 144
Morgan's Patent, In re 1876	24 W. R. 245; W. N. 1876, p. 27	65
Morris *v.* Branson .... (N. P.) 1776	Bull, N. P. 76; 1 Web. P. C. 51; 1 Carp. P. C. 30	130
Morton *v.* Middleton .. 1863	1 Cr. S., 3rd Series, 718	21
Moxon *v.* Bright 1869	L. R., 4 Ch. 292; 20 L. T. Rep. 961 ..	103
Mullins *v.* Hart (N. P.) 1852	3 C. & K. 297	141
Muntz *v.* Foster (L. C.) 1843	2 Web. P. C. 93	97, 113
——— *v.* ——— (N. P) 1844	2 Web. P. C. 96	15, 19, 108, 109, 110, 130, 139
——— *v.* Greenfell .. 1842	7 Jur. 121: 2 Coop. 61 (n.)	97

Names of Cases.	Where reported.	Where cited in this Book.
Murray *v.* Clayton ..... (L. J.) 1872	L. R., 7 Ch. 570; 20 W. R. 649; 27 L. T. Rep., N. S. 110	128, 135
——— *v.* ——— ..... (V.-C.) 1872	21 W. R., 118; 42 L. J., Ch. 191; L. R. 15 Eq. 115; 27 L. T. Rep., N. S. 644	104
——— *v.* ——— ..... (V.-C.) 1872	21 W. R. 498; L. R., 10 Ch. 675 (n.)	111
Needham *v.* Oxley ..... (V.-C.) 1863	8 L. T. Rep., N. S. 604; 2. N. R. 388; 11 W. R. 852	102
——— *v.* ——— ..... (V.-C.) 1863	1 H. & M. 248	82
Neilson *v.* Betts	See Betts *v.* Neilson (H. L.).	
——— *v.* Forman 1841	See Neilson *v.* Thompson.	
——— *v.* Fothergill ..... (L. C.) 1841	1 Web. P. C. 287	62
——— *v.* Harford ..... (N. P.) 1841	1 Web. P. C. 295	15, 133, 144
——— *v.* ——— 1841	1 Web. P. C. 324 (n.)	92
——— *v.* ——— ..... (Exch.) 1841	8 M. & W. 806; 1 Web. P. C. 331; 11 L. J., Ex. 20; 10 L. J., Ex. 493	15, 17, 23, 30, 85 93, 131
——— *v.* ———(L.C.) 1841	1 Web. P. C. 373; 2 Coop. C. C. 61 (n.)	
——— *v.* Thompson ..... (L. C.) 1841	1 Web, P. C. 373; 2 Coop. 61 (n.) ..	97
Newall *v.* Elliott ..... (Exch.) 1853	1 H. & C. 797; 9 Jur., N. S. 359; 32 L. J., Exch. 120; 11 W. R. 438; 7 L. T. Rep., N. S. 753	108
——— *v.* ——— ..... (Exch.) 1864	10 Jur., N. S. 954; 13 W. R. 11; 10 L. T. Rep., N. S. 792; 4 N. R. 429	12, 29, 108
Newall and Elliott, In re 1858	4 C. B., N. S. 269; 4 Jur., N. S. 562; 27 L. J., C. P. 337	12, 35, 136
——— *v.* Wilson 1852	2 De G., M. & G. 282; 19 L. T. Rep. 161	97, 99
Newton *v.* Grand Junction Railway Co, .. 1846	5 Exch. 331; 20 L. J., Exch. 427 (n.); M. Dig. 75	109
——— *v.* Vaucher 1851	6 Exch. 859; 21 L. J., Ex. 305	135
Nickels *v.* Haslam 1844	8 Scott, N. R. 97; 7 M. & G. 378; 8 Jur. 474; 13 L. J., C. P. 146	29
Nickel's Patent, In re 1841	1 Ph. 36; 1 Web. P. C. 650	53
Nobel's Explosives Company *v.* Jones, Scott & Co.	17 Ch. D. 721 ..... *v.*	109
——— *v.* ——— 1882	48 L. T. Rep., N. S. 490; 8 App. Cas.	105
Norton *v.* Brooks 1861	7 H. & N. 499; 8 Jur., N. S. 155; 10, W. R. 111	61
Nunn *v.* D'Albuquerque 1865	34 Beav. 595	103
Oldham *v.* Langmead ..... Before 1789	Cit. 3 T. R. 439, 441	63
Ormson *v.* Clarke ..... (C. P.) 1862	32 L. J., C. P. 8: 13 C. B., N. S. 337; 9 Jur., N. S. 749; 11 W. R. 118; 7 L. T. Rep., N. S. 361; 1 N. R. 61	131
——— *v.* ——— ..... (Ex. Ch.) 1863	32 L. J., C. P., 291; 14 C. B., N. S. 475; 10 Jur., N. S. 128; 11 W. R. 787; 2 N. R. 192	131

Names of Cases.	Where reported.	Where cited in this Book.
Otto v. Linford	46 L. T. Rep., N. S. 35	22, 131, 133, 137, 141, 144
Oxford and Cambridge Universities v. Richardson 1802	6 Ves. 689	93
Oxley v. Holden 1860	8 C. B., N. S. 666; 30 L. J., C. P. 68; 8 W. R. 626; 2 L. T. Rep., N. S. 464	30, 110, 140, 141
Palmer v. Cooper 1853	9 Exch. 231; 2 C. L. R. 430; 23 L. J., Exch. 82	85, 88, 93
——— v. Wagstaffe ..1853	8 Exch. 840; 17 Jur. 581; 22 L. J., Exch. 295; 1 W. R. 438; 1 C. L. Rep. 448	88, 89
——— v. ——— ..1854	9 Exch. 494; 2 C. L. R. 1052; 23 L. J., Exch. 217	22
Parkes v. Stevens ..... (V.-C.) 1869	L. R. 8 Eq. 358; 38 L. J., Ch. 627; 17 W. R. 846	26, 30, 110, 128
——— v. ——— ..... (L. C.) 1869	L. R., 5 Ch. 36; 16 W. R. 233; 22 L. T. Rep., N. S. 635	26, 106, 132
Patent Bottle Envelope Co. v. Seymer 1858	5 C. B., N. S. 164; 5 Jur., N. S. 174; 28 L. J., C. P. 22	30, 132
Patent Type Founding Co. v. Richards ..(Ch.) 1859	1 John. Rep., 381; 6 Jur., N. S. 39 ..	16, 113
——— v. ——— (C. P.) 1860	2 L. T. Rep., N. S. 359	82
——— v. Walter ..) ——— v. Lloyd 1860)	5 H. & N. 192; 29 L. J. Exch. 207; 6 Jur., N. S. 103; 1 L. T. Rep., N. S. 382	101
——— v. Walter .... (Ch.) 1860	Johns. 727; 8 W. R. 353	101
Patterson v. The Gas Light & Coke Co. 1876	2 Ch. D. 827; 45 L. J., Ch. 843; 35 L. T. Rep., N. S. 11	10, 131, 130, 133
——— v. ——— 1877	3 App. Cas. 239; 47 L. J., Ch. 402; 38 L. T. Rep., N. S. 303; 26 W. R. 482	10, 133, 134, 139, 140
Payne v. Maltby	3 T. R. 438; 1 Web. P. C. 230	62
Penn v. Bibby ..... ——— v. Jack (V.-C.) 1866	L. R., 3 Eq. 308; 36 L. J., Ch. 277; 15 L. T. Rep., N. S. 385	104, 105, 106
——— v. ——— ..... ——— v. ——— (V.-C.) 1866	L. R., 1 Eq. 548	87, 89, 93
——— v. ——— ..... ——— v. ——— (L. C.) 1866	L. R. 2 Ch. 127; 36 L. J., Ch. 455; 15 W. R. 208; 15 L. T. Rep., N. S. 899	12, 13, 35, 130, 131
——— v. ——— ..... ——— v. ——— (V.-C.) 1867	L. R., 5 Eq. 81; 37 L. J., Ch. 136; 16 W. R. 243; 17 L. T., N. S. 407	103, 104
Perry v. Mitchell 1840	1 Web. P. C. 269	81, 83
——— v. Skinner 1837	2 M. & W. 471; M. & H. 122; 1 Jur. 433; 1 Web. P. C. 250; 6 L. J., Ex. 124	58
Piggott v. Anglo-American Telegraph Company 1868	19 L. T. Rep., N. S. 46	100, 101
Plimpton v. Malcolmson .. 1875	44 L. J., Ch. 275; L. R. 20 Eq. 37 ..	98
——— v. ——— 1876	3 Ch. D. 531; 45 L. J., Ch. 505; 34 L. T. Rep., N. S. 340	7, 9, 15, 139

Names of Cases.	Where reported.	Where cited in this Book.
Plimpton *v.* Spiller ..... (C. A.) 1876	4 Ch. D. 286; 35 L. T. Rep., N. S. 656; 25 W. R. 152	96, 97
——— *v.* ——— ..... (Field, J.) 1876	20 Solicitor's Jour., 1876, p. 860	89, 90, 91
——— *v.* ——— 1877	6 Ch. D. 412, 425	22, 26, 139, 142, 143
Poupard *v.* Fardell ..... (V.-C.) 1869	18 W. R. 127; 21 L. T. Rep., N. S. 696	21
Pow *v.* Taunton 1845	9 Jur. 1056	130
Price's Patent Candle Company *v.* Bauwen's Patent Candle Company 1858	4 K. & J. 727	100, 103
Pullan's Patent, In re 1878	Not Reported. See Johnson's P. M., 4 ed., p. 103	51
Ralston *v.* Smith (C.P.) 1860	9 C. B., N. S. 117; 4 L. T. Rep., N. S. 549	128
——— *v.* ——— ..... (Ex. Ch.) 1861	11 C. B., N. S. 471; 8 Jur., N. S. 100; 31 L. J., C. P. 102; 10 W. R. 107	128
——— *v.* ——— ..... (H. L.) 1865	11 H. L. Cas. 223; 20 C. B., N. S. 28; 13 L. T. Rep., N. S. 1; 35 L. J., C. P. 49	51, 57, 132
Redmund's Patent, In re .. 1828	5 Russ. 44; 1 Web. P. C. 649 (n.) ..	54
R. *v.* Aires	10 Mod. 354	72
——— *v.* Arkwright ..1785	Dav. P. C. 61; Printed Cases, Fol. Lon. 1785; 1 Web. P. C. 64; 1 Carp. P. C. 53	15, 16, 130, 143
——— *v.* Butler	3 Lev. 220	72
——— *v.* Cutler 1847	3 C. & K. 215; Macrory's P. C. 124; 14 Q. B. 372 (n.)	20
——— *v.* Else 1785	Bull, N. P. 76; Dav. P. C. 144; 1 Web. P. C. 76; note to Harmer *v.* Payne, 11 East. 109	19, 30
——— *v.* Metcalf 1817	2 Stark, N. P. 249; 1 Web. P. C. 141 (n.)	28
——— *v.* Mill 1850	10 C. B. 379; 20 L. J., C. P. 16; 15 Jur. 59; 1 L. M. & P. 695	30, 57, 58, 59, 71, 85
——— *v.* ——— 1851	14 Beav. 312	54, 55
——— *v.* Walton 1842	2 Q. B. 969	87
——— *v.* Wheeler 1819	2 B. & Ald. 345; 1 Carp. P. C. 394 ..	14, 28
Renard *v.* Levinstein ..... (V.-C.) 1864	3 N. R. 665; 10 L. T. Rep., N. S. 94	97
——— *v.* ——— ..... (V.-C.) 1864	11 L. T. Rep., N. S. 505; 13 W. R. 229	94
——— *v.* ——— ..... (L. J.) 1864	10 L. T. Rep., N. S. 177	9, 97
——— *v.* ——— ..... (V.-C.) 1865	5 N. R. 301; 2 H. & M. 628; 11 L. T. Rep., N. S. 766; 13 W. R. 382	61, 98
Rollins *v.* Hinks 1872	L. R. 13 Eq. 355; 41 L. J., Ch. 358; 20 W. R. 287; 26 L. T. Rep., N. S. 56	107

Names of Cases.	Where reported.	Where cited in this Book.
Rolls v. Isaacs 1878	19 Ch. D. 268	134
Rubery's Patent, In re 1837	1 Web. P. C. 649 (n.)	54
Rushton v. Crawley ..1870	L. R. 10 Eq. 522	19, 133
Russell v. Cowley ..... (L. C.) 1832	1 Web. P. C. 457	101
——— v. ——— ..... (N. P.) 1834	1 Web. P. C. 459; 1 Carp. P. C. 532	112
——— v. ——— ..... (L. C.) 1834	2 Coop. C. C. 59 (n.); 1 Web. P. C. 471	97
——— v. ——— ..... (Exch.) 1835	1 C. M. & R. 864; 1 Web. P. C. 463; 1 Carp. P. C. 557	127
——— v. Crichton....1837	1 Web. P. C. 667 (n.); 15 Dec. of Court of Sess. 1270	101
——— v. Ledsam ..... (Exch.) 1843	7 Jur. 585; 1 D. & L. 347; 12 L. J., Exch. 439; 11 M. & W. 647	86, 88, 93
——— v. ——— ..... (Exch.) 1345	14 L. J., Exch. 353; 14 M. & W. 574	47
——— v. ——— ..... (Exch. Ch.) 1847	16 M. & W. 633; 16 L. J., Exch. 145; 9 Jur. 557	47
——— v. ——— ..... (H. L.) 1848	1 H. L. Cas. 687	47
Russell's Patent, In re 1857	2 De G. & J. 130; 6 W. R. 95; 30 L. T. Rep., N. S. 178	9, 32, 38
Savory v. Price (N. P.) 1823	1 Ry. and Mo. 1; 1 Web. P. C. 83 ..	17, 107
Saxby v. Clunes (H. L.) 1873	43 L. J., Exch. 228	111, 126
—— v. Gloucester Wagon Co. .....(C. A.) 1880	7 Q. B. D. 305	130
—— v. Easterbrook ..1872	L. R. 7 Exch. 207; 41 L. J., Ex. 113; 20 W. R. 751; 26 L. T. Rep., N. S. 439	103
—— v. Hennett 1873	L. R. 8 Exch. 210; 42 L. J., Exch. 137; 22 W. R. 16; 28 L. T. Rep., N. S. 639	45
Scott & Young, Ex parte 1871	L. R. 6 Ch. 274; 19 W. R. 425.....	9, 38
Secretary of War v. Chubb	W. N. 1880, p. 128	96
Seed v. Higgins (Q. B.) 1858	27 L. J., Q. B. 146; 4 Jur., N. S. 258; 8 Ell. & Bl. 755	53
—— v. ——— (Exch. Ch.) 1858	27 L. J., Q. B. 411; 8 Ell. & Bl. 771; 5 Jur., N. S. 540	53
—— v. ——— (H. L.) 1860	8 H. L. Cas. 550; 30 L. J., Q. B. 314; 6 Jur. N. S. 1264; 3 L. T. Rep., N. S. 101	18, 53, 108, 110
Sellers v. Dickinson ..1850	5 Exch. 312; 20 L. J., Exch. 417.....	109
Sharp's Patent, In re..1840	1 Web. P. C. 641; 10 L. J., Ch. 86; 3 Beav. 245	51, 54
Shaw v. Bank of England.. 1852	22 L. J., Exch. 26	101
Sheehane v. Great Eastern Ry. Co.	16 Ch. D. 59.....	61
Sheffield, Ex parte.....1872	L. R. 8 Ch. 237; 42 L. J., Ch. 356; 21 W. R. 283	38, 42
Sinister's Patent, In re....	1 Web. P. C. 721.....	144

Names of Cases.	Where reported.	Where cited in this Book.
Simpson *v.* Holliday ..... (V.-C.) 1864	20 Newton's Lon. Jour., N. S. 105 ..	24, 25, 144
——— *v.* ——— (L. C.) 1865	13 W. R. 577; 12 L. T. Rep., N. S. 99; 5 N. R. 340; 21 New. Lon. Jour., N. S. 111	22
——— *v.* ——— (H. L.) 1866	L. R. 1 H. L. 315; 35 L. J., Ch. 811	20, 127
Simpson and Isaac's Patent, In re.....1853	21 L. T. Rep., N. S. 81; 1 W. R. 259	32, 38, 41
Singer Sewing Machine Co. *v.* Wilson ..(V.-C.) 1865	5 N. R. 505; 12 L. T. Rep., N. S. 140; 13 W. R. 560	101
Smith *v.* Buckingham..1870	18 W. R. 314; 21 L. T. Rep., N. S. 819	118
—— *v.* Davidson 1875	19 C. S. 691.....	136
—— *v.* Dickinson 1804	3 B. & P. 630	117
—— *v.* London and North Western Ry. Co.....1853	2 Ell. & Bl. 69; 17 Jur. 1071	109
—— *v.* London & South Western Ry. Co.....1854	Kay, 408; 23 L. J., Ch. 562; 23 L. T. Rep. 10; 2 Eq. Rep. 428; 2 W R. 310	98, 99, 103
—— *v.* Neale 1857	2 C. B., N. S. 67; 3 Jur., N. S. 516; 26 L. J., C. P. 143; 5 W. R. 563	118
—— *v.* Scott 1859	6 C. B., N. S. 771; 28 L. J., C. P. 325; 5 Jur., N. S. 1356	61
—— *v.* Upton.....1843	6 M. & G. 251	73
Smith's Patent, In re..1855	Macr. P. C. 232	55, 59
Somerset and Walker's Patent, In re	13 Ch. D. 397; 42 L. T. Rep., N. S. 635	44
Spence's Patent, In re 1859	3 De G. & J. 523; 7 W. R. 157	32, 38
Spencer *v.* Jack(L. C.) 1864	11 L. T. Rep., N. S. 242	136
Stead *v.* Anderson ..... (N. P.) 1846	2 Web. P. C. 147.....	137
—— *v.* ——— (C.P.)1847	2 Web. P. C. 151; 16 L. J., C. P. 250; 4 C. B. 806	108
—— *v.* Williams ..... (N. P.) 1843	2 Web. P. C. 126.....	136, 137
—— *v.* ——— ..... (C. P.) 1844	7 M. & G. 818; 8 Scott., N. R. 449; 8 Jur. 930; 13 L. J., C. P. 218; 2 Web. P. C. 137	30, 139
Steiner *v.* Heald.....1851	6 Exch. 607; 17 Jur. 875; 20 L. J., Exch. 410	131
Stevens *v.* Keating ..... (N. P.) 1847	2 Web. P. C. 181	127
——— *v.* ——— ..... (V.-C.) 1847	2 Web. P. C. 175	97
——— *v.* ——— ..... (L. C.) 1847	2 Web. P. C. 176; 2 Phil. 333.....	22, 97
——— *v.* ——— ..... (Exch.) 1848	2 Exch. 772; 19 L. J., Exch. 57; 2 Web. P. C. 192	21
Stocker *v.* Rodgers..... (N. P.) 1843	1 Car. & Kir. 99	105
—— *v.* Waller 1845	9 Jur. 136; 14 L. J., C. P. 90; 1 C. B. 148	58

Names of Cases.	Where reported.	Where cited in this Book.
Stocker *v.* Warner 1845	So reported in 1 C. B. 148	58
Stoner *v.* Todd (M. R.) 1876	4 Ch. D. 58; 46 L. J., Ch. 32; 35 L. T. Rep., N. S. 661; 25 W. R. 38	12, 140
Sturtz *v.* De la Rue ..1828	5 Russ. 322; 1 Web. P. C. 83	17, 29
Sugg *v.* Silber .. .. (Q. B. D.) 1876	1 Q. B. D. 362	79
—— *v.* —— .. (C. A.) 1877	2 Q. B. D. 493	76, 88
Sykes *v.* Howarth .. .. (Fry, J.) 1879	12 Ch. D. 826; 48 L. J., Ch. 769; 41 L. T. Rep., N. S. 79; 28 W. R. 215	93, 109, 128
Talbot *v.* La Roche ..1854	15 C. B. 310; 2 C. L. Rep. 836; M. Dig. 210	83
Taylor *v.* Hare 1805	1 B. & P., N. R. 260	62
Templeton *v.* Macfarlane .. (H. L.) 1848	1 H. L. Cas. 595	142
Tennant's Case 1802	Cit. Dav. P. C. 429; 1 Web. P. C. 125; 1 Carp. P. C. 177	8, 138
Tetley *v.* Easton .. .. (N. P.) 1852	Macr. P. C. 48	22
—— *v.* —— .. .. (Q. B.) 1853	2 Ell. & B. 956; 18 Jur. 350; 23 L. J., Q. B. 77; Macr. P. C. 82	17, 26
—— *v.* —— .. .. (C. P.) 1857	2 C. B., N. S. 706; 26 L. J., C. P. 269	57
Thomas *v.* Foxwell .. .. (Q. B.) 1858	5 Jur., N. S. 37	18, 22
—— *v.* —— .. .. (Ex. Ch.) 1859	6 Jur., N. S. 271	18, 22
—— *v.* Hunt 1864	17 C. B., N. S. 183	60, 111
—— *v.* Welch .. .. (C. P.) 1866	L. R., 1 C. P. 192; 12 Jur., N. S. 316; 35 L. J., C. P. 200	13, 35
Thompson *v.* James ..1863	32 Beav. 570	132
Thorn *v.* Worthing Skating Rink Co. .. (M. R.) 1876	6 Ch. D. 415	112
Tolson's Patent, In re 1856	6 De G., M. & G. 422; 4 W. R. 518 ..	38
Townsend *v.* Haworth .. .. (M. R.) 1875	Appendix to Higgins' dig. P. C. 60; for imperfect note of judgment see 12 Ch. D. 831 (n.)	111
Trotman *v.* Wood 1864	16 C. B., N. S. 479	22, 24, 62
Turner *v.* Winter 1787	1 T. R. 602; Dav. P. C. 145; 1 Web. P. C. 77	16, 143
United Telephone Co *v.* Harrison	19 Ch. D. 268	139
—— *v.* ——	21 Ch. D. 720	95, 112
Universities of Oxford and Cambridge *v.* Richardson	6 Ves. 706	97
Unwin *v.* Heath	See Heath *v.* Unwin.	
Vavasseur *v.* Krupp .. .. .. (M. R.) 1878	9 Ch. D. 351; 39 L. T. Rep., N. S. 437	109
—— *v.* —— .. .. .. (C. A.) 1878	9 Ch. D. 353; 39 L. T. Rep., N. S. 438; 27 W. R. 176	109

Names of Cases.	Where reported.	Where cited in this Book.
Vidi *v.* Smith 1854	3 Ell. & Bl. 969; 1 Jur., N. S. 14; 23 L. J., Q. B. 342; 2 C. L. R. 1573	100
Vincent's Patent, In re 1867	L. R. 2 Ch. 341; 15 W. R. 524	42
Von Heyden *v.* Neustadt ..	14 Ch. D. 230	110
Wakefield *v.* Duke of Buccleuch	11 Jur., N. S. 523	96
Wallington *v.* Dale .. 1852	7 Exch. 888; 23 L. J., Ex. 49	26, 127
Walton *v.* Bateman .. .. .. (N. P.) 1842	1 Web. P. C. 613	16, 85, 107
—— *v.* Lavater 1860	8 C. B., N. S. 162; 29 L. J., C. P. 275; 6 Jur., N. S. 1251; 3 L. T. Rep., N. S. 272	61, 63, 111
—— *v.* Potter .. .. (N. P.) 1841	1 Web. P. C. 585	112
—— *v.* —— .. .. (C. P.) 1841	4 Scott, N. R. 91; 3 M. & G. 411; 1 Web. P. C. 597; 11 L. J., C. P. 138	130
Wegmann *v.* Corcoran 1878	13 Ch. D. 65; 39 L. T. Rep., N. S. 563; 27 W. R. 357	17, 19
—— *v.* —— .. .. (C. A.) 1879	13 Ch. D. 83; 41 L. T. Rep., N. S. 358	17, 19
White *v.* Fenn 1867	15 W. R. 348; 15 L. T. Rep., N. S. 505	109
—— *v.* Toms 1867	37 L. J., Ch. 204; 17 L. T. Rep., N. S. 348	131
Whitehouse's Patent, In re 1830	1 Web. P. C. 649 (n.)	53
Williams *v.* Brodie .. .. .. Before 1785	Parl. Rep. 1829; p. 183; cited R. *v.* Arkwright, printed case, 162; Dav. P. C. 96	17
—— *v.* Nash 1859	5 Jur., N. S. 696; 28 L. J., Ch. 886; 28 Beav. 93	48
Willis *v.* Davison 1863	1 N. R. 234	133
Wilson *v.* Gann .. .. (V.-C. H.) 1875	23 W. R. 546	94
Wirth's Patent, In re .. .. (L. C.) 1879	12 Ch. D. 303; 28 W. R. 329	9
Wood *v.* Zimmer .. .. (N. P.) 1815	Holt, N. P. 58; 1 Web. P. C. 44 (n.), 28 (n.) and 84; 1 Carp. P. C. 290	16, 141
Wren *v.* Weild 1869	L. R., 4 Q. B. 213; 38 L. J., Q. B. 88; 20 L. T. Rep., N. S. 277	83
—— *v.* —— 1869	L. R., 4 Q. B. 730; 38 L. J., Q. B. 327; 20 L. T. Rep., N. S. 1007	107
Wright *v.* Hitchcock .. 1870	L. R. 5 Exch. 37; 39 L. J., Exch. 97	30, 34, 108, 110, 129
Yates, Ex parte 1869	L. R. 5 Ch. 1; 18 W. R. 1, 153; 21 L. T. Rep., N. S. 663	41, 42, 43
Young *v.* Fernie (L. C.) 1864	4 Giff. 577; 10 Jur., N. S. 926; 12 W. R. 901; 10 L. T. Rep., N. S. 861; 9 Prac. Mech. Jour., 2nd Series, 102; 4 N. R. 218	127

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

(46 & 47 Vict. c. 57.)

ARRANGEMENT OF SECTIONS.

PART I.

Preliminary.

SECTION

1. Short title.
2. Division of Act into parts.
3. Commencement of Act.

PART II.

Patents.

Application for and Grant of Patent.

4. Persons entitled to apply for patent.
5. Application and specification.
6. Reference of application to examiner.
7. Power for comptroller to refuse application or require amendment.
8. Time for leaving complete specification.
9. Comparison of provisional and complete specification.
10. Advertisement on acceptance of complete specification.
11. Opposition to grant of patent.
12. Sealing of patent.
13. Date of patent.

Provisional Protection.

14. Provisional protection.

Protection by Complete Specification.

15. Effect of acceptance of complete specification.

SECTION

Patent.

16. Extent of patent.
17. Term of patent.

Amendment of Specification.

18. Amendment of specification.
19. Power to disclaim part of invention during action, &c.
20. Restriction on recovery of damages.
21. Advertisement of amendment.

Compulsory Licenses.

22. Power for Board to order grant of licenses.

Register of Patents.

23. Register of Patents.

Fees.

24. Fees in Schedule.

Extension of Term of Patent.

25. Extension of term of patent on petition to Queen in Council.

Revocation.

26. Revocation of Patent.

Crown.

27. Patent to bind Crown.

Legal Proceedings.

28. Hearing with assessor.
29. Delivery of particulars.
30. Order for inspection, &c., in a n.
31. Certificate of validity questioned, and costs thereon.
32. Remedy in case of groundless threats of legal proceedings.

Miscellaneous.

33. Patent for one invention only.
34. Patent on application of representative of deceased inventor.
35. Patent to first inventor not invalidated by application in fraud of him.
36. Assignment for particular places.
37. Loss or destruction of patent.
38. Proceedings and costs before law officer.
39. Exhibition at industrial or international exhibition not to prejudice patent rights.
40. Publication of illustrated journal, indexes, &c.

SECTION

41. Patent Museum.
42. Power to require models on payment.
43. Foreign vessels in British waters.
44. Assignment to Secretary for War of certain inventions.

Existing Patents.

45. Provisions respecting existing patents.

Definitions.

46. Definitions of patent, patentee, and invention.

PART III.

DESIGNS.

Registration of Designs.

47. Application for registration of designs.
48. Drawings, &c. to be furnished on application.
49. Certificate of registration.

Copyright in Registered Designs.

50. Copyright on registration.
51. Marking registered designs.
52. Inspection of registered designs.
53. Information as to existence of copyright.
54. Cesser of copyright in certain events.

Register of Designs.

55. Register of designs.

Fees.

56. Fees on registration, &c.

Industrial and International Exhibitions.

57. Exhibition at industrial or international exhibition not to prevent or invalidate registration.

Legal Proceedings.

58. Penalty on piracy of registered design.
59. Action for damages.

Definitions.

60. Definition of "design," "copyright."
61. Definition of proprietor.

PART IV.

TRADE MARKS.

SECTION

Registration of Trade Marks.

62. Application for registration.
63. Limit of time for proceeding with application.
64. Conditions of Registration of trade mark.
65. Connection of trade mark with goods.
66. Registration of a series of marks.
67. Trade marks may be registered in any colour.
68. Advertisment of application.
69. Opposition to registration.
70. Assignment and transmission of trade mark.
71. Conflicting claims to registration.
72. Restrictions on registration.
73. Further restriction on registration.
74. Saving for power to provide for entry on register of common marks as additions to trade marks.

Effect of Registration.

75. Registration equivalent to public use.
76. Right of first proprietor to exclusive use of trade mark.
77. Restrictions on actions for infringment, and on defence to action in certain cases.

Register of Trade Marks.

78. Register of trade marks.
79. Removal of trade mark after fourteen years unless fee paid.

Fees.

80. Fees for registration, &c.

Sheffield Marks.

81. Registration by Cutlers Company of Sheffield marks.

PART V.

GENERAL.

Patent Office and Proceedings thereat.

82. Patent Office.
83. Officers and clerks.
84. Seal of Patent Office.

SECTION
85. Trust not to be entered in registers.
86. Refusal to grant patent, &c., in certain cases.
87. Entry of assignments and transmissions in registers.
88. Inspection of and extracts from registers.
89. Sealed copies to be received in evidence.
90. Rectification of registers by court.
91. Power for Comptrollor to correct clerical errors.
92. Alteration of registered mark.
93. Falsification of entries in registers.
94. Exercise of discretionary power by Comptroller.
95. Power of Comptroller to take directions of law officers.
96. Certificate of Comptroller to be evidence.
97. Applications and notices by post.
98. Provision as to days for leaving documents at office.
99. Declarations by infant, lunatic, &c.
100. Transmission of certified printed copies of specifications, &c.
101. Power for Board of Trade to make general rules for classifying goods and regulating business of Patent Office.
102. Annual reports of Comptroller.

International and Colonial Arrangements.

103. International arrangements for protection of inventions, designs, and trade marks.
104. Provisions for colonies and India.

Offences.

105. Penalty on falsely representing articles to be patented.
106. Penalty on unauthorised assumption of Royal Arms.

Scotland; Ireland; &c.

107. Saving for Courts in Scotland.
108. Summary proceedings in Scotland.
109. Proceedings for revocation of patent in Scotland.
110. Reservation of remedies in Ireland.
111. General saving for jurisdiction of courts.
112. Isle of Man.

Repeal; Transitional Provisions; Savings.

113. Repeal and saving for past operation of repealed enactments, &c.
114. Former registers to be deemed continued.
115. Saving for existing rules.
116. Saving for prerogative.

SECTION *General Definitions.*

117. General definition.
The FIRST SCHEDULE.—Forms of Application, &c.
The SECOND SCHEDULE.—Fees on instruments for obtaining Patents, and Renewal.
The THIRD SCHEDULE.—Enactments repealed.

An Act to amend and consolidate the Law relating to Patents for Inventions, Registration of Designs and of Trade Marks. [25th August, 1883.]

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, as follows:

PART I. PRELIMINARY.

PART I.

PRELIMINARY.

Short title.

S. 1. This Act may be cited as the Patents, Designs, and Trade Marks Act, 1883.

Division of Act into parts.

S. 2. This Act is divided into parts as follows:—

Part I.—PRELIMINARY.
Part II.—PATENTS.
Part III.—DESIGNS.
Part IV.—TRADE MARKS.
Part V.—GENERAL.

Commencement of Act.

S. 3. This Act, except where it is otherwise expressed, shall commence from and immediately after the thirty-first day of December one thousand eight hundred and eighty-three.

PART II.

PATENTS.

Application for and Grants of Patent.

S. 4. (1.) Any person, whether a British subject or not, may make an application for a patent. Persons entitled to apply for patent.

(2.) Two or more persons may make a joint application for a patent, and a patent may be granted to them jointly.

The generality of the words "any person" are limited by the provision in the 5th section that the application for a patent must contain "a declaration to the effect that the applicant is in possession of an invention, whereof he, or, in the case of a joint application, one or more of the applicants, claims or claim to be the true and first inventor or inventors." The question as to who may obtain a grant is best considered under the following heads:—

1.—*The person who discovers a new manufacture.*

The person who invents a new manufacture, and obtains a patent for it, is the true and first inventor within the statute, notwithstanding that somebody else had invented it before, but had not published it within the realm. (Dolland's Patent, cit. in *Boulton* v. *Bull*, 2 H. Bl. 469; *Lewis* v. *Marling*, 1 Web. P. C. 493; *Hills* v. *London Gaslight Co.*, 5 H. & N. 336; *Plimpton* v. *Malcolmson*, per Jessel, M.R. 3 Ch. D. 556; *Gibson* v. *Brand*, 1 Web. P. C. 628.)

If several persons simultaneously discover the same thing, the party first communicating it to the public, under the protection of letters patent, becomes the legal inventor. (Chitty, Prerog. Crown. 182; 1 Web. P. C. 97.)

A man who discovers the principle of a new manufacture, but employs others to carry it out in detail is still the true

S. 4.

and first inventor within the statute. (*Bloxam* v. *Elsee*, 1 Web. P. C. 132 (n); *Minter* v. *Wells*, 1 Web. P. C. 127; *Allen* v. *Rawson*, 1 C. B. 574; *Tennant's Case*, 1 Web. P. C. 125.)

It was held in *Chappel* v. *Purday* (14 M. & W. 318) that an alien subject of a country with which we are at amity may be the grantee of a patent, and it would seem that the words "whether a British subject or not," appearing in this section, now remove all restrictions of nationality. This will probably in time do away with the practice, now usually followed, of foreign inventors taking out British patents in the names of their patent agent, and subsequently taking an assignment from them.

2.—*The importer from abroad of a new manufacture.*

As a person who is not a British subject can now obtain a patent, applications of this nature are likely to be much less frequent.

The 6th section of the Statute of Monopolies has not been repealed, and as it has long been held that a person to whom an invention is communicated from abroad is the "first and true inventor" within that section (*Edgeberry* v. *Stephens*, 2 Salk. 447; *Marsden* v. *The Saville Street Foundry Co.*, 3 Ex. Div. 203), a patent may still be granted to the importer of an invention. Rule 27, p. 197, provides that the form A 1, in the second schedule to the rules, p. 216, shall be used in applications of this nature.

It is immaterial that the patent is held in trust for a foreigner, the subject of a state in amity with this country, and that the inventor has parted with his invention abroad, before the grant of a patent in England. (*Beard* v. *Egerton*, 3 C. B. 97.) So, if a person resident abroad communicates an invention to A. who communicates it to B., it is competent to B. to apply for a patent (*Plimpton* v. *Malcolmson*, 3 Ch. D. 552), and a patent may be granted to an alien

resident abroad, for an invention communicated to him by another alien also resident abroad. (*In re Wirth's Patent*, 12 Ch. D. 803.) But a communication made in England, by one British subject to another, of an invention, does not constitute the person to whom the communication is made the true and first inventor within the statute. (*Marsden* v. *The Saville Street Foundry Co.*, 3 Ex. Div. 203.) S. 4.

Before the passing of the present Act it was held that when a patent is taken out as for an original invention, the subject of the patent being in fact a communication from a British subject resident abroad, the patent is void (*Milligan* v. *Marsh*, 2 Jur., N. S. 1083), also that when the patent relates partly to original inventions, and partly to communications from abroad, they should be distinguished in the specification. (*Renard* v. *Levinstein*, 10 L. T. Rep., N. S. 177.)

3.—*Any person or persons who, not being the true and first inventor or inventors, makes or make a joint application with the person who claims to be the true and first inventor.*

In the case of *concurrent applications* in respect of contemporaneous discoveries, a joint patent has sometimes been granted (*Heath* v. *Smith*, 2 Web. P. C. 271), or a patent to one in trust for both (*In re Russell*, 2 De G. & J. 130); but in other cases a patent has been granted either to the person who first applies for the seal (*In re Bates and Redgate*, L. R., 4 Ch. 577; *Ex parte Henry*, L. R., 8 Ch. 167; *In re Lowe*, 25 L. J., Ch. 454; *Ex parte Dyer*, Holroyd, 59), provided there is no fraud (*Ex parte Scott and Young*, L. R., 6 Ch. 274), or to the first applicant for provisional protection (*In re Derring*, 13 Ch. D. 393), or to both (*In re Derring*, 13 Ch. D. 393), and a patent may be granted jointly to an adult and a minor (*Cheavin* v. *Walker*, 5 Ch. Div. 858). Joint patentees are not, in contemplation of law, partners, and each may use the invention without accounting to the other. (*Mathers* v. *Green*, 1 Ch. App. 29.)

S. 4. 4.—*The legal representative of a person possessed of an invention, who dies without making application for a patent.*

The application must be made within six months of the decease of the inventor, and declare him to be the true and first inventor (sect. 34, p. 116), and must be accompanied by an official copy or extract from his will, or the letters of administration granted of his estate and effects, in proof of the applicant's title (rule 24, p. 196).

Prior to the passing of this Act, the legal representative could not obtain a patent. (*Marsden* v. *The Saville Street Foundry Co.*, 3 Ex. D. 203.)

5.—*Semble, a member of an official commission or committee in respect of an invention relating to the subject-matter of their official investigation, and embodied in their official report, cannot be an applicant.* (See *Patterson* v. *The Gas Light and Coke Co.*, 2 Ch. D. 832, and 3 App. Cas., 242, 247, 251.)

Application and specification.

S. 5. (1.) An application for a patent must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed; and must be left at, or sent by post to, the patent office in the prescribed manner.

(2.) An application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application, one or more of the applicants, claims or claim to be the true and first inventor or inventors, and for which he or they desires or desire to obtain a patent; and must be accompanied by either a provisional or complete specification (*a*, p. 11).

(3.) A provisional specification must describe the nature of the invention, and be accompanied by drawings, if required (*b*).

(4.) A complete specification, whether left on application or subsequently, must particularly describe and ascertain the nature of the invention, and in what manner it is to be performed, and must be accompanied by drawings, if required (*c*, p. 13).

(5.) A specification, whether provisional or complete, must commence with the title, and in the case of a complete specification must end with a distinct statement of the invention claimed (*d*, p. 26).

(*a*) By section 34, p. 116, the legal representative of a deceased inventor may, in certain events, obtain a patent. This case forms an exception to the provision of this subsection, for the application must contain a declaration by the legal representative that he believes *such deceased person* to be the true and first inventor. No Form is given for use in this class of cases. See forms A and A 1, in 2nd Sch. to the Rules, p. 215. The application must be signed by the applicant (r. 8, p. 192) and accompanied by a statement of an address to which all communications may be made (rule 9, p. 192). As to the prescribed manner of leaving or sending applications see rr. 19 and 22, p. 194. Every applicant must also supply additional drawings under rule 31, p. 198, when his specification is accompanied by drawings.

(*b*) Rule 6, p. 192, makes the use of the form of provisional specification given in the 2nd Sch. to the Rules, p. 217, compulsory. As to the size, &c., of documents see rule 10, p. 193. The 6th section of the Patent Law Amendment Act, 1852, to which this section corresponds, directs that every petition for the grant of Letters Patent shall be accompanied

S. 5.

by a provisional specification "describing the nature of the invention." A provisional specification, therefore, which satisfied the old Act, will be sufficient under the present Act, except that drawings must now accompany, "if required," so that all the decided case relating of this branch of Patent Law are still applicable.

A provisional specification was never intended to be more than a mode of protecting an inventor until the time for filing the final specification. It is not intended to contain a complete description of the thing so as to enable any workman of ordinary skill to make it, but only to disclose the invention, fairly, no doubt, but in its rough state, until the inventor can perfects its details. (Per Jessel, M.R., in *Stoner* v. *Todd*, 4 Ch. D. 59; and see *In re Newall* v. *Elliott*, 4 C. B., N. S. 269.)

The object of the provisional specification is, on the one hand, to enable the inventor to perfect his invention by experiments, which, although open and known, will not be a user and publication to the prejudice of Letters Patent to be afterwards granted, so that he may be in a condition to describe in his complete specification, as the result of his experience, the best manner of performing the invention (*Penn* v. *Bibby*, L. R., 2. Ch. 132), and, on the other hand, to ascertain the identity of the invention, and to make it certain that the patentee shall ultimately obtain his patent for that invention which he presented to the Attorney-General in the first instance. (*Newall* v. *Elliott* 10 Jur., N. S. 955.)

The vagueness or generality of the provisional specification is an objection that may well be taken before the grant of a patent, but it affords no ground for avoiding the patent after it has been granted. (*Penn* v. *Bibby*, L. R., 2 Ch. 132.)

The provisional specification, cannot be prayed in aid, for the purpose of supplying a defect in the subsequent complete specification (*Mackelcan* v. *Rennie*, 13 C. B., N. S. 52.) But

any part of a provisional specification may be omitted in the complete specification, if there is no fraud, and the effect of the remainder is not altered by the omission. (*Thomas* v. *Welch*, L. R., 1 C. P. 192; *Penn* v. *Bibby*, L. R., 2 Ch. 134.) S. 5.

(*c*) For the form of specification to be used see form C, in 2nd Sch. to Rules, p. 217. And see rule 30, p. 197. The words of this sub-section, requiring that the complete specification shall "particularly describe and ascertain the nature of the invention, and in what manner it shall be performed," are taken from the 9th sect. of the Patent Law Amendment Act, 1852, with the addition that drawings may be required under this sub-section, and that it must commence with the title, and end with a distinct statement of the invention claimed. Subject to the 5th sub-sect. of this section, any complete specification that was sufficient before the passing of this Act will be sufficient still, and all, or nearly all the reported cases are still useful law.

The following general rules as to the sufficiency of the complete specification are deduced from the reported cases.

(A.) The complete specification must not only describe and ascertain the nature of the invention, but must also describe in what manner it is to be performed, otherwise the patent will be void.

Illustrations.

(1.) The complete specification of a patent for "improvements in preserving animal substances," said: "The manner in which our said invention is performed is as follows:—We employ a solution, hereinafter distinguished as solution No. 1, being a solution of bisulphide of lime (usually expressed by the formula $CaO,2SO_2$), in water of the specific gravity 1050." The specification then described the formation of solutions Nos. 2, 3 and 4, by mixing solution No. 1 with other bodies, and the mode of employing them in preserving various animal substances, but contained no statement as to how the solution No. 1 was to be applied or used for the purposes of the invention. The patentee claimed the use of solution No. 1 for preserving animal

S. 5.

substances, and the preservation of particular animal substances by the various other solutions "in manner hereinbefore described." *Held*, that, if the final specification claimed the independent and separate use of solution No. 1, for preserving animal substances, there was no sufficient description of the manner in which the invention was to be performed. (*Bailey* v. *Robertson*, 3 App. Cas. 1055.)

(2.) Patent for certain improvements in extracting sugar or syrup from cane-juice and other substances containing sugar, and in refining sugar and syrup. In the specification the patentee said: "The invention consists in a means of discolouring syrups of every description by means of charcoal, produced by the distillation of bituminous schistus alone, or mixed with animal charcoal, and even of animal charcoal alone." The specification then stated that the "discoloration" was to be produced by means of a filter of the charcoal, and continued: "The carbonization of bituminous schistus has nothing particular; it is produced in closed vessels, as is done for producing animal charcoal, only it is convenient before the carbonization to separate from the bituminous schistus the sulphurets of iron which are mixed with it." The specification said nothing as to any previous operation on the syrup before it was submitted to the filter, but it did state that syrup in a proper state might be obtained by a mixture of sugar and water. The defendant objected to the sufficiency of the specification. *Held*, first, upon proof that the invention was applicable with advantage to the syrup, after it had undergone a certain degree of heat, though it failed when applied to the first drawings of the syrup, that the specification was sufficient. Secondly, that it was incumbent on the patentee to prove, that the presence of iron in the bituminous schistus, used in the process of filtering, would not be injurious; or else, that the method of extracting the iron from it was so simple and well known, that a person ordinarily acquainted with the subject could remove it with ease; or, that the bituminous schistus, as known in England, could be used in the process with advantage. (*Derosne* v. *Fairie*, 2 Cr. M. & R. 476.)

(3.) Patent for "a new or improved method of drying and preparing malt." In the specification it was stated, that the invention consisted in exposing malt previously made, to a very high degree of heat: but it did not describe any new machine invented for that purpose; nor the state, whether moist or dry, in which the malt was originally to be taken for the purpose of being subjected to the process; nor the utmost degree of heat which might be safely used; nor the length of time to be employed; nor the exact criterion by which it might be known when the process was accomplished. *Held*, that the specification was not sufficiently precise. (*Reg.* v. *Wheeler*, 2 B. & Ald. 355.)

(B) The specification must so disclose the manner in which the invention is performed as not to necessitate a recourse to experiment, invention, addition or correction. (*Neilson* v. *Harford*, 8 M. & W. 806; *Reg.* v. *Wheeler*, 2 B. & Ald. 354; *Morgan* v. *Seaward*, 1 Web. P. C. 174.) S. 5.

Illustrations.

(1.) The description in the specification of a lamp burner omitted to state where the hole for the admission of air was to be made. *Held*, that the patent was bad, as it required corrections or invention to make the lamp useful. (*Hinks* v. *Safety Lighting Co.*, 4 Ch. Div. 607.)

(2.) The invention consisted of an improved mode of cutting or forming stone, or other suitable material for paving or covering roads, and the specification directed the blocks to be bevelled both inwards and outwards, but said nothing as to the precise angle at which the bevels were to be made. *Held*, that if any angle was a benefit, the specification was sufficient, but if experiment were necessary to determine the proper angle, it was bad. (*Macnamara* v. *Hulse*, 2 Web. P. C. 129.)

(3.) The specification of a patent for an improved manufacture of metal plates for sheathing the bottoms of ships, directed copper and zinc to be melted together in proportions between 40 per cent. of copper to 50 per cent. of zinc, and 63 per cent of copper to 36 per cent. of zinc. It was objected that the specification left it uncertain whether the above were to be taken with reference to the measured quantities to be put into the fusing pot, or whether they meant to specify the result of the two combined together when taken out. *Held*, that if this necessitated experiments the patent was void. (*Muntz* v. *Foster*, 2 Web. P. C. 96.)

(C.) The specification must be intelligible to an ordinary careful workman possessed of reasonable skill and intelligence, but not such scientific knowledge or power of invention as would enable him, unaided, to supplement a defective description or correct an erroneous description. (*Plimpton* v. *Malcolmson*, 3 Ch. D. 568; *Neilson* v. *Harford*, 1 Web. P. C. 314; *Reg.* v. *Arkwright*, 1 Web. P. C. 66; *Household Iron Co.* v. *Neilson*, 1 Web. P. C. 676, 662; *Heath* v. *Unwin*, 2 Web. P. C. 245.)

S. 5.

(D.) There must be no fraudulent concealment, but the specification must disclose the invention, and in what matter it is to be performed, in as ample and beneficial a way as the patentee himself knows, otherwise the patent will be void. (*Reg.* v. *Arkwright*, 1 Web. P. C. 66; *Bovill* v. *Moore*, Dav. P. C. 400; *Lewis* v. *Marling*, 10 B. & C. 26; *Walton* v. *Bateman*, 1 Web. P.C. 622.)

Illustrations.

(1.) The specification of a patent for making verdigris described a method sufficient for that purpose, but made no mention of *aqua fortis*, which the patentee had been accustomed clandestinely to add for the purpose of dissolving the copper more rapidly. The verdigris produced with the *aqua fortis* was neither better nor cheaper than that made according to the specification, but it involved less labour. *Held*, a prejudicial concealment which rendered the patent void. (*Wood* v. *Zimmer*, 1 Web. P. C. 82.)

(2.) If the patentee can make the article patented with *cheaper* materials than those which he has enumerated in his specification, although the latter will answer the purpose equally well, the patent is void. (*Turner* v. *Winter*, 1 Web. P. C. 81.)

(3.) The patentee is bound to communicate to the public, not only all the information he has at the time he applies for his patent, but all the knowledge he has at the date of his specification. (*Crossley* v. *Beverley*, 1 Web. P. C. 117.)

(E.) If the specification is *misleading* or *ambiguous* the patent is void. (*Crompton* v. *Ibbotson*, 1 Web. P. C. 83; *Neilson* v. *Harford*, 8 M. & W. 806; *Patent Type Founding Co.* v. *Richards*, 1 John. Rep. 381; *Campion* v. *Benyon*, 6 B. Mo. 71; *Turner* v. *Winter*, 1 Web. P. C. 77).

Illustrations.

(1.) The specification of a patent for making seidlitz powders gave three recipes for preparing the ingredients, to which no names were given. The three recipes were the common processes, for preparing the ingredients, which were Rochelle salt, carbonate of soda, and tartaric acid, which were sold in shops before the date of the patent. *Held*, that the patent was void, as the specification misled the public, by

making them believe an elaborate process essential to the invention. (*Savory* v. *Price*, 1 Web. P. C. 83.) S. 5.

(2.) The invention consisted in putting a glazed or enamelled surface on paper to be used for copper and other plate printing, by means of white lead and size. The enamel was directed to be made by mixing size with "the finest and purest chemical white lead." The finest and purest white lead obtainable in the London shops, or generally in the trade, would not answer the purpose, but there was a purer white lead, prepared on the Continent, and imported into this country, which alone could be successfully used. *Held*, that as this was not pointed out in the specification, the patent was void. (*Sturtz* v. *De la Rue*, 1 Web. P. C. 83; and see *Wegmann* v. *Corcoran*, 13 Ch. D. 65, 83.)

(3.) The patent was for an improvement in drying and finishing paper. The patentee said in his specification: "The invention I claim consists in conducting the paper, by means of cloth or cloths, against the heated cylinders, which cloth may be made of any suitable material, but I prefer it to be made of linen warp and woollen weft." The evidence showed, that, before the date of the specification, the patentee had tried several fabrics for the purpose, but none had answered, except the one made of linen and wool. *Held*, that the specification was bad, as it tended to mislead the public. (*Crompton* v. *Ibbotson*, 1 Web. P. C. 83; and see *Bickford* v. *Skewes*, 1. Q. B. 948.)

(4.) The insertion or representation of anything as material, not being so in fact, is fatal. (*Huddart* v. *Grimshaw*, 1 Web. P. C. 93.)

(5.) A specification in a patent, for a particular construction of windlasses, stated that the object was "to hold, without slipping, a chain cable of any size." Before the date of the patent, constructions were known by which a windlass might be made to hold a single chain cable of any assigned size. *Held*, that the specification did not unequivocally show, that the object was to construct a single windlass which might hold different chain cables, whatever their size, and that such a windlass was, therefore, not protected by the patent. (*Hastings* v. *Brown*, 1 E. & B. 450.)

(F.) The specification should distinguish what is new from what is old, and confine the claim to what is new, otherwise the patent is void. (*Dangerfield* v. *Jones*, 13 L. T. Rep., N. S. 144; *Tetley* v. *Easton*, 2 Ell. & Bl. 956; *Manton* v. *Manton*, Dav. P. C. 349; *Carpenter* v. *Smith*, 1 Web. P. C. 532; *Lister* v. *Leather*, 8 Ell. & Bl. 1004, 1031; *Foxwell* v. *Bostock*, 4 De G., J. & S. 298; *Williams* v. *Brodie*, Dav. P. C. 96.

S. 5.

Illustrations.

(1.) The plaintiff obtained a patent for "an improved turning-table," all the component parts of which, except one, were comprised in a prior patent, the specification of which was not enrolled until after the date of the plaintiff's patent. The plaintiff, in his specification, claimed "the improved turning-table hereinbefore described," without showing that any part of it was old. The jury found that the introduction of certain suspending rods made the table a new instrument. *Held*, that the specification was bad, as it did not distinguish what was new from what was old. (*Holmes* v. *London and North Western Ry. Co.*, Macr. P. C. 13.)

(2.) The patent was for improvements in central-fire breech-loading cartridges. The specification, describing the method of performing the invention, referred to certain figures in drawings annexed thereto, but did not distinguish between what was new and what was old. The patentee claimed the manufacture of cartridges described with reference to figs. 1, 2, and 1*, and also the manufacture of cartridges described with reference to figs. 3, 4, and 3*. *Held*, that the patent might be upheld by limiting the claim (as in *Seed* v. *Higgins*, 8 H. L. C. 550), for the manufacture of cartridges described with reference to the above-mentioned figures. (*Daw* v. *Eley*, L. R., 3 Eq. 500 (n).)

(3.) In a drawing of a machine attached to a specification there was shown an intervening space, or opening, between two parts of the machine, the subject of the patent; it was intended as the arching of a cutter-plate, but this was not referred to and explained in the specification. In the specification there was the statement of an evil in existing machines, and upon careful examination by a skilful person, he might suppose that the space exhibited in the drawing was intended to obviate this evil, but there was no statement to that effect, nor was the form of the opening described, and described as a necessary quality of improvement in the machine. This form was afterwards relied upon as one of the great improvements in the combination of the patented apparatus. *Held*, that as it had not been properly explained, described and claimed, the specification was defective. (*Clark* v. *Adie*, 2 App. Cas. 315.)

(4.) If the claim is too large and vague, or covers more than, or something different from, what is described in the specification, or something which will not succeed in practice, the patent is void. (*Thomas* v. *Foxwell*, 6 Jur., N. S. 271; *Jordan* v. *Moore*, L. R., 1 C. P. 624; *Arnold* v. *Bradbury*, L. R., 6 Ch.

706; *Rushton* v. *Crawley*, L. R., 10 Eq. 527; *Gamble* v. *Kurtz*, 3 C. B. 425.) S. 5.

Illustrations.

(1.) The patent was for "an improvement in the construction, making, or manufacturing of chairs." "The patentees claimed the application of a self-adjusting leverage to the back and seat of a chair, whereby the weight on the seat acts as a counter-balance to the pressure against the back of such chair as above described." It appeared from the evidence, that a chair, acting upon the same principle as that which the patentee claimed, had been constructed and sold by a person of the name of Brown, before the date of the patent. *Held*, that the patent was void, as it claimed more than the patentee had invented, and would preclude Brown from continuing to make the chair he had invented prior to the date of the patent. (*Minter* v. *Mower*, 6 A. & E. 735.)

(2.) The patent was for a machine for making paper in single sheets, without seam or jointing, from one to twelve feet and upwards wide, and from one to forty-five feet and upwards in length. *Held*, that this imported that paper, varying in width between those extremes, should be made by the same machine, and that the patentee at the time of taking out the patent, not having any machine capable of producing paper of different widths, the patent was void. (*Bloxam* v. *Elsee*, 6 B. & C. 169.)

(3.) Where a patentee claimed the exclusive liberty of making lace, composed of silk and cotton thread mixed, and not any particular mode of mixing, it was held to be void, on proof that silk and cotton thread had been before mixed on the same frame for lace, although not in the same mode. (*R.* v. *Else*, 1 Web. P. C. 76.)

(4.) Action for the infringement of a patent for "an improved manufacture of metal plates for sheathing the bottoms of ships or other such vessels." The patentee, in his specification, directed copper and zinc to be melted together "in the usual manner, in proportions between 50 per cent. of copper to 50 per cent. of zinc, and 63 per cent. copper to 37 per cent. of zinc, both of which extremes, and all intermediate proportions, will roll at a red heat." *Held*, that if the invention could not be made in one or two of the different proportions of zinc and copper mentioned in the specification, the patent would be void. (*Muntz* v. *Foster*, 2 Web. P. C. 110; and see *Wegmann* v. *Corcoran*, 13 Ch. D. 65.)

(5.) Action for the infringement of a patent for "improvements in the manufacture of gas." The specification stated the invention to "consist in the direct use of seeds, leaves, flowers, branches, nuts,

S. 5.

fruit, and other substances and matters containing oil, or oily or resinous matter." The specification also stated "that the mode of using seed, and constructing the apparatus used under this my patent in preparing gas, may be the same as the apparatus used in the ordinary mode of making gas with coal." The claim was as follows: "I claim for making gas direct from seeds, and matter herein named, for practical illuminations, or other useful purposes, instead of making it from the oils, resins, or gums, previously extracted from such substances." A previous patentee had, by his specification, proposed, for the manufacture of gas, to use fatty substances, such as greaves or graves; also the residuum after the oil had been expressed from seeds, such as oil cake; also beech nuts, mast, cocoanuts, and other matters abounding in oil, and he proposed to use these substances separately and in combination. *Held*, that the claim, being merely for making gas direct from seeds and matter stated in the specification, without reference to any method of doing it, was too large and general, and could not be supported. (*Booth* v. *Kennard*, 2 H. & N. 84.)

(6.) A patent for "improvements in the preparation of red and purple dyes," thus described the process: "I mix aniline with dry arsenic acid, and allow the mixture to stand for some time, or I accelerate the operation by heating it to, or near to, its boiling point, until it assumes a rich purple colour." It was proved (and not denied by the patentee) that it was necessary to apply heat in order to produce the colour; but evidence was given that a competent workman would apply heat. *Held*, however, that this description in the specification was bad, and the patent founded thereon was invalid. (*Simpson* v. *Holliday*, L. R., 1 H. L. 315; see also *R.* v. *Cutler*, Mast. P. C. 124, and *Beard* v. *Egerton*, 19 L. J., C. P. 40.)

(7.) Patent for "a process or method of combining various materials so as to form stuccoes, plasters, and cements, and for the manufacture of artificial stones, marbles, &c., used in buildings." The specification, after stating the invention to consist in producing certain hard cements of the combination of the powder of gypsum, powder of limestone, and chalk, with other materials, such combinations being (subsequent to their mixing) submitted to heat, described the method or process of making a cement from gypsum to consist in mixing with powdered gypsum, strong alkali (*ex. gr.* best American pearl-ash) dissolved in a certain proportion of water; this solution to be neutralized with acid (sulphuric acid being the best), the mass to be kept in agitation, and the acid to be added gradually till the effervescence should cease; and then a certain proportion of water to be added (if other alkali were used, the quantity to be varied in proportion to its strength); and the mixture having been brought to a proper consistence

by the further addition of powdered gypsum, to be dried in moulds, and finally subjected to a furnace capable of producing a red heat. The specification concluded by stating that other alkalies and acids, besides those before mentioned, would answer the purposes of the invention, though not so well, and that the inventor claimed the method or process thereinbefore described. *Held*, that the specification was bad. "It must either be a claim of all acids and alkalies, or of all acids and alkalies that will answer the purpose. If it be a claim of all acids and alkalies, it is clearly bad, as there are some which will not answer the purpose. If it be a claim of those only which will answer the purpose, it is as clearly bad, in consequence of not stating those which will answer the purpose, and distinguishing them from those which will not, and so preventing the public from being under the necessity of making experiments to ascertain which of them will succeed and which will not." (*Stevens* v. *Keating*, 2 Exch. R. 772.) S. 5.

Before the passing of the present Act it was never compulsory upon a patentee to annex drawings to his specification, if he could make his invention intelligible without them. (*Boulton* v. *Bull*, 2 H. Bl. 481.) Drawings.

Drawings when employed form part of the specification (*Morgan* v. *Seaward*, 1 Web. P. C. 173), and may be employed to explain an ambiguity in the written description of the invention (*Hastings* v. *Brown*, 1 E. & B. 454; *Bloxam* v. *Elsee*, 1 C. & P. 564), or to limit the claim (*Daw* v. *Eley*, L. R., 3 Eq. 500 (n)), and might, before the passing of this Act, even form a complete specification without any written description. (*Poupard* v. *Fardell*, 18 W. R. 129; *Foxwell* v. *Bostock*, 4 De G. J. & S. 303.) It has not been considered necessary that drawings should be well executed, or skilfully drawn, and they have been considered sufficient if they enabled a workman of fair and competent skill to carry out the invention (*Bovill* v. *Moores*, Dav. P. C. 369.) Their intelligibility was considered to be a question for the jury. (*Morton* v. *Middleton*, 1 Cr. S. 3rd. Ser. 722.)

Under the present Act it will be for the examiners to report whether the drawings are in the prescribed form (sect. 6, p. 27), and the comptroller may require them to be amended (sect. 7 (1), p. 30). The question of their sufficiency

S. 5. and intelligibility may still be questioned in Court. Drawings must now comply strictly with rules 28 and 29, p. 197.

The following are the principles which apply to the construction of the specification:

Construction of Specification.

(A.) The rules that govern the construction of specifications are the ordinary rules for the interpretation of written instruments, and the specification ought not to be subjected to a benign interpretation or to a strict one, but it should be construed fairly and truly, with a judicial anxiety to support a really useful invention, if it can be supported on a reasonable construction of the patent. (*Simpson* v. *Holliday*, 13 W. R. 578; *Harrison* v. *Anderston Foundry Co.*, 1 App. Cas. 581; *Dudgeon* v. *Thomson*, 3 App. Cas. 53; *Hinks* v. *Safety Lighting Co.*, 4 Ch. D. 612; *Plimpton* v. *Spiller*, 6 Ch. D. 422; *Stevens* v. *Keating*, 2 Web. P. C. 187; *Thomas* v. *Foxwell*, 6 Jur., N. S. 272; *Otto* v. *Linford*, 46 L. T. Rep., N. S. 35; *Tetley* v. *Easton*, Macr. P. C. 74; *Palmer* v. *Wagstaff*, 9 Exch. 494.)

Illustrations.

(1.) If a claim in the specification can be read in two ways, one claiming something that has a merit of novelty, and the other claiming something which would show the man to be ignorant of all the ordinary appliances used in every workshop in the world, it is the duty of the judge to adopt the construction which makes the patent reasonable and sensible, rather than that construction which makes the patent utterly absurd. (*Plimpton* v. *Spiller*, 6 Ch. D. 422; *Clark* v. *Adie*, 3 Ch. D. 142; *Trotman* v. *Wood*, per Byles, J., 16 C. B., N. S. 504.)

(2.) Patent "for improvements in giving signals and sounding alarums in distant places, by means of electric currents transmitted through *metallic circuits*." Subsequently to the patent, it was discovered that the return current could be conducted back to the battery through the earth as effectually as through a continuous metallic circuit. The defendants contended that, by using this method, they did not infringe the patent. *Held*, that the specification, in speaking of metallic circuits, comprehended all circuits which were metallic, so far as it was material to the improvements claimed that they should be so, and therefore that the defendants were guilty of infringement. (*The Electric Telegraph Co.* v. *Brett*, 10 C. B. 838.)

S. 5.

(B.) The construction of a specification belongs to the Court; but the explanation of the words or technical terms of art, the phrases used in commerce, and the proof and results of the processes which are described (and in a chemical patent the ascertainment of chemical equivalents) are matters of fact upon which evidence may be given, contradictory testimony may be adduced, and upon which it is the province and right of a jury to decide. (*Hills* v. *Evans*, 31 L. J., Ch. 457; *Neilson* v. *Harford*, 1 Web. P. C. 370; *Derosne* v. *Fairie*, 1 Web. P. C. 156.)

Illustration.

(1.) The specification described the invention to consist in the application to the covering of buttons, of such figured woven fabrics "wherein the ground, or the face of the ground thereof, is produced by a warp of *soft or organzine silk*, such as is used in weaving satin and the classes of fabrics produced therefrom." The jury asked how they were to understand the word "or" in the specification; whether it was used disjunctively, or whether "*organzine*" was the construction of the word "*soft*." The judge told them, that, in his opinion, unless the silk was *organzine*, it was not within the patent. *Held*, that this direction was erroneous; for that the judge should not have told the jury, absolutely, that soft and organzine silk were the same, but that the words were *capable* of being so construed, if the jury were satisfied that, at the date of the patent, there was only one description of soft silk—and that organzine—used in satin weaving; but, otherwise, that the proper and ordinary sense of the word "or" was to be adopted, and the patent held to apply to every species of soft silk, as well as to organzine silk. (*Elliott* v. *Turner*, 2 C. B. 446; and see *Hills* v. *London Gas Light Co.*, 27 L. J., Ex. 60, and 29 L. J., Ex. 409.)

(C.) A specification of a patent should be construed with reference to the state of knowledge upon the subject-matter of the patent at the date of the grant. (*Heath* v. *Unwin*, 25 L. J., C. P. 19; *Electric Telegraph Co.* v. *Brett*, 10 C. B. 838; *Lewis* v. *Marling*, 10 B. & C. 22.)

Illustrations.

(1.) Action for the infringement of a patent for "an improved gas apparatus." In the specification the patentee said: "My improved

S. 5.

gas apparatus is for the purpose of extracting inflammable gas by heat from pit coal, or tar, or any other substance from which gas or gases capable of being employed for illumination can be extracted by heat." It was objected to the sufficiency of the specification, that the retort described would not do for making gas from oil. Before the date of the specification, however, oil had never been employed for that purpose. *Held*, that the specification was sufficient. (*Crossley* v. *everley*, 1 Web. P. C. 106.)

(2.) A patent for a chemical process only gives an exclusive right to use those substances which are known, at the date of the patent, to be chemical equivalents for the substances mentioned in the specification, and does not extend to those subsequently discovered to be equivalent. (*Heath* v. *Unwin*, 25 L. J., C. P. 19.)

(3.) Where the patentee in his specification describes his invention in the best form that science could then give it, it is immaterial that a cheaper way of carrying out the invention has been subsequently discovered. (*Simpson* v. *Holliday*, 20 Newt. Lon. Jour., N. S. 116.)

(D.) *Semble*, prior patents and specifications are admissible in evidence, for the purpose of informing the Court of the state of knowledge relating to the subject matter of a patent, so as to enable the Court rightly to construe the specification of such patent. (*Trotman* v. *Wood*, 16 C. B., N. S. 479; *Clark* v. *Adie* (second appeal), 2 App. Cas., 423, pp. 430, 436; in Court of Appeal, 3 Ch. D. 142.)

Semble, also for the purpose of construing a specification which is ambiguous or doubtful. (*Clark* v. *Adie*, 2 App. Cas. 430.)

(E.) In construing specifications the popular or commercial, and not the mathematical or scientific, meaning is to be placed upon the words used. (*Clark* v. *Adie*, 2 App. Cas. 423.)

Illustrations.

(1.) A patentee, in his specification of a patent for preparing red and purple dyes, said: "I mix aniline with *dry* arsenic acid," &c. At the date of the patent an arsenic acid entirely free from water was known to chemists as anhydrous arsenic acid, but could not be commonly bought in the trade. This would not produce the dyes. A hydrated acid, containing from 12 to 14 per cent. of water, was commonly sold

by manufacturers, which was dry to the touch, and known in the trade as "dry arsenic acid." This would produce the dyes. Wood, V.-C., found, on the ground that the specification was addressed to manufacturers, and not to scientific chemists, that "dry arsenic acid" meant dry hydrated arsenic acid. (*Simpson* v. *Holliday*, 20 Newt. Lon. Jour., N. S, 118.)

(2.) *Patent for "improvements in a horse-clipping machine."* The improvements described in the specification, among other items, the parallelism of the teeth of the comb. *Held*, that the word "parallel" should be construed in its popular and not in its mathematical sense. (*Clark* v. *Adie*, 2 App. Cass. 423.)

(F.) In the comparison of two specifications, each of which contains terms of art, and the description of technical processes, the duty of the Court is confined to giving the legal construction to such documents taken independently, but the comparison of the two instruments, and ascertaining whether the words, as interpretated by the Court, and contained in one specification, do or do not denote the same external matter as the words, as interpreted and explained by the Court, contained in the other specification, is a matter of fact, and within the province of the jury. (*Hills* v. *Evans*, 31 L. J., Ch. 457; *Betts* v. *Menzies*, 10 H. L. Cas. 134.)

Illustration.

The plaintiff obtained in 1849 a patent for the purification of coal gas by means of *hydrated* oxides of iron. In 1847, F., having obtained a patent for the purification of gas by chloride of calcium, specified a mode of making the chloride of calcium by decomposing muriate of manganese, iron or zinc, and said, "the oxides or carbonates which result are useful for the said purification of gas, and need not be removed." The oxides so prepared would be hydrates. *Held*, that the Court, on a comparison of F.'s specification with that of the plaintiff, could not say as a matter of law, that F. had anticipated the plaintiff's invention. (*Hills* v. *London Gas Light Co.*, 5 H. & N. 312.)

(G.) The intelligibility and sufficiency of a specification is a question of fact for the jury, and not a question of law for

S. 5. the Court. (*Parkes* v. *Stevens*, L. R., 8 Eq. 358, affirmed L. R., 5 Ch. 36; *Wallington* v. *Dale*, 7 Exch. 888; *Hill* v. *Thompson*, 1 Web. P. C. 235; *Bickford* v. *Skewes*, 1 Web. P. C. 214.)

(*d.*) The provisions of this sub-section have been in practice usually carried out. It has, however, been held, prior to the passing of the present Act, that the claim was not an essential part of a specification, or necessary for the protection of a patent. (*Lister* v. *Leather*, 8 E. & B. 1034; *Dudgeon* v. *Thomson*, 3 App. Cas. 54.) The claim always was and still is an extremely important part of the specification, and should be very carefully worded in order to avoid a difficulty such as that which arose in the case of *Tetley* v. *Easton* (2 E. & B. 956), where it was held that a specification must, unless a contrary intention appears, be deemed to claim all that it describes, not only as a whole taken in combination, but also all the essential parts of which such combination is composed.

In future a complete specification will not be passed by an examiner, or accepted by the comptroller, as prepared in the prescribed manner, unless it ends with a distinct statement of the invention claimed. In the absence of such claim an amendment may be required. It should be remembered that the real object of the claim, as pointed out by James, L.J. (*Plimpton* v. *Spiller*, 6 Ch. D. 426), is not to claim anything which is not mentioned in the specification, but to disclaim something. A man who has invented something gives in detail the whole of the machine in his specification. In doing that he is of necessity very frequently obliged to give details of things which are perfectly known and in common use—he describes new combinations of old things to produce a new result, or something of that kind. Therefore, having described his invention, and the mode of carrying that invention into effect, by way of security, he says: "But take notice, I do not claim the whole of that machine, I do not claim the whole of that *modus operandi*, but that which is new, and that which I claim is that which I am now about to state."

S. 5.

Not only must care be taken to exclude everything from the claim which is old, and therefore not patentable, but also to include all that the patentee has in fact invented, for everything described in the specification and not specifically claimed becomes public property. (*Hinks* v. *Safety Lighting Co.*, per Jessel (M.R.), 4 Ch. D. 612.)

Reference of application to examiner.

S. 6. The comptroller shall refer every application to an examiner, who shall ascertain and report to the comptroller whether the nature of the invention has been fairly described, and the application, specification, and drawings (if any) have been prepared in the prescribed manner, and the title sufficiently indicates the subject matter of the invention.

Under this section it is the duty of the examiner to ascertain and report to the comptroller upon the following points.

(1.) Whether the *nature* of the invention has been fairly described.

Every application for a patent must be accompanied by either a provisional or complete specification (sect 5 (2), p. 10). To this the examiner must look for a description of the nature of the invention. It will be observed that when the application is accompanied by a *complete* specification the examiner is not here required to consider its sufficiency as such, but only so far as it fills the office of a provisional specification, namely to disclose the *nature* of the invention claimed. See sect. 5 (3) and notes thereto, p. 11.

(2.) Whether the *application* has been prepared in the prescribed manner. See sect. 5 (1), and (2) and notes thereon, p. 10, and the First Sch., p. 181.

(3.) Whether the *specification* has been prepared in the prescribed manner.

The specification here spoken of is that which accompanies the application, and may be either the provisional or complete

S. 6. specification. See sect. 5 (3), (4), and (5), and notes thereon, p. 11.

The specification must describe but one invention (sect. 33, 113).

(4.) Whether the *drawings* have been prepared in the prescribed manner. See sect. 5 (4), and notes thereon, p. 21.

(5.) Whether the *title* sufficiently indicates the subject-matter of the invention.

It will be observed that the requirements under the Act of the title, the provisional specification, and the complete specification are very different. The title must indicate the *subject matter* of the invention; the provisional specification must describe the *nature* of the invention; and the complete specification must *particularly* describe and ascertain the nature of the invention, *and in what manner it is to be performed.*

If the examiner reports that the title does not sufficiently indicate the subject matter of the invention, the comptroller may require it to be amended; sect. 7 (1), p. 30. It was formerly of importance that as little information as possible respecting the *nature* of the invention should be conveyed by the title, as advantage might be taken of it by rival inventors, and by opponents to the grant of a patent. All danger from this source is, however, now removed, as neither the title, nor either of the specifications, or drawings (if any), can be inspected until the acceptance of the complete specification has been advertised (s. 10, p. 36), and all may be inspected at the same time.

Formerly patents were held void because the title was too large, and covered more than had actually been invented, which was construed as a fraud upon the Crown (*Morgan* v. *Seaward*, 2 M. & W. 544; *Cook* v. *Pearce*, 8 Q. B. 1058); or for variance between the title and the specification (*Rex* v. *Wheeler*, 2 B. & Ald. 345; *Rex* v. *Metcalf*, 2 Stark, 249).

Although these objections to patents are not taken away by the Act, and may still be set up for the purpose of

defeating them, it is very unlikely that such pleas will be successfully urged in cases that have satisfied the examiner. S. 6.

For the purpose of determining whether or no the title sufficiently indicates the subject matter of an invention it may still be useful to refer to the reported cases, as examiners are hardly likely to be satisfied with titles which formerly were held insufficient and led to the patent being invalidated. Those cases where objections were unsuccessfully taken to the title are perhaps not so useful, as it by no means follows that the examiner will pass a title although, if passed, it would not invalidate the patent obtained.

Illustrations.

(1.) Patent for "a method or methods of more completely lighting cities, towns and villages." The invention described consisted of improvements in street lamps. Patent held void. (*Cochrane* v. *Smethurst*, Dav. P. C. 354.)

(2.) Patent for "certain improvements in copper and other plate printing." Invention consisted in putting a glazed or enamelled surface on paper, to be used for copper and other plate printing, and in a mode of polishing the enamel. *Held*, that the title was sufficient. (*Sturtz* v. *De la Rue*, 5 Russ. 322.)

(3.) Patent for "a machine for an expeditious and correct mode of giving a fine edge to knives, razors, *scissors*, and other cutting instruments." As the machine described in the specification would not do for sharpening *scissors*, the patent was held void. (*Felton* v. *Greaves*, 3 C. & P. 611.)

(4.) Patent for "improvements in weaving figured fabrics." Objected that the improvements were applicable only to figured fabrics having terry surfaces. *Held*, that the title was sufficient. (*Crossley* v. *Potter*, Macr. P. C. 242.)

(5.) The title "an improvement in locomotion" is too general. (*Newall* v. *Elliott*, 13 W. R. p. 15.)

(6.) Patent for "improvements in manufacture of plaited fabrics." The specification described that which together amounted to but a single improvement. *Held*, not such an inconsistency between the title and the invention specified as to invalidate the patent. (*Nickels* v. *Haslam*, 8 Scott. N. R. 97.)

(7.) Patent for "improvements in the manufacture of gas for the purpose of illumination, and in the apparatus used when transmitting

S. 6. and measuring gas." In the specification, the words "therein and" where interpolated between "used" and "when." So that the specification was represented to be for improvements in the manufacture of gas for the purpose of illumination, and in the apparatus used *therein and* when transmitting and measuring gas." (Patent held bad. *Croll* v. *Edge*, 9 C. B. 379.)

(8.) Patent "for improvements in the manufacture of frills or ruffles and in the machinery employed therein." The complete specification extended the invention to the manufacture of frills, ruffles, *or trimmings*. *Held*, that as the words "frills, ruffles, and trimmings" are all *ejusdem generis*, and as they are only important as showing what is to be made by the machinery, of which alone the patentee claimed to be the inventor, there was no such variance as to render the patent invalid. (*Wright* v. *Hitchcock*, L. R., 5 Ex. 37.)

For other instances see *Oxley* v. *Holden*, 8 C. B., N. S. 707; *Reg.* v. *Mill*, 10 C. B. 379; *Neilson* v. *Harford*, 8 M. & W. 806; *Fisher* v. *Dewick*, 3 Q. B. 1056; *Hill* v. *Thompson*, 8 Taunt. 375; *Bainbridge* v. *Wigley*, 1 Carp. P. C. 270; *Stead* v. *Williams*, 2. Web. P. C. 137; *Bloxam* v. *Elsee*, 6 B. & C. 169; *Brunton* v. *Hawkes*, 4 B. & Ald. pp. 552, 558; *Campion* v. *Benyon*, 6 B. Mo. 71 *Rex* v. *Else*, 1 Web. P. C. 76; *Beard* v. *Egerton*, 3. C. B. 97; *Patent Bottle Envelope Co.* v. *Seymer*, 5 C. B., N. S. 164; *Parker* v. *Stevens*, L. R., 8 Eq. 358.

Power for comptroller to refuse application or require amendment.

S. 7. (1.) If the examiner reports that the nature of the invention is not fairly described, or that the application, specification, or drawings has not or have not been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject matter of the invention, the comptroller may require that the application, specification, or drawings be amended before he proceeds with the application.

(2.) Where the comptroller requires an amendment, the applicant may appeal from his decision to the law officer (*a*, p. 31).

(3.) The law officer shall, if required, hear the applicant and the comptroller, and may make an order determining whether and subject to what conditions, if any, the application shall be accepted (*a*). S. 7.

(4.) The comptroller shall, when an application has been accepted, give notice thereof to the applicant.

(5.) If after an application has been made, but before a patent has been sealed, an application is made, accompanied by a specification bearing the same or a similar title, it shall be the duty of the examiner to report to the comptroller whether the specification appears to him to comprise the same invention; and, if he reports in the affirmative, the comptroller shall give notice to the applicants that he has so reported.

(6.) Where the examiner reports in the affirmative, the comptroller may determine, subject to an appeal to the law officer, whether the invention comprised in both applications is the same, and if so he may refuse to seal a patent on the application of the second applicant. (*b*)

(*a*) As to practice on appeal, see sect. 38, p. 118, and rules p. 208.

(*b*) Under this sub-section a patent may be refused on the ground of want of novelty, but only, in case of an appeal, when the examiner, the comptroller, and the law officer agree upon this issue of fact. This provision will probably involve much trouble and expense, and may, unless great care is exercised, lead to injustice to inventors. Probably in all cases of real doubt the patent will be granted upon the same principle that has already been recognised in cases of opposition. See

S. 7. *In re Russell's Patent*, 2 De G. & J. 130; *In re Spence's Patent*, 3 De G. & J. 523; *In re Simpson's Patent*, 21 L. T. Rep., N. S. 81. By rule 16, p. 194, both applicants may attend the hearing of the question whether the invention comprised in both applications is the same, but neither party shall be at liberty to inspect the specification of the other.

Time for leaving complete specification.

S. 8. (1.) If the applicant does not leave a complete specification with his application, he may leave it at any subsequent time within nine months from the date of application (*a*).

(2.) Unless a complete specification is left within that time the application shall be deemed to be abandoned.

(*a*) As none of the papers left at the Patent Office are open to public inspection prior to the acceptance of the complete specification (Sect. 10), and the Reports of Examiners are not in any case published, or open to public inspection, there appears to be no reason why, after one application has been abandoned under this section by not leaving a complete specification, another application may not be made for a patent for the same invention.

Comparison of provisional and complete specification.

S. 9. (1.) Where a complete specification is left after a provisional specification, the comptroller shall refer both specifications to an examiner for the purpose of ascertaining whether the complete specification has been prepared in the prescribed manner, and whether the invention particularly described in the complete specification is substantially the same as that which is described in the provisional specification (*a*, p. 33).

(2.) If the examiner reports that the conditions herein-

before contained have not been complied with, the comptroller may refuse to accept the complete specification unless and until the same shall have been amended to his satisfaction; but any such refusal shall be subject to appeal to the law officer. S. 9.

(3.) The law officer shall, if required, hear the applicant and the comptroller, and may make an order determining whether and subject to what conditions, if any, the complete specification shall be accepted.

(4.) Unless a complete specification is accepted within twelve months from the date of application, then (save in the case of an appeal having been lodged against the refusal to accept) the application shall, at the expiration of those twelve months, become void.

(5.) Reports of examiners shall not in any case be published or be open to public inspection, and shall not be liable to production or inspection in any legal proceeding, other than an appeal to the law officer under this Act, unless the court or officer having power to order discovery in such legal proceeding shall certify that such production or inspection is desirable in the interests of justice, and ought to be allowed.

(*a*) Under this subsection the examiner is required to ascertain and report whether,

1. The complete specification has been prepared in the prescribed manner (see sect. 5, subsections 4 and 5, p. 11, form C. p. 217, rule 2, p. 192, and rules 10, 28, 29 and 30), and

2. Whether the invention particularly described in the

S. 9.

complete specification is substantially the same as that which is described in the provisional specification.

In determining this question it is presumed that the examiner will be guided by what the Courts have considered a material variation between the provisional and complete specifications.

The principle acted upon would appear to be this, that the complete specification must not lay claim to an invention different from, or larger than, that disclosed in the provisional specification. (*Bailey* v. *Roberton*, 3 App. Cas. 1055; *Foxwell* v. *Bostock*, 4 De G., J. & S. 298.)

Illustrations.

(1.) The provisional specification of a patent stated the object of the invention to be the preserving of animal substances in a fresh state; and the patentees therein claimed the use of a solution composed of a certain quantity of gelatine mixed with bisulphite of lime, but in the complete specification they claimed as "solution No. 1" a solution composed of bisulphite of lime alone. In an action for infringement for the use of bisulphite of lime, pure and simple:—*Held*, that the complete specification, if large enough to cover the employment of bisulphite of lime for the preservation of animal substances as practised by the defenders, would claim an invention larger than, and different from, that disclosed in the provisional specification. (*Bailey* v. *Roberton*, 3 App. Cas. 1055.)

(2.) The title of the patent being for improvements in the manufacture of frills or ruffles, and the provisional specification describing the invention as relating to a particular manufacture of frills and ruffles, the complete specification described the invention as relating to a particular manufacture of frills, ruffles, *or trimmings*:—*Held*, that this was no such material variation as to render the patent invalid. (*Wright* v. *Hitchcock*, L. R., 5 Exch. 37.)

(3.) A. was the inventor of "improvements in apparatus employed in laying down submarine electric telegraph wires." In the provisional specification the invention was thus described: "The cable or rope containing the insulated wire or wires is passed round a cone, so that the cable in being drawn off the coil is prevented from kinking by means of the cone, and there is a cylinder on the outside, which prevents the coil from shifting in its place." In the complete specification, after describing the invention in the same terms, the inventor proceeds to

S. 9.

say: "When the wire or cable is to be laid down, I place over the cone an apex or top, which is conoidal or conical, and round this I suspend several rings of iron or other metal by means of cords, so as to admit of adjustment at various heights over the cone. The use of these rings is, to prevent the bight of the rope from flying out when going at a rapid speed, and the combination of these parts of the apparatus prevents the wire or cable from running into kinks;" and the claim at the end ran thus: "What I claim as my invention is, first, coiling the wire or cable round a cone; second, the supports placed cylindrically outside the coil round the cone; third, the use of rings in combination with the cone as described":—*Held*, that the validity of the patent was not affected by the omission of all mention of the metal rings in the provisional specification. (*Newall* v. *Elliott*, 4 C. B., N. S. 269.)

(4.) The provisional specification of a patent for an improvement in the bearings and bushes for the shafts of screw and submerged propellers, described the invention as consisting in employing wood in the construction of such bearings and bushes. The complete specification, after describing the mode in which the wood was used, claimed the employment of wood in the construction of the bearings and bushes "as therein described":—*Held*, that this was no such variation between the provisional and complete specification, as would invalidate the patent. (*Penn* v. *Bibby*, L. R., 2 Ch. 127.)

(5.) The provisional specification of a patent for sewing machines, claimed, amongst other improvements, that a certain instrument which moved the work, "or another acting therewith," acted to hold the work during the insertion of the needle, while the complete specification appeared to describe only one instrument as moving and holding the work:—*Held*, that such a variance would not invalidate the patent. (*Thomas* v. *Welch*, L. R., 1 C. P. 192.)

The effect of a material variance, in the Courts of law, has been to render the patent invalid. The effect of the report of such variance by an examiner will be, that the comptroller will refuse to accept the complete specification, and unless such amendment is made, and the specification accepted within twelve months from the date of the application, such application becomes void.

Should the examiner report favourably upon the point, and the specification be accepted, it may still be raised in a Court of law should contentious proceedings be instituted.

S. 10. Advertisement on acceptance of complete specification.

S. 10. On the acceptance of the complete specification the comptroller shall advertise the acceptance; and the application and specification or specifications with the drawings (if any) shall be open to public inspection (*a*).

(*a*) See rules 25 and 26, p. 196.

Opposition to grant of patent.

S. 11. (1.) Any person may at any time within two months from the date of the advertisement of the acceptance of a complete specification give notice at the patent office of opposition to the grant of the patent on the ground of the applicant having obtained the invention from him, or from a person of whom he is the legal representative, or on the ground that the invention has been patented in this country on an application of prior date, or on the ground of an examiner having reported to the comptroller that the specification appears to him to comprise the same invention as is comprised in a specification bearing the same or a similar title and accompanying a previous application, but on no other ground (*a*, p. 37).

(2.) Where such notice is given the comptroller shall give notice of the opposition to the applicant, and shall, on the expiration of those two months, after hearing the applicant and the person so giving notice, if desirous of being heard, decide on the case, but subject to appeal to the law officer (*b*, p. 40).

(3.) The law officer shall, if required, hear the applicant and any person so giving notice and

being, in the opinion of the law officer, entitled to be heard in opposition to the grant, and shall determine whether the grant ought or ought not to be made (*c*, p. 41). S. 11.

(4.) The law officer may, if he thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the law officer, with the consent of the Treasury, shall appoint.

(*a*) The notice must state the grounds of opposition, and be signed by the opponent, and give his address (rule 32, p. 198); a copy is furnished to the opponent (rule 33, p. 198). No opposition is allowed in respect of any ground not stated in the notice (rule 40, p. 199). Hitherto oppositions to the grant of a patent have been heard (1) by the Law Officer of the Crown, after an applicant had given notice to proceed under the 12th section of the Patent Law Amendment Act, 1852, and (2) by the Lord Chancellor, after the Law Officer had issued his warrant for sealing the patent under the 15th section of the same Act.

Oppositions were conducted before the publication of the provisional specification (*Re Tolson's Patent*, 6 De G. M. & G. 522), and the case of the applicant was heard in the absence of the opponent, so that the opponent could do little more than guess at the subject-matter of the alleged invention, from the title.

Under the present Act and rules notice of opposition may be given at any time within two months from the time that the applicant's application and specification or specifications with the drawings (if any) have been open to public inspection (sect. 10, p. 36).

It has been held more than once, both by Law Officers and by Lord Chancellors, that where there is doubt as to the validity of the grounds of opposition, the proper course is to grant the letters patent, as an error in refusing them would

S. 11.

be irremediable, while an error in granting them would not. (*In re Russell's Patent*, 2 De G. & J. 130; *In re Spence's Patent*, 3 De G. & J. 523; *In re Simpson and Isaac's Patent*, 21 L. T. Rep., N. S. 81; *In re Dance's Patent*, Prac. Mech. Jour., 2nd Series, vol. 6. p. 298; *In re Tolson's Patent*, 6 De G. M. & G. 422; *In re Lowe's Patent*, 25 L. J. Ch. 454.)

So also in opposing the grant of letters patent, the burden of proof is on the opponent to show that the grant would be clearly wrong. (*Ex parte Sheffield*, L. R. 8 Ch. 237.)

By this section three grounds of opposition only are allowed to opponents:—

1.—*That the applicant has obtained the invention from him, or from a person of whom he is the legal representative.*

This opposition is based upon an allegation of *mala fides* which was always considered a sufficient reason for refusing to grant a patent. Thus, where a servant having filed a provisional specification, his master afterwards filed a provisional specification for the same invention, and then a complete specification, and obtained a patent. There was grave suspicion that the master had surreptitiously obtained a knowledge of the servant's invention, and the servant's patent, notwithstanding the existence of the master's patent (which would otherwise have been a sufficient ground for refusing the patent), was ordered to be sealed, and dated as of the day of his application. (*Ex parte Scott and Young*, L. R., 6 Ch. 274; and see *Ex parte Henson*, 1 Web. P. C. 432; but see *Ex parte Bailey*, L. R., 8 Ch. 60.)

2.—*That the invention has been patented in this country on an application of prior date.*

When this ground of opposition is relied upon the title, number, and date of the patent granted in such prior application must be specified in the notice (rule 34, p. 198), and unless this is done the opposition shall not be allowed (rule 40, p. 199). It is important to observe that the mere

fact, that a patent for the same invention exists, is no ground of opposition, unless the application for the same was of *prior* date; and see sect. 13 of the Act (p. 45). S. 11.

This is in accord with the principle of the decision in the case of *In re Deering's Patent* (13 Ch. D. 393), where Lord Cairns, L. C., disapproved the decision of Lord Hatherley, L.C., in the case of *In re Bates* (L. R., 4 Ch. 577). In the latter case it was decided that where a provisional specification is filed, but, pending the six months' provisional protection, and before obtaining letters patent, a second inventor files a provisional specification, and obtains letters patent for an invention, partly covered by the first provisional specification, letters patent will not, in the absence of fraud, be granted to the first applicant, for any part of his invention which is covered by the letters patent already obtained by the second applicant. See also *Ex parte Manceaux*, L. R., 6 Ch. 272; *Ex parte Bailey's Patent*, L. R., 8 Ch. 60; *Ex parte Harrison*, L. R., 9 Ch. 632; *In re Lowe's Patent*, 25 L. J. Ch. 454. Lord Cairns's objection to this decision was that the legislature intended patentees to have the full term of protection given by the provisional specification for perfecting their inventions.

In *Deering's* case D. and R. independently, on the *same day*, viz., the 29th April, 1879, applied for letters patent for inventions, which were, for the purpose of the decision, taken to be similar. R.'s patent was sealed on the 25th of July, 1879, and on the 5th August 1879, he entered an opposition to the sealing of D.'s patent. There being no suggestion of fraud, it was held that D.'s patent ought to be sealed, and be dated as of the day of application, which was also the date of R.'s patent. (13 Ch. D. 393.)

It would seem that an inventor, who has obtained protection by leaving a complete specification with his application for a patent, does not, under sect. 15 of this act (p. 46), acquire the rights of a patentee so as, between the date of the acceptance of the complete specification and the expiration of

S. 11. the time for sealing, to prevent any other person who has previously obtained protection for a similar invention from obtaining a patent. (*In re Henry's Patent*, L. R., 8 Ch. 167.)

3.—*That an examiner has reported to the comptroller that the specification appears to him to comprise the same invention as is comprised in a specification bearing the same or a similar title, and accompanying a previous application.*

This ground of opposition is new, and must be stated in the notice of opposition (rules 32, 40, p. 198). The authority for the examiner to report to the comptroller is contained in sect. 7 subsection 5 (p. 31): and under the same section, subsection 6, the comptroller may refuse to seal a patent upon the above ground, although there is no formal opposition. In fact it is difficult to see how this ground of opposition can be taken advantage of by any person outside the Patent Office, because the reports of the examiner are not to be published or open to public inspection. (Sect. 9, subsection 5, p. 33.)

When the report of the examiner is to the effect that *part* only of the invention for which a patent is sought is comprised in a specification bearing the same or a similar title, and accompanying a previous application, protection will probably be given to the rest of the invention. This would be in accord with the practice adopted by the Law Officers. (*In re Craig and Macfarlane's Application*, Prac. Mech. Jour., 3rd Series, vol. 4, p. 366.)

(*b*) A copy of the notice of opposition is to be furnished by the comptroller to the applicant (rule 33, p. 198). This subsection gives an appeal from the comptroller to the Law Officer in all cases. Formerly there was no appeal from the Law Officer to the Lord Chancellor when the former refused to issue his warrant for the sealing of the patent under the 15th section of the Patent Law Amendment Act, 1852. The power given by the 38th section (p. 118) to the Law Officers to examine witnesses on oath is not extended to the comptroller,

who will hear evidence by means of statutory declarations. Within fourteen days after the expiration of the two months the opponent must leave at the Patent Office statutory declarations in support of his opposition, and deliver to the applicant a list thereof (rule 35, p. 198). Within fourteen days from the delivery of such list the applicant must leave at the Patent Office statutory declarations in answer, and deliver to the opponent a list thereof, and within seven days from such delivery the opponent must leave at the Patent Office his statutory declarations in reply, and deliver to the applicant a list thereof. Such last mentioned declarations must be confined to matters strictly in reply (rule 36). No further evidence shall be left on either side except by leave of the comptroller upon the written consent of the parties duly notified to him, or by his special leave on application made (rule 37) of which notice must be given (rule 38). On the close of the evidence, the comptroller will give at least seven days' notice of the hearing (rule 39), and his decision will be notified to the parties (rule 41).

(*c*) By the first subsection of this section "any person" may give notice of opposition, and by the 2nd subsection is entitled to be heard in opposition before the comptroller. But under this subsection only such persons, so giving notice, as are, in the opinion of the Law Officer, entitled to be heard in opposition to the grant, can claim a right to be heard before the Law Officer.

This seems to be in analogy with the practice formerly existing in opposing before the Lord Chancellor, who generally refused to hear any person who had not opposed before the Law Officer (*In re Mitchell's Patent*, L. R. 2 Ch. 343), though this rule was not always strictly adhered to. (*Ex parte Henson*, 1 Web. P. C. 432; *Ex parte Manceaux*, L. R. 5 Ch. 518; *Ex parte Yates*, L. R., 5 Ch. 1.) In cases where no opposition had taken place before the Law Officer it was usual for the Lord Chancellor not to enter into the merits of the case but to refer it back to the Law Office. (*Re*

S. 11. *Fawcett's Patent*, 2 De G. M. & G. 439; *Ex parte Manceaux*, L. R., 5 Ch. 518; *Ex parte Yates*, L. R., 5 Ch. 1.)

Any person intending to appeal must within fourteen days from the date of the decision appealed against file in the Patent Office, a notice of such intention (Law Officers Rules, rule 1, p. 208). A form is given in the schedule, p. 228, and must state the nature of the decision, and whether the appeal is to the whole, or what part of such decision (rule 2). A copy of such notice is to be sent to the Law Officers' clerk, and when there has been an opposition before the Comptroller also to the opponents, and if any such to a prior applicant (rule 3). The time for appeal may be extended by the Comptroller or the Law Officers (rule 5, and Board of Trade rules, 47, p. 201). Usually seven days' notice of the hearing will be given (Law Officers' Rules, rule 6) to the Comptroller, the applicant, the opponent and the prior applicants (rule 7).

The evidence to be used is to be the same as that used at the hearing before the Comptroller; and no further evidence is to be given, save as to matters which have occurred or come to the knowledge of either party, after the date of the decision appealed against, except with the leave of the Law Officer upon application for that purpose (rule 8).

This rule follows the practice laid down in *Ex parte Sheffield* (L. R., 8 Ch. 237). In this case it was also held that where the facts on which the opponent relies were within his knowledge when he opposed before the Law Officer, he could not, when before the Lord Chancellor, raise a new legal argument on those facts. The case of *In re Vincent's Patent* (L. R., 2 Ch. 341) decided that the Lord Chancellor, on an application for sealing a patent, would not interfere with the decision of the Law Officer, except in a case of fraud or surprise, or of some material fact having come to the knowledge of the party since the case was before the Law Officer. These decisions will probably both be followed by the Law Officers in appeal from the Comptroller.

Section 38, p. 118, authorizes the Law Officers to examine

witnesses on oath, and to administer oaths for that purpose. And the Law Officers shall, at the request of either party, order the attendance, for the purpose of being cross-examined, of any person, who has made a declaration, in the matter to which the appeal relates, unless in the opinion of the Law Officer, there is good ground for not making such order (rule 9, p. 209), but the person requiring the attendance of a witness must tender him a reasonable sum for conduct money (rule 10). S. 11.

The Law Officer may order costs to be paid by either party, and such order may be made a rule of Court (section 38, p. 118 and rules 12 and 13, p. 209). In exercising their discretion as to costs the Law Officers will probably be guided by the practice adopted by the Lord Chancellors on application to seal, and the cases are therefore shortly referred to.

There the opposition to sealing was considered reasonable, no costs were given (*Ex parte Fox*, 1 Web. P. C. 431), but if no opposition had taken place before the Law Officer, and was unsuccessful before the Lord Chancellor, the opponent had to pay the costs. (*In re Cutler's Patent*, 4 My. & Cr. 510; *In re Alcock's Patent*, Ib. p. 511.) See also when the opposition was on the ground that the invention is similar to that protected by a prior patent, provided the applicant is not guilty of fraud (*Ex parte Manceaux*, L. R. 5 Ch. 518) and where objections have been withdrawn (*In re Copley's Patent*, 31 L. J. Ch. 333).

No costs were given against the opponent where the Lord Chancellor refused to read his affidavits owing to their not having been filed until the morning of the hearing (*In re M'Kean's Patent*, 1 De G. F. & J. 2). And if the opposition is successful the applicants were ordered to pay the costs. (*Ex parte Yates*. L. R. 5 Ch. 1.)

S. 12. (1.) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, the comptroller shall Sealing of patent.

S. 12.

cause a patent to be sealed with the seal of the patent office.

(2.) A patent so sealed shall have the same effect as if it were sealed with the Great Seal of the United Kingdom.

(3.) A patent shall be sealed as soon as may be, and not after the expiration of fifteen months from the date of application, except in the cases herein-after mentioned, that is to say—

(*a.*) Where the sealing is delayed by an appeal to the Law Officer, or by opposition to the grant of the patent, the patent may be sealed at such time as the law officer may direct (*a*).

(*b.*) If the person making the application dies before the expiration of the fifteen months aforesaid, the patent may be granted to his legal representative and sealed at any time within twelve months after the death of the applicant.

(*a*) This is a provision similar to that contained in sect. 20 of the Act of 1852, and sect. 6 of the 16 & 17 Vict. c. 115. See *Ex parte Bailey*, L. R., 8 Ch. 60; *In re Somerset and Walker's Patent*, 13 Ch. D. 397; *In re Johnson's Patent*, Ib. (n.) This section does not allow of a patent being sealed after the expiration of the fifteen months, upon any ground other than those stated therein; and no power is given to the Law Officers, either by the Act or the Rules, similar to that formerly possessed by the Lord Chancellor under the third set of rules made 12th Dec. 1833 (altered by Rule of the 14th May, 1878), enabling him "under special circumstances" to extend the time for sealing. This power was

exercised in the case of *In re Hersee's Patent*, L. R., 1 Ch. 518, and *In re Macintosh Patent*, 28 L. T. Rep. 280. S. 13.

S. 13. Every patent shall be dated and sealed as of the day of the application: Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the complete specification: Provided also, that in case of more than one application for a patent for the same invention, the sealing of a patent on one of those applications shall not prevent the sealing of a patent on an earlier application (*a*). Date of patent.

(*a*) Under the 24th section of the Act of 1852, any letters patent sealed and bearing date as of any day prior to the day of the actual sealing were of the same force and validity as if sealed on the day as of which the same were expressed to be sealed and bear date. This is exemplified by the case of *Saxby* v. *Hennett* (L. R. 8 Exch. 210).

The custom has been to date and seal patents as of the day of the application, but under the 23rd section of the Act of 1852 the Law Officer to whom an application was referred, or the Lord Chancellor, could direct a patent to be sealed and bear date as of the day of the sealing thereof, or of any other day between the day of application or provisional registration and the day of such sealing. This power no longer exists, and *every* patent *must* be dated and sealed as of the day of the application.

As to concurrent applications see notes to sect. 11 (*a*), p. 38.

Provisional Protection.

S. 14. Where an application for a patent in respect of an invention has been accepted, the invention may during the period between the date of the application and the Provisional protection.

S. 14. date of sealing such patent be used and published without prejudice to the patent to be granted for the same; and such protection from the consequences of use and publication is in this Act referred to as provisional protection.

Protection by Complete Specification.

Effect of acceptance of complete specification.

S. 15. After the acceptance of a complete specification and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification: Provided that an applicant shall not be entitled to institute any proceeding for infringement unless and until a patent for the invention has been granted to him.

Patent.

Extent of patent.

S. 16. Every patent when sealed shall have effect throughout the United Kingdom and the Isle of Man (*a*).

(*a*) The 18th section of the Act of 1852 provided that letters patent should extend to the whole of Great Britain and Ireland, the Channel Islands, and the Isle of Man.

The Channel Islands are now excluded.

Term of patent.

S. 17. (1.) The term limited in every patent for the duration thereof shall be fourteen years from its date (*a*).

(2.) But every patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails

to make the prescribed payments within the prescribed times (*b*). S. 17.

(3.) If, nevertheless, in any case, by accident mistake or inadvertance, a patentee fails to make any prescribed payment within the prescribed time, he may apply to the comptroller for an enlargement of the time for making that payment. (*c*).

(4.) Thereupon the comptroller shall, if satisfied that the failure has arisen from any of the abovementioned causes, on receipt of the prescribed fee for enlargement, not exceeding ten pounds, enlarge the time accordingly, subject to the following conditions:

(*a.*) The time for making any payment shall not in any case be enlarged for more than three months.

(*b.*) If any proceeding shall be taken in respect of an infringement of the patent committed after a failure to make any payment within the prescribed time, and before the enlargement thereof, the Court before which the proceeding is proposed to be taken may, if it shall think fit, refuse to award or give any damages in respect of such infringement.

(*a*) This is in accordance with the 21 Jac. 1, c. 3. In calculating when letters patent expire the day of the date of the patent must be reckoned inclusively. (*Russell* v. *Ledsam*, 14 M. & W. 574.)

(*b*) The payments are prescribed by sect. 24, p. 67, and the 2nd schedule to the Act, p. 187, and the 1st schedule to the rules, p. 211.

S. 17. (c) An application for an enlargement of the time for making a prescribed payment shall state in detail the circumstances in which the patentee, by accident, mistake, or inadvertence has failed to make such payment, and the Comptroller may require the patentee to substantiate by such proof as he may think necessary the allegations contained in the application for enlargement (rule 46, p. 201). A form of application is given in the 2nd schedule to the rules. (See form K., p. 223.) The schedule to the 16th Vict. c. 5, prescribing the payments to be made, directed a certain payment to be made "before the expiration of the third year," and it was held that the three years did not expire until twelve o'clock at night of the anniversary of the day on which the letters patent were granted. (*Williams* v. *Nash*, 28 L. J., Ch. 886.) The words in the 2nd schedule to the present Act are "before end of four years from date of patent." This would seem to mean the same thing as "before the expiration of the fourth year," so that the above decision would apply.

Amendment of Specification.

Amendment of specification.

S. 18. (1.) An applicant or a patentee may, from time to time, by request in writing left at the patent office, seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of such amendment and his reasons for the same (*a*, p. 50).

(2.) The request and the nature of such proposed amendment shall be advertised in the prescribed manner, and at any time within one month from its first advertisement any person may give notice at the patent office of opposition to the amendment (*b*, p. 55).

(3.) Where such notice is given the comptroller shall give notice of the opposition to the person making the request, and shall hear and decide the case subject to an appeal to the law officer (*b*, p. 55). S. 18.

(4.) The law officer shall, if required, hear the person making the request and the person so giving notice, and being in the opinion of the law officer entitled to be heard in opposition to the request, and shall determine whether and subject to what conditions, if any, the amendment ought to be allowed (*c*, p. 56).

(5.) Where no notice of opposition is given, or the person so giving notice does not appear, the comptroller shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6.) When leave to amend is refused by the comptroller, the person making the request may appeal from his decision to the law officer (*c*, p. 56).

(7.) The law officer shall, if required, hear the person making the request and the comptroller, and may make an order determining whether, and subject to what conditions, if any, the amendment ought to be allowed (*c*, p. 56).

(8.) No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before amendment (*d*, p. 56).

(9.) Leave to amend shall be conclusive as to the

S. 18.

right of the party to make the amendment allowed, except in case of fraud; and the amendment shall in all courts and for all purposes be deemed to form part of the specification.

(10.) The foregoing provisions of this section do not apply when and so long as any action for infringement or other legal proceeding in relation to a patent is pending.

(*a*) The 18th and 19th sections of the present Act deal with the subject-matter of the 1st section of the 5 & 6 Will. 4, c. 83 (1835), the 5th section of the 7 & 8 Vict. c. 89 (1844), and the 39th section of the 15 & 16 Vict. c. 83 (1852), into which certain amendments are introduced.

Under the Acts of 1835, 1844 and 1852, power was given only to a patentee or his assignee to amend his title or specification. Under this section "an applicant *or* a patentee" may seek leave to amend his specification."

The word "patentee" is defined to mean the person for the time being entitled to the benefit of a patent (s. 46, p. 145). The provisions of the 5th section of the Act of 1844 are, therefore, retained, and, when the original patentee has parted with the whole of his interest in the patent, his assignee may seek leave to amend, and when he has parted only with part of his interest therein, a joint application must be made.

The word "applicant" in this section appears to mean an "applicant for a patent," so that the provisional and complete specifications may be amended, before the grant of a patent, not only at the instance of the comptroller, but also at the instance of the person applying for a patent.

The words of the Act of 1835 were, "may enter a disclaimer or a memorandum of any alteration." These are changed to "may seek leave to amend his specification by way of disclaimer, correction, or explanation." It is im-

possible to foresee what interpretation may be placed upon these words, or how far the decisions under the old statutes may be followed. The reported cases cannot, however, fail to be useful in construing the section, which would appear to extend the statutory powers of amendment formerly existing. S. 18.

Upon an application for a disclaimer under the old Acts it was held that the matter must be decided on the words of the specification itself, irrespective of extraneous consideration, and in cases of doubt the amendment should be allowed, as the refusal is irrevocable and may be of serious consequence to the patentee, whereas if the disclaimer extends the claim of the invention, the public will not be injured, as the disclaimer will be void. (*In re Bateman and Moore's Patent*, Macr. P. C. 116; *In re Sharp's Patent*, 1 Web. P. C. 643.)

If on an *ex parte* application leave to amend has been given, a rehearing will be granted if the leave has been obtained by means of fraud (s. 18 (9), p. 49). This is in accord with existing practice. Thus in the case of *In re Pullan's Patent*, leave was given by the Lord Chancellor, upon an *ex parte* application, to correct a filed specification by adding drawings alleged to have been omitted through inadvertence. The drawings so added were not described in the specification. Some months after the addition was effected, an application was made to the Lord Chancellor by a patentee, who had been threatened with an action for infringing the amended patent, to rehear the original application. The Lord Chancellor decided to hear the matter afresh, and, upon reading the affidavits on both sides, and considering that his order had been made on imperfect information, ordered the added drawings to be struck out of the specification. (Not reported; see *Johnson's Patentees' Manual*, 4th ed. p. 103.)

In the case of *Ralston* v. *Smith* (11 H. L. Cas. 223), R. took out a patent for improvements in "embossing and finishing woven fabrics, and in the machinery and apparatus employed therein." In his specification he said: "I employ a roller

S. 18.

of metal, wood, or other suitable material, and groove, flute, engrave, mill, or otherwise indent upon it any desired design;" he caused this roller to revolve with a bowl at unequal velocities, moving the fabric transversly when fed into the machine, and by these means he proposed to calender or finish, and to emboss the fabric by one process instead of two, as then practised. He afterwards entered a "disclaimer," in which he disclaimed the words in the title, "and in the machinery or apparatus employed therein," disclaimed the word "wood" from the description of the roller, and restricted the grooves or flutes on the roller to those of a circular kind. Any other grooves would not only not produce the desired effect on the fabric but would destroy it:—*Held*, that the disclaimer extended the exclusive right, and was consequently bad.

In another case a patentee claimed by his specification "the application of the principle of centrifugal force to the flyers employed in certain machinery for roving cotton and other fibrous substances," but declared that his improvements "applied solely to such part of the machinery, called the flyers, which is employed in connection with the spindle for the purpose of winding cotton." He attached drawings to his specification, and went on to say that these drawings and the specification represented "one particular and practicable mode of applying" his invention, but "I do not intend to confine myself to this particular method, but I claim as my invention the application of the law or principle of centrifugal force to the particular or special purpose above set forth, that is, to flyers used in machinery for preparing cotton." He afterwards disclaimed "all application of the law or principle of centrifugal force as being part of my invention, or as being comprised in my claim of invention contained in the specification, except only the application of centrifugal force, by means of a weight acting upon a presser so as to cause it to press against a bobbin, as described in the specification":—*Held*, that this disclaimer did not extend the claim, but confined it to a particular mod

of applying the principle of centrifugal force, and did not claim the discovery of that principle, or the application of it, except in a particular way, and that, therefore, the patent was good. (*Seed* v. *Higgins*, 27 L. J., Q. B. 148, aff. in Ex. Ch., Ib. p. 411, and in House of Lords, 8 H. L. Cas. 550; and see *Foxwell* v. *Bostock*, 4 De G., J. & S. 298.) S. 18.

The person entering a disclaimer under the old Acts was required to state the reason for such disclaimer, just as he is required to do in his application for an amendment under the present section.

The reason for such disclaimer, however, forms no part of the disclaimer itself. (*Per* Lord *Westbury* in *Cannington* v. *Nuttall*, L. R., 5 H. L. p. 227.)

When an application to enter a disclaimer under the 5 & 6 Will. 4 c. 83, s. 1 was refused by the law officer, he had no jurisdiction to order the applicant to pay costs. (*Kynoch* v. *The National Arms Co.*, 37 L. T. Rep., N. S. 31.)

This is now changed by the 38th section (p. 118), which provides that "in any proceeding before either of the law officers under this part of the Act (Part 2, Patents), the law officer may order costs to be paid by either party, and any such order may be made a rule of Court."

Amendment at Common Law.

The Master of the Rolls, as Keeper of the Records, had power to direct the amendment of a clerical error in a specification, but the Lord Chancellor, as Keeper of the Great Seal, alone had power to amend the letters patent themselves. (*In re Nickel's Patent*, 1 Web. P. C. 650; *Ex parte Beck*, 1 Br. C. C. 578.)

Thus where in the specification the word "wire" was by mistake substituted for the word "fire" the mistake was ordered to be corrected. (*In re Whitehouse's Patent*, 1 Web. P. C. 649, note (*n*).)

So the Master of the Rolls ordered a specification to be amended which recited the letters patent to have been

S. 18. granted in "October" instead of "November." (*In re Rubery's Patent*, 1 Web. P. C. 649 (n.).)

An order to amend was also granted in a case where the specification contained the name "Charles" instead of the name "George." (*In re Dismore's Patent*, 18 Beav, 538.)

But an application for amendment of a patent by rectifying an error in the spelling of the name of the patentee, four years after it was granted, was refused on the ground of lapse of time. (*In re Blamond's Patent*, 3 L. T. Rep., N. S. 800.)

So when letters patent, specifications, and memoranda of alteration were enrolled, clerical errors in the enrolment were, in proper cases, ordered to be amended. (See *In re Redmund's Patent*, 5 Russ. 44; *In re Sharp's Patent*, 1 Web. P. C. 645; *In re Adams' Patent*, 21 L. T. Rep. 38; and for other instances, 1 Web. P. C. 647, note (*l*).)

Where a disclaimer had been filed without the consent of the patentee, the Master of the Rolls had jurisdiction, without bill filed, to order it to be taken off the file. (*In re Berdan's Patent*, L. R., 20 Eq. 346.)

The power of the Master of the Rolls to direct the amendment of a clerical error in a specification is saved by the Jud. Act, 1873, s. 17, sub-sect. 6 (*In re Johnson's Patent*, 5 Ch. D. 503); and there appears to be nothing in the present Act to limit his power.

The power of the Lord Chancellor to amend letters patent arises from his being Keeper of the Great Seal.

In future letters patent will bear the seal of the patent office (see sect. 12 (1), p. 43), and the impressions thereof are to be judicially noticed and admitted in evidence (sect. 84, p. 165), and a patent so sealed shall have the *same effect* as if it were sealed with the Great Seal of the United Kingdom (sect. 12, (2), p. 44). The question then arises whether the Lord Chancellor retains the power of ordering letters patent so sealed to be amended. The question is not, however, of much practical importance, as he would in all probability refuse to exercise the power, even supposing he retains it.

S. 18.

The following are examples of conditions that have been imposed upon patentees or assignees seeking to disclaim:—

(1.) That an undertaking be given that no action shall be brought in respect of anything done prior to the hearing of the application for a disclaimer. (*In re Smith's Patent*, Macr. P. C. 232.)

(2.) That the applicants should bring no action against the persons opposing the amendment for any infringement of the said patent (which was for the preparation of red and purple dyes) by the use or continued use, during the continuance of the patent of any process or processes for manufacturing or preparing red and purple dyes which is or are in use by them or either of them at the present time. (*In re Medlock's Patent*, Newton, London Jour., N. S., vol. 22, p. 69.)

(*b*) A request for leave to amend a specification must be signed by the applicant or patentee and accompanied by a copy of the original specification and drawings, showing in red ink the proposed amendments, and must be advertised by publication of the request and the nature of the proposed amendment in the official journal of the Patent Office, and in such manner (if any) as the comptroller may in each case direct (rule 48, p. 201). In the second schedule to the rules, a form of application for amendment of specification or drawings is given (Form F., p. 219).

The notice of opposition must state the grounds on which the opponent intends to rely, and must be signed by him, and state his address for service (rule 49, p. 201). For form, see Form G., p. 220. A copy of this notice is to be furnished by the comptroller to the applicant (rule 50, p. 201).

Within fourteen days after the expiration of one month from the first advertisement of the application for leave to amend, the opponent must leave at the Patent Office statutory declarations in support of his opposition, and deliver to the applicant a list thereof (rule 51, p. 202). Within fourteen days from the delivery of such list, the applicant must leave at the Patent

S. 18. Office statutory declarations in answer, and deliver to the opponent a list thereof, and within seven days from such delivery the opponent must leave at the Patent Office his statutory declarations in reply, and deliver to the applicants a list thereof. Such declarations must be confined to matters strictly in reply. Copies of declarations may be obtained either from the Patent Office or from the opposite party (rules 36, p. 199, and 52, p. 202). No further evidence is to be left on either side except by leave of the comptroller on application made to him for that purpose (rules 37 and 52). For form of application, see Form E., p. 219.

The party making this application must give notice to the opposite party, who may oppose it (rules 38 and 52). On the completion of the evidence, the comptroller will appoint a time for the hearing, and give seven days' notice at least of such appointment (rules 39 and 52), and will subsequently notify his decision to the parties (rule 53). When leave to amend is given, the applicant must, if the comptroller so require, and within the time limited by him, leave at the Patent Office a new specification and drawings as amended, which must be prepared in accordance with rules 10, 28 and 29 (rule 54, p. 202). Every amendment of a specification shall be forthwith advertised by the comptroller in the official journal of the Patent Office, and in such other manner (if any) as the comptroller may direct (rule 56, p. 202).

(*c*) For the practice on appeal to the Law Officers see rules made by them, p. 208. The 6th subsection is not clearly worded. The applicant may appeal only when "leave to amend is refused by the comptroller." Probably this will be held to give an appeal in all cases where the comptroller has not given leave to amend *to the full extent of the request*. If this is so it will be well in all cases to make the *request* very wide, as it is impossible to anticipate the effect of a *partial* amendment "subject to conditions," and it will be well to secure a right of appeal in case of necessity.

(*d*) The wording of the 8th subsection seems to convey

the meaning placed by judicial decisions upon the provision of the 1st section of the 5 & 6 Vict. c. 83, which enables a patentee to enter a disclaimer or memorandum of alteration "not being such disclaimer or such alteration as shall extend the exclusive right granted by the letters patent." S. 18.

Lord Blackburn said in *Dudgeon* v. *Thomson* (3 App. Cas. p. 55), "The object of a disclaimer is merely to take out and renounce part of what has been claimed before, and it would vitiate the new specification if, by striking out that part, you gave an extended sense to what is left, so as to make it embrace something which it did not embrace before." And see *R.* v. *Mill*, 10 C. B. 395; and 14 Beav. 315; *Foxwell* v. *Bostock*, *per* Lord *Westbury*, 4 De G. J. & S. 306; and *Tetley* v. *Easton*, 2 C. B., N. S. 706.

So in *Ralston* v. *Smith* (11 H. L. Cas. 223) it was held that the object of the Act was only to permit a disclaimer to amend the specification of a patent, by removing from it something superfluous, but not to allow the introduction of that which would convert a description, in itself unintelligible or impracticable, into a practicable description of a useful invention.

Power to disclaim part of invention during action, &c.

S. 19. In an action for infringement of a patent, and in a proceeding for revocation of a patent, the Court or a judge may at any time order that the patentee shall, subject to such terms as to costs and otherwise as the Court or a judge may impose, be at liberty to apply at the Patent Office for leave to amend his specification by way of disclaimer, and may direct that in the meantime the trial or hearing of the action shall be postponed.

Where a request for leave to amend is made by or in pursuance of an order of the Court or a judge, an official or verified copy of the order shall be left with the request at the Patent Office (rule 55, p. 202).

The 1st section of the 5 & 6 Will. 4, c. 83, provided that

S. 19. no disclaimer or alteration should be receivable in evidence in any action or suit (except by *scire facias*) pending at the time when such disclaimer or alteration was enrolled, and prior to the passing of the present Act, if a patentee amended his specification while an action for its infringement was pending, the action had to be abandoned and a fresh action brought, and even an injunction to restrain the infringement of the patent prior to amendment would not be enforced. (*Dudgeon* v. *Thomson*, 3 App. Cas. 34; *Lister* v. *Leather*, 3 Jur. N. S. 433; and see *R.* v. *Mill*, 14 Beav. 312.)

As to the payment of costs where the patentee gave a disclaimer in evidence on the trial of a *scire facias*, see *R.* v. *Mill*, 10 C. B. 379.

Restriction on recovery of damages.

S. 20. Where an amendment by way of disclaimer, correction, or explanation, has been allowed under this Act, no damages shall be given in any action in respect of the use of the invention before the disclaimer, correction, or explanation, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

The Act of 1835 provided that the disclaimer or memorandum of alteration should be deemed and taken to be part of the letters patent or specification in all Courts whatever. The judges did not, however, agree as to the time from which such disclaimer or amendment was to be operative. It was first held that a disclaimer or amendment had no retrospective operation so as to make a party liable for an infringement of the patent, prior to the time of entering such disclaimer, or in other words, that the Act of 1835 should be read as being, "shall be deemed and taken as part of the said letters patent, &c., *from thenceforth*." (*Perry* v. *Skinner*, 2 M. & W. 471; *Stocker* v. *Waller*, 9 Jur. 138. Reported as *Stocker* v. *Warner*, 1 C. B. 148.)

Doubt was, however, thrown upon this interpretation of

S. 20.

the statute, and it was suggested that the disclaimer was to be deemed and taken to be part of the patent or specification from the time of the granting of the letters patent (*R.* v. *Mill*, 10 C. B. 379), and that there were exceptional cases where a disclaimer should enable a patentee to proceed for infringements prior to the date at which it was filed. (*In re Lucas's Patent*, Macr. P. C. 235; and see *In re Smith's Patent*, Macr. P. C. 232.)

This section now makes it clear that the amendment relates back to the date of the original grant, otherwise damages could not be recovered in an action for an infringement prior to such amendment. If this were not so the action would be based upon a patent different from that which was infringed. The section, however, throws upon the person bringing the action the burden of proving that the "original claim was framed in good faith and with reasonable skill and knowledge."

It is to be presumed that the mere fact that the specification has passed the examiner, will not necessarily satisfy this requirement so far as it relates to the skill and knowledge, although it would seem to be *primâ facie* evidence of it.

Advertisement of amendment.

S. 21. Every amendment of a specification shall be advertised in the prescribed manner.

The manner of advertisement is prescribed by rule 56 (p. 202), which provides that every amendment of a specification shall be forthwith advertised by the comptroller in the official journal of the Patent Office, and in such other manner (if any) as the comptroller may direct.

Compulsory Licenses.

Power for Board to order grant of licenses.

S. 22. If on the petition of any person interested it is proved to the Board of Trade that by reason of the default of a patentee to grant licenses on reasonable terms—

S. 22.

(*a*) The patent is not being worked in the United Kingdom; or

(*b*) The reasonable requirements of the public with respect to the invention cannot be supplied; or

(*c*) Any person is prevented from working or using to the best advantage an invention of which he is possessed,

the Board may order the patentee to grant licenses on such terms as to the amount of royalties, security for payment, or otherwise, as the Board, having regard to the nature of the invention and the circumstances of the case, may deem just, and any such order may be enforced by mandamus (*a*).

(*a.*) For the mode of procedure on an application or petition for the grant of compulsory licenses and opposition thereto, see rules 57 to 63, p. 202, and forms H., H. 1, and I., p. 220.

A license need not be under deed (*Chanter* v. *Dewhurst*, 12 M. & W. 823), and may be constituted by a verbal agreement (*Crossley* v. *Dixon*, 10 H. L. Cas. 293). When in writing it need not be stamped as a deed (*Chanter* v. *Johnson*, 14 M. & W. 411).

A license to manufacture a patent article is an authority to the vendees of the licensee to sell it without the consent of the patentee. (*Thomas* v. *Hunt*, 17 C. B., N. S. 183.)

So where the owner of a patent manufactures and sells the patented article in a foreign country as well as in England, the sale of the article in one country implies a license to use it in the other. But if he has assigned his patent in either country, the article cannot be sold so as to defeat the rights of the assignee. (*Betts* v. *Willmott*, L. R., 6 Ch. 239.)

Where a patent for an invention is granted to two or more persons in the usual form, each one may use the invention without any license from the other, and without accounting for the profits so made. (*Mathers* v. *Green*, L. R., 1 Ch. 29.)

S. 22.

Where, however, a patent is vested in trustees upon trust for several tenants in common or joint tenants, *quære* whether any one of them is at liberty to work the patent on his own account. (*Hancock* v. *Bewley* John. 601.)

An exclusive licensee has a right to use the name of the patentee to restrain an infringement of the patent, and to recover damages in an action (*Renard* v. *Levinstein*, 2 H. & M. 628). It is also competent to the assignee of a separate and distinct portion of a patent to sue for an infringement of that part, without joining one who has an interest in another part, the damages to be recovered in the action accruing to the former alone. (*Dunnicliff* v. *Mallett*, 7 C. B., N. S. 209; *Walton* v. *Lavater*, 8 C. B., N. S. 162.) So also one of several co-owners of a patent has a right to sue alone for the recovery of profits due for the use of the patent. (*Sheehane* v. *Great Eastern Railway Co.*, 16 Ch. D. 59.)

When an assignment is made of a share of profits (arising, e.g. from the working of a patent by licensees), the assignee is entitled to an account from the licensee, but the account must be taken once for all, in the presence of all the parties interested. The licensee is not bound to account to the assignor and to each assignee of a share separately. An assignee who asks for an account must place himself in the position of the assignor by offering to pay to the accounting party anything which may be due to him by the assignor. An account of profits will not be directed if it is clear that no profits have been made. (*Bergmann* v. *Macmillan*, 17. Ch. D. 423.)

A licensee under a patent cannot in an action against him to recover royalties, or other proceedings, in any way question its validity during the continuance of his license (*Crossley* v. *Dixon*, 10 H. L. Cas. 293; *Norton* v. *Brooks*, 7 H. & N. 499; *Smith* v. *Scott*, 6 C. B., N. S. 771; *Besseman* v. *Wright*, 6 W. R. 719; *Lawes* v. *Purser*, 6 E. & B. 930; but see *Chanter* v. *Leese*, 4 M. & W. 295; in Exch. Ch. 5 M. & W. 698); but if the claim in the specification is susceptible of two constructions, one of which would make the specification bad, and the other

S. 22.

and more natural one would make it good, it is competent to him to insist that the latter is the true construction. (*Trotman* v. *Wood*, 16 C. B., N. S. 479.)

And he may show that what he has done does not fall within the limits of the patent, but is something extraneous to it; and *semble*, for this purpose, prior specifications may be put in evidence to assist in construing a doubtful or ambiguous specification. (*Clark* v. *Adie*, 2 App. Cas. 423). After the license has been determined a licensee may dispute the validity of the patent. (*Dangerfield* v. *Jones*, 13 L. T. Rep., N. S. 142; *Neilson* v. *Fothergill*, 1 Web. P. C. 290.) So where A. and B. had worked a patent, the property of B., in partnership, A. was not estopped from disputing the validity of the patent, on the termination of the partnership. (*Axmann* v. *Lund*, L. R. 18 Eq. 330; *Mayne* v. *Maltby*, 3 T. R. 438; *Per Cottenham*, L.C., 1 Web. P. C. 290.)

Where judgment was given by consent before declaration filed in an action by a patentee against the members of a partnership firm for an infringement, and the defendants immediately took a license to use the invention, a suit to restrain a subsequent alleged infringement having been brought by the patentee against the defendants at law and two fresh partners, it was held that the defendants in equity were not estopped by the judgment at law from disputing the validity of the patent. (*Goucher* v. *Clayton*, 11 Jur., N. S. 107.)

Neither can a licensee recover back royalties which he has paid under a license for the use of a patented invention which turns out to be old (*Taylor* v. *Hare*, 1 B. & P., N. R. 260), unless fraud is proved (*Lovell* v. *Hicks*, 2 Y. & C. 46 and 472.)

Nor will a licensee be permitted to use an invention, without complying with the terms of his license, on the ground that the patent has been held invalid in proceeding between third parties. (*The Grover & Baker Sewing Machine Co.* v. *Millard*, 8 Jur., N. S. 714.)

Not only is a licensee estopped from disputing the validity of the patent in an action for royalties, but in an action by

S. 22. Register of patents.

the assignee of the patentee, the latter is estopped by his own deed from showing that the patent was not valid. (*Oldham* v. *Langmead*, 3 T. R. 439; and see *Walton* v. *Lavater*, 3 L. T., Rep. N. S. 272; *Chambers* v. *Crichley*, 33 Beav. 374.) This rule does not, however, apply to the partner of the assignor who is sued for infringement. (*Heugh* v. *Chamberlain*, 25 W. R. 742.)

Again, a patentee who grants a license cannot, without derogating from his grant, publish advertisements and circulars which have the effect of deterring usual customers or the public from dealing with his licensee. (*Clark* v. *Adie*, 21 W. R. 456, affirmed, Ibid. 764.)

A covenant not to make or use a known machine without certain patented improvements, is not a covenant in restraint of trade. (*Jones* v. *Lees*, 26 L. J., Exch. 9.)

S. 23. (1.) There shall be kept at the patent office a book called the Register of Patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licenses under patents, and of amendments, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may from time to time be prescribed.

(2.) The register of patents shall be *primâ facie* evidence of any matters by this Act directed or authorised to be inserted therein.

(3.) Copies of deeds, licenses, and any other documents affecting the proprietorship in any letters patent or in any license thereunder, must be supplied to the comptroller in the prescribed manner for filing in the Patent Office (*a*).

(*a*) The rules applicable to the register of patents are

S. 23.

numbered 64 to 76 inclusive. See p. 204. Sect. 85, p., 165, provides that there shall not be entered in any register kept under this Act, or be receivable by the comptroller, any notice of any trust expressed, implied or constructive. And it is enacted by sect. 87 (p. 165) that where a person becomes entitled by assignment, transmission, or other operation of law to a patent, the comptroller shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent in the register of patents. And see rules 65 to 70 inclusive, p. 204. The fee for every entry of an assignment, transmission, agreement, license or extension of a patent is 10*s*. See. p. 212. See also Forms L, M, R, and S, p. 224. The person for the time being entered in the register of patents, as proprietor of a patent shall, subject to any rights appearing from such register to be vested in any other person have power absolutely to assign, grant licenses as to, or otherwise deal with, the same, and to give effectual receipts for any consideration for such assignment, license, or dealing. Provided that any equities in respect of such patent may be enforced in like manner as in respect of any other personal property.

The keeping of registers of patents and of proprietors was formerly regulated by the 34th and 35th sections of the Patent Law Amendment Act, 1852. The later section provided that until the assignment of any letters patent, or any share or interest therein, or any license or other matter relating to the proprietorship of a patent was entered in the register of proprietors, the grantee should be deemed the sole and exclusive proprietor of such letters patent and all licenses granted. Consequently an assignee could not bring an action for infringement against third parties until his assignment had been registered (*Chollet* v. *Hoffman*, 7 E. & B. 686), although he might have done so against his assignor, and subsequent licensees of the assignor who had notice of the assignment. (*Hassall* v. *Wright*, L. R., 10 Eq. 509.)

The above provision is repealed and not re-enacted, consequently the question may hereafter arise whether, seeing

that registration of all matters affecting the validity or proprietorship of a patent are still compulsory, and that the person appearing on the register as proprietor has power absolutely to assign and to grant licenses, an assignor or a licensee may now take proceedings against third parties for matters relating to the patent before the registration of the patent assignment or license. The point is not however of much importance, as registration when made relates back to the date of assignment (*Hassall* v. *Wright*, L. R., 10 Eq. 509), so that an action would not be defeated on this ground. S. 23.

Power was given, by the 38th section of the Act of 1852, to the Master of the Rolls, and to any Common Law Court at Westminster in term time, and to a judge of such Court in vacation, to order an entry in the register of proprietors, by which any person felt himself aggrieved, to be expunged, vacated, or varied. But it would seem that the jurisdiction over patents was vested in the High Court of Justice by section 16, subsection 6, of the Jud. Act, 1873. (*In re Morgan's Patent*, 24 W. R. 245.) This is, however, of little importance now as the 38th section of the Act of 1852 is repealed, and the rectification of the register of patents, as of all registers to be kept under the Act, is transferred by sect. 90 (p. 196) to "The Court" on the application of any person aggrieved. The section provides that—

(1.) The Court may on the application of any person aggrieved by the omission without sufficient cause of the name of any person from any register kept under this Act, or by any entry made without sufficient cause in any such register, make such order for making, expunging, or varying the entry, as the Court thinks fit; or the Court may refuse the application; and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

(2.) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an

S. 23. issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3.) Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the comptroller.

"The Court" is by sect. 117 (p. 179) defined as (subject to the provisions of Scotland, Ireland, and the Isle of Man) Her Majesty's High Court of Justice in England. The application may, therefore, be made in either the Chancery or Queen's Bench Division. Notwithstanding this transfer of jurisdiction the Courts will probably be guided by former decisions, which are, therefore, here given.

A patentee, in 1853, assigned his patent, but the assignees omitted to register it. In 1855 the patentee assigned the patent to another person, who registered it on the same day. The first assignees registered their assignment a week afterwards. The Court, in 1857, on the motion of the first assignees, ordered the register of the second assignment to be expunged, and with costs. (*In re Green's Patent*, 24 Beav. 145.)

A patentee assigned half a patent to A., and afterwards he assigned the whole to B. by deed, reciting that he had already granted a license, to work and use, to A. B.'s assignment was first registered:—*Held*, that B. had constructive notice of A.'s rights, and an entry was ordered to be made in the register, that the license referred to in B.'s assignment was the deed of assignment to A. subsequently entered. (*In re Morey's Patent*, 25 Beav. 581.)

Where one of two joint patentees by deed assigned his interest in the patent to a third person, and released to him all the rights of action, &c., against him of both the patentees, and the deed was set out completely in the register of proprietors, it was held that the other patentee was entitled, under the 38th section of the Patent Law Amendment Act, to have the entry struck out. (*In re Horsley & Knighton's Patent*, L. R., 8 Eq. 475.)

S. 23.

Inspection of the register, and the supply of sealed certified copies of entries therein, is provided for by sect. 88, p. 166, and rules 75 and 76, p. 206, and such copies, as also similar copies of other documents in the patent office, are made evidence in all Courts in her Majesty's dominions, and in all proceedings, without further proof or production of the originals (sect. 89, p. 166).

The comptroller may, on request in writing accompanied by the prescribed fee, correct any clerical error in the name, style or address of the registered proprietor of a patent (sect. 91 (b), p. 167). The applicant for such correction is not entitled to be heard personally, or by his agent, under the 94th section, p. 168, but should send his application by a prepaid letter through the post (sect. 97, p. 169.)

If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor (sect. 93, p. 168).

Fees.

Fees in schedule.

S. 24. (1.) There shall be paid in respect of the several instruments described in the Second Schedule to this Act, the fees in that schedule mentioned, and there shall likewise be paid, in respect of other matters under this part of the Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury may from time to time direct. (*a*)

(2.) The Board of Trade may, from time to time, if

S. 24.

they think fit, with the consent of the Treasury, reduce any of those fees.

(*a*) The 4th rule (p. 191) provides that, in addition to the fees mentioned in the Second Schedule to the Act, so far as it relates to Patents, the fees specified in the First Schedule to the Rules must be paid (p. 211).

Extension of Term of Patent.

Extension of term of patent on petition to Queen in Council.

S. 25. (1.) A patentee may, after advertising in manner directed by any rules made under this section his intention to do so, present a petition to Her Majesty in Council, praying that his patent may be extended for a further term; but such petition must be presented at least six months before the time limited for the expiration of the patent.

(2.) Any person may enter a caveat, addressed to the Registrar of the Council at the Council Office against the extension.

(3.) If Her Majesty shall be pleased to refer any such petition to the Judicial Committee of the Privy Council, the said Committee shall proceed to consider the same, and the petitioner and any person who has entered a caveat shall be entitled to be heard by himself or by counsel on the petition.

(4.) The Judicial Committee shall, in considering their decision, have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(5.) If the Judicial Committee report that the patentee

has been inadequately remunerated by his patent, it shall be lawful for Her Majesty in Council to extend the term of the patent for a further term not exceeding seven, or in exceptional cases fourteen, years; or to order the grant of a new patent for the term therein mentioned, and containing any restrictions, conditions, and provisions that the Judicial Committee may think fit. S. 25.

(6.) It shall be lawful for Her Majesty in Council to make, from time to time, rules of procedure and practice for regulating proceedings on such petitions, and subject thereto such proceedings shall be regulated according to the existing procedure and practice in patent matters of the Judicial Committee.

(7.) The costs of all parties of and incident to such proceedings shall be in the discretion of the Judicial Committee; and the orders of the Committee respecting costs shall be enforceable as if they were orders of a division of the High Court of Justice.

Revocation.

Revocation of patent.

S. 26. (1.) The proceeding by scire facias to repeal a patent is hereby abolished. (*a*, p. 71.)

(2.) Revocation of a patent may be obtained on petition to the Court.

(3.) Every ground on which a patent might, at the commencement of this Act, be repealed by scire facias shall be available by way of defence to an

S. 26.

action of infringement and shall also be a ground of revocation. (*b*, p. 74.)

(4.) A petition for revocation of a patent may be presented by—

(*a.*) The Attorney-General in England or Ireland, or the Lord Advocate in Scotland:

(*b.*) Any person authorised by the Attorney-General in England or Ireland, or the Lord Advocate in Scotland.

(*c.*) Any person alleging that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims:

(*d.*) Any person alleging that he, or any person under or through whom he claims, was the true inventor of any invention included in the claim of the patentee:

(*e.*) Any person alleging that he, or any person under or through whom he claims an interest in any trade, business, or manufacture, had publicly manufactured, used, or sold, within this realm, before the date of the patent, anything claimed by the patentee as his invention. (*c*, p. 75.)

(5.) The plaintiff must deliver with his petition particulars of the objections on which he means to rely, and no evidence shall, except by leave of the Court or a judge, be admitted in proof of any objection of which particulars are not so delivered. (*d*, p. 75.)

(6.) Particulars delivered may be from time to time

amended by leave of the Court or a judge. (*e*, p. 75.) S. 26.

(7.) The defendant shall be entitled to begin, and give evidence in support of the patent, and if the plaintiff gives evidence impeaching the validity of the patent the defendant shall be entitled to reply. (*e*, p. 75.)

(8.) Where a patent has been revoked on the ground of fraud, the comptroller may, on the application of the true inventor made in accordance with the provisions of this Act, grant to him a patent in lieu of and bearing the same date as the date of revocation of the patent so revoked, but the patent so granted shall cease on the expiration of the term for which the revoked patent was granted. (*f*, p. 76.)

(*a*) Prior to the passing of this section letters patent for an invention could be cancelled or revoked in two ways—

(1.) By *scire facias*,

(2.) Under a proviso contained in the letters patent themselves.

(1.) *Scire facias.* The action of *scire facias* to repeal patents has of late years fallen into disuse. The reason for this is that by the 1st section of the 5 & 6 Will. 4, c. 83, a patentee was empowered to enter a disclaimer or memorandum of alteration of either the title of his patent or of the specification, and to give the same in evidence at the trial of any action of *scire facias*. In this way any suggestion of objection to the patent, which did not deal with the whole alleged invention, could be removed, and the prosecutor would fail in his action, and possibly have to pay the defendant his costs. (*R.* v. *Mill*, 10 C. B. 379.)

S. 26.

If it appears that the Crown in granting letters patent has been deceived in any material particular, by a false representation or suggestion of the grantee, the patent will be wholly void (Vin. Abr. Prerog. (o. b.)). In such cases the Crown had by the Common Law a right to proceed by *scire facias* to repeal and cancel the patent (*Rex* v. *Butler*, 3 Lev. 220, 221). This proceeding was taken in the Common Law side of the Court of Chancery, being the Court in which the patent was made, and the patent and enrolment of it were cancelled by the Lord Chancellor. The action of *scire facias* was a remedy provided not only for the Crown on behalf of the public, but also for any subject who could show that a void or illegal patent operated to his prejudice (*R.* v. *Aires*, 10 Mod. 354), and as every one was assumed to be prejudiced by an illegal patent, all were entitled to institute the action, on obtaining the *fiat* of the Attorney-General giving leave to sue in the name of the Crown, This *fiat* was, however, only granted on condition that the prosecutor entered into a bond to pay the defendant his taxed costs as between attorney and client, in the event of the defendant obtaining a verdict and judgment.

The writ, which was in the nature of a pleading, stated the effect of the patent, and set out the suggestions upon which the prosecutor sought to repeal the patent, and might include anything that showed that the patent was originally void, or that it had become so since it was made. The writ directed the sheriff (12 & 13 Vict. c. 109, s. 29) to summon the defendant to appear in Chancery to show cause why the patent and enrolment should not be cancelled. Upon the return of the writ the defendant entered an appearance. The prosecutor then delivered his declaration and notice of objections, and the defendant his pleas, or demurrer, if the matters alleged in the writ were not sufficient to repeal the patent.

When any issues were joined which had to be tried by a jury, the trial took place in the Queen's Bench, the record being returned to the Court of Chancery, and judgment

signed there, but when no jury was required the trial took place in Chancery before the Lord Chancellor. The action was tried either at bar or *nisi prius*. S. 26.

If any one of the objections was substantiated that was sufficient to entitle the Crown to judgment. The effect of a judgment for the Crown was to render the patent wholly void, and the judgment was a bar to any subsequent proceedings on the patent.

The practice relating to the action of *scire facias* was unaltered by the Patent Law Amendment Act, 1852, the 15th section providing that the writ of *scire facias* shall be for the repeal of any letters patent issued under that Act in the like cases as the same would be for the repeal of letters patent which could then be issued under the Great Seal.

In *Smith* v. *Upton* (6 M. & G. 251) the Court stayed proceedings in an action for infringement to await the result of a motion pending on a *scire facias*, upon the terms that the plaintiff should pay the defendant any costs which he might have been put to in preparing for trial and the costs of the motion.

(2.) *Under the proviso contained in letters patent.*—The 33rd section of the Act provides that "every patent may be in the form in the first schedule to this Act." The form here referred to contains the following proviso:—Provided that these our letters patent are on this condition, that, if at any time during the said term it be made to appear to us, our heirs, or successors, or any six or more of our 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 within our United Kingdom of Great Britain and Ireland, and Isle of Man, or that the said patentee is not the first and true inventor thereof within this realm as aforesaid, these our letters patent shall forthwith determine, and be void to all intents and purposes, notwithstanding anything herein-before contained.

S. 26.

Under this proviso the Crown, or any six or more of the Privy Council, could declare a patent void without the necessity of proceeding by *scire facias*, and can do so still without any petition to the Court under the 2nd subsection of the 26th section of this Act. It is believed that there is no modern instance of the determination of a patent under this proviso, but the opinion is expressed by Mr. Hindmarch (p. 432) that it was under this or a similar proviso that Queen Elizabeth was enabled to recall the patents for monopolies which were found to be so grievous to the public during her reign.

(*b*) It is laid down (4 Inst. 88) that a *scire facias* lies to repeal letters patent in three cases:—"*Firstly*, when the King by his letters patent doth grant by several letters patent one and the self-same thing to several persons, the former patentee shall have a *scire facias* to repeal second patent; *secondly*, when the King granteth any thing that is grantable upon a false suggestion, the King by his prerogative *jure regio* may have a *scire facias* to repeal his own grant; *thirdly*, when the King doth grant any thing which by law he cannot grant, he *jure regio* (for the advancement of justice and right) may have a *scire facias* to repeal his own letters patent."

The following may be taken as being generally the grounds upon which patents are sought to be repealed:—

(1.) That the patentee was not the true and first inventor within the realm;

(2.) That the alleged invention was not communicated to the patentee by any foreigner resident abroad as alleged;

(3.) That the alleged invention was not any improvement;

(4.) That the alleged invention was not new;

(5.) That it was false and untrue that the alleged invention was not in use by any other person than the patentee to the best of his knowledge and belief (see form of patent, p. 183);

(6.) That the alleged invention was not an invention of a new manufacture within this realm;

(7.) That the alleged invention was not of any use, benefit, or advantage to the public; S. 26.

(8.) That the specification does not particularly describe and ascertain the nature of the alleged invention and in what manner it is to be performed.

(*c*) Formerly no person could issue a writ of *scire facias* to repeal letters patent without first obtaining the *fiat* of the Attorney-General, and this was only granted on condition that the prosecutor entered into a bond to pay the defendant his taxed costs as between attorney and client, in the event of the defendant obtaining a verdict and judgment.

It would seem that this *fiat*, the grant of which may be made conditional as heretofore, will be required by any person who may desire to petition for the revocation of a patent, unless he falls within the descriptions contained within subsections (*c*), (*d*) or (*e*) of this section.

Now, however, any person who can make the allegations contained in subsections (*c*), (*d*) and (*e*) are quite free to petition the Court, but at the risk of having to pay the patentee his costs in the event of failure. This risk is, however, much reduced by the provision in sect. 18, subsection (10), p. 50, to the effect that no application to amend the specification by way of disclaimer, correction, or explanation, shall be made, so long as any legal proceeding in relation to a patent is pending, except (see s. 19, p. 57) by leave of the Court or a judge, subject to such terms as to costs and otherwise as they or he may impose. And even if such leave to apply for an amendment is granted, the application may be opposed by the person petitioning for revocation (s. 18 (2), p. 48).

(*d*) See notes to sect. 29, p. 84.

(*e*) This is a re-enactment of the latter part of the 41st section of the 15 & 16 Vict. c. 83.

The person who is entitled to the privilege granted by the patent, and has the custody of the patent itself, must be made defendant. The defendant should therefore be the patentee, or the assignee, or both where the patentee has assigned a part

S. 26. only of his patent right. In case of the death of the patentee, his executors or administrators should be made defendants.

(*f*) This provision is new. A patent obtained in fraud of the first and true inventor could be revoked under the old law, but no means existed of vesting the patent rights in the person entitled thereto. As the grant of the patent in lieu of that revoked is to be made "on the application of the true inventor made in accordance with the provisions of this Act," it would seem that the applicant will have to proceed in the same manner, and pay the same fees, as if no application had been made in respect of the invention in question. And see section 94, p. 168, and rules 11 to 16 inclusive, p. 193.

Crown.

Patent to bind Crown.

S. 27. (1.) A patent shall have to all intents the like effect as against Her Majesty the Queen, her heirs and successors, as it has against a subject. (*a*)

(2.) But the officers or authorities administering any department of the service of the Crown may, by themselves, their agents, contractors, or others, at any time after the application, use the invention for the services of the Crown on terms to be before or after the use thereof agreed on, with the approval of the Treasury, between those officers or authorities and the patentee, or, in default of such agreement, on such terms as may be settled by the Treasury after hearing all parties interested. (*b*)

(*a*) This is an important change in the law, it having been held that letters patent, in their usual form, were not valid against the Crown, and that the Crown had the right to use a patented invention without compensation to the patentee. (*Feather* v. *The Queen*, 6 B. & S. 257.)

S. 27.

The form of letters patent given in the schedule to the Act contains a recital that "the said inventor hath by and in his complete specification particularly described *the nature* of his invention." It is difficult to see how, in the face of this recital, the Crown, who makes the grant, can, either in a proceeding for revocation of a patent, or as defendant in an action for infringement, contend that the patentee has not "particularly described the nature of his invention," although the Crown would not be estopped from showing that the specification did not disclose "in what manner it is to be performed."

(*b*) This provision is also new, for it was held in *Dixon* v. *The London Small Arms Company* (L. R., 1 App. Cas. 632), that where the defendants, not being servants or agents of the Crown doing the work of the Crown, but being private contractors with the Crown to supply a certain manufactured article, were not protected in what they did by any particular privilege attaching to the Crown.

Legal Proceedings.

Hearing with assessor.

S. 28. (1.) In an action or proceeding for infringement or revocation of a patent, the Court may, if it thinks fit, and shall, on the request of either of the parties to the proceeding, call in the aid of an assessor specially qualified, and try and hear the case wholly or partially with his assistance; the action shall be tried without a jury unless the Court shall otherwise direct. (*a*)

(2.) The Court of Appeal or the Judicial Committee of the Privy Council may, if they see fit, in any proceeding before them respectively, call in the aid of an assessor as aforesaid. (*b*)

(3.) The remuneration, if any, to be paid to an assessor under this section shall be determined by the

S. 28.

Court or the Court of Appeal or Judicial Committee, as the case may be, and be paid in the same manner as the other expenses of the execution of this Act. (*c*)

(*a*) The provision of this section is not the only one giving the Court power to call in the aid of an assessor. Sect. 56 of the Jud. Act, 1873, provides that the High Court or the Court of Appeal may in any cause or matter (other than a criminal proceeding by the Crown), in which it may think it expedient to do so, call in the aid of one *or more* assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such assessors shall be determined by the Court.

Order XXXVI., rule 43, of the Rules of the Supreme Court, 1883, provides that "trials with assessors shall take place in such manner and upon such terms as the Court or a judge shall direct." And by rule 7a. of the same Order, that in every cause or matter, where the mode of trial is by a judge without a jury, the Court *or* judge *may* at any time order any cause, matter, or issue to be tried by a judge sitting with assessors, or by an official or special referee with or without assessors.

It is a curious circumstance that under the 28th section of the present Act only one assessor can be called in, whereas under the Jud. Act and Rules the assistance of one *or more* may be obtained.

The Jud. Act and Rules leave it entirely to the discretion of the Court or judge, whether or no one or more assessors shall be called in, but by this section either party has an absolute right to insist upon *one* assessor being secured to assist the judge, and probably in future few patent actions, in which any technical issues have to be decided, will be tried without the presence of an assessor, for if one side does not want him the other side probably will.

The selection of the assessor, a matter of great importance, however, rests with the Court. S. 23.

An action or proceeding for infringement or revocation of a patent may now be tried in the several modes following, viz:

(1.) By a judge alone.

(2.) By a judge with the aid of one or more assessors.

(3.) By a judge and jury, special or common.

(4.) By a judge assisted by one or more assessors and a jury, special or common.

(5.) By an official or special referee.

(6.) By an official or special referee with one or more assessors.

Prior to the passing of this Act, and the Rules of the Supreme Court, 1883, either party to an action for infringement of a patent, brought in the Queen's Bench Division, had, subject to the power of compulsory reference, an absolute right to have the issues of fact tried by a jury. (*Sugg* v. *Silber*, 1 Q. B. D. 362.)

This is now changed, for not only under this section, but also by the Rules of the Supreme Court, the discretion of ordering or refusing a trial with a jury in most cases rests entirely with Court or judge. See Order XXXVI., rules 4, 5, 6 and 7.

(*b*) The parties to the proceeding have no power to demand that the Court of Appeal, or the Judicial Committee of the Privy Council, shall call in the aid of an assessor. The 56th section of the Jud. Act, 1873, also empowers the Court of Appeal to call in the aid of one or more assessors. Where it is desired that the Court of Appeal should exercise this power an application must be made to the Court itself, as the judge at Chambers has no power to make the order, as he may do in trials under Order XXXVI., rule 43.

The proceedings before the Judicial Committee of the Privy Council here referred to, are those relating to the extension of the term of letters patent under sect. 25 of the Act.

S. 23. (c) The remuneration to be paid to an assessor *under this section* is to be paid in the same manner as the other expenses of the execution of this Act.

Sect. 83 (2), p. 165, provides that the expenses of the execution of this Act shall be paid out of money provided by Parliament.

Sect. 56 of the Jud. Act, 1873, directs the remuneration, if any, to be paid to assessors shall be *determined* by the Court. And Order XXXVI., rule 43, says, trials with assessors shall take place *upon such terms* as the Court or a judge shall *determine*. But no fund is provided for the payment of assessors whose remuneration has to be provided by the parties, or either of them, as the Court or judge shall direct.

Under the present Act one assessor is provided at the public expense.

Delivery of particulars.

S. 29. (1.) In an action for infringement of a patent the plaintiff must deliver with his statement of claim, or by order of the Court or the judge, at any subsequent time, particulars of the breaches complained of.

(2.) The defendant must deliver with his statement of defence, or, by order of the Court or a judge, at any subsequent time, particulars of any objections on which he relies in support thereof.

(3.) If the defendant disputes the validity of the patent, the particulars delivered by him must state on what grounds he disputes it, and if one of those grounds, is want of novelty, must state the time and place of the previous publication or user alleged by him.

(4.) At the hearing no evidence shall, except by leave of the Court or a judge, be admitted in proof of

any alleged infringement or objection of which particulars are not so delivered.

(5.) Particulars delivered may be from time to time amended by leave of the Court or a judge.

(6.) On taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant; and they respectively shall not be allowed any costs in respect of any particular delivered by them unless the same is certified by the Court or a judge to have been proven or to have been reasonable and proper, without regard to the general costs of the case.

Particulars of Breaches.

The Court has power, irrespective of any statute to that effect, to order the plaintiff, in an action for the infringement of a patent, to deliver particulars in writing of the infringement on which it is intended to rely. (*Perry* v. *Mitchell*, 1 Web. P. C. 269.)

The 15 & 16 Vict. c. 83, s. 41, provided that "the plaintiff shall deliver with his declaration particulars of the breaches complained of in the said action . . . and at the trial of such action no evidence shall be allowed to be given in support of any alleged infringement which shall not be contained in the particulars delivered as aforesaid . . . Provided always, that it shall and may be lawful for any judge at Chambers to allow such plaintiff to amend the particulars delivered as aforesaid upon such terms as to such judge shall seem fit."

This statute was held applicable to suits in Chancery as well as actions at common law. (*Curtis* v. *Platt*, 35 L. J., Ch. 852; *Finnegan* v. *James*, L. R., 19 Eq. 72; *Crossley* v. *Tomey*, 2 Ch. D. 533; *Bovill* v. *Goodier*, L. R., 1 Eq. 35, overruled.) The present section, therefore, introduces no new practice with respect to particulars of breaches.

S. 29.

The particulars of breaches are sufficient, if, taken together with the pleadings, they give the defendant full and fair notice of the case to be made against him. (*Needham* v. *Oxley*, 1 Hem. & M. 248.)

If the patent is for an invention other than a chemical process, the plaintiff ought to give particular instances of infringement. Thus, where plaintiff's particulars of breaches alleged that the defendant "did make, use, exercise, and put into practice the said invention, and did counterfeit, imitate, and resemble the said invention, and, further, during the same period did make and sell large quantities of type manufactured according to the specification of the said letters patent, and divers other large quantities in imitation of the invention described in the said specification," Keating, J., at Chambers, made an order for further particulars. The further particulars delivered gave specific instances of infringement by manufacture and sale with dates, ending with these words: "and the plaintiffs state these particular instances by way of example only, and not so as to preclude them from proving any of the infringements mentioned in the former particulars of breaches. An application was made for better particulars on the grounds (1) that in some of the particulars there was no distinct statement of times and persons, and (2) that by the last clause of the particulars they were made utterly useless; and the plaintiff might at the trial give evidence of instances entirely different from those named in the particulars: *Held*, that the particulars were insufficient. (*The Patent Type-Founding Co.* v. *Richards*, 2 L. T. Rep., N. S. 359.)

So in an action by a patentee against his licensee for breach of covenant in not paying sums due for machines made by him with the plaintiff's invention, the plaintiff was ordered to furnish the best particulars he could, and to excuse himself upon oath for not giving better. (*Jones* v. *Lees*, 25 L. J., Exch. 241.) And Wood, V.C., stated that the object of furnishing these statements was that the defendant

might know what were the *particular instances* on which the plaintiff relied. (*Curtis* v. *Platt*, 8 L. T. Rep., N. S. 657.) S. 29.

But in an action for the infringement of a patent for a chemical invention, which was held to be substantially one process, for "improvements in obtaining pictures or representations of objects," the Court refused to compel the plaintiff to specify particularly the persons and occasions, or the particular parts of the specification alleged to have been infringed, although the declaration merely averred an infringement in general terms. The Court, however, stated that if the two processes described in the specification were wholly distinct from each other, and the defendant's process might be an infringement of the one and not of the other, he ought to have better particulars. (*Talbot* v. *La Roche*, 15 C. B. 310.)

The plaintiff, where his patent is for a complicated machine, and he has inspected and examined the alleged infringement, will be ordered to point out, by reference to the pages and the lines, the parts of his specification in respect of which such alleged breaches have been committed. (*Lamb* v. *Nottingham Manufacturing Co.*, not reported; cited L. R., 19 Eq. 230; *Seton on Decrees*, p. 349.)

A similar order was made where an action was brought in respect of injuries caused by letters written, and statements made, by the defendant to persons who purchased machines manufactured and sold by the plaintiffs, alleging such machines to be infringements of a patent obtained by him, and making claims in respect of the same. (*Wren* v. *Weild*, L. R., 4 Q. B. 213.)

So where the specification set forth and described thirteen different pens, containing an indefinite number of slits and adjustments, and the declaration charged the making of pens and nibs, in imitation of parts of the said invention, with divers additions thereto and subtractions therefrom, the Court ordered the plaintiff to give particulars by the numbers of the pens on which infringements were alleged. (*Perry* v. *Mitchell*, 1 Web. P. C. 269.)

S. 29.

The order was, however, refused where the invention was not a complicated machine, and the patented article itself was made an exhibit in the action. (*Batley* v. *Kynock*, L. R., 19 Eq. 229.) It was also refused where the parties had previously been before the Court, in proceedings upon the same patent, though in a different action, in which affidavits were used which, to a sufficient extent, set forth in what particulars the infringement was supposed to have existed; and the order, if made, would from the nature of the patent have been embarrassing to the plaintiffs. (*The Electric Telegraph Co.* v. *Nott*, 16 L. J., C. P. 174.)

The plaintiff was allowed to amend his particulars after issue joined, and after interrogating the defendant. (*Jones* v. *Pratt*, 30 L. J., Exch. 365.)

Notice or Particulars of Objections.

The 5 & 6 Will. 4, c. 83, s. 41, enacted that in any action brought against any person for infringing any letters patent, the defendant on pleading thereto shall give to the plaintiff 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 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 on such plaintiff, 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. The Court has power, under its general jurisdiction, and irrespective of the statute, to decide on the sufficiency of notices given under this statute. (*Bulnois* v. *Mackenzie*, 1 Web. P. C. 260.) The object of this statute was not to limit the defence, but to limit the expense of the parties, and more particularly to prevent the patentee from being upset by some unexpected turn of the evidence. (*Fisher* v. *Dewick*, 1 Web. P. C. 267;

Morgan v. *Fuller*, L. R., 2 Eq. 297; *Flower* v. *Lloyd*, 45 L. J., Ch. 747; and see *Curtis* v. *Platt*, 8 L. T. Rep., N. S. 657.) S. 29.
After the passing of this statute, if a defendant neglected to deliver a notice of objections with his pleas, he had to obtain leave to plead *de novo.* (*Losh* v. *Hague*, 1 Web. P. C. 203 (n.).) It was not sufficient to state an objection in the notice of objections unless there was a plea to which it could apply. (*Gillett* v. *Wilby*, 1 Web. P. C. 270.) And the notice of objections was required to be drawn with reference to the pleas, or notice given of the pleas to which the objections were to be applied (*Walton* v. *Bateman*, 1 Web. P. C. 616): and were not allowed to go beyond them, or stand in their place. (*Macnamara* v. *Hulse*, 2 Web. P. C. 128 (n.).) They were required to point out the defence with greater particularity than the record (*Jones* v. *Berger*, 1 Web. P. C. 544; *Betts* v. *Walker*, 14 Q. B. 363; *Bulnois* v. *Mackenzie*, 1 Web. P. C. 263), of which they formed no part (*Reg.* v. *Mill*, 10 C. B. 379), unless the objections are completely and fully explained in the pleadings. (*Neilson* v. *Harford*, 1 Web. P. C. pp. 331, 370.) And further, the plaintiff's particulars of breaches could not be called in aid of defective particulars of objections. (*Palmer* v. *Cooper*, 23 L. J., Exch. 82.)

The 5th section of the 5 & 6 Will. 4 was supplemented by the 41st section of the 15 & 16 Vict. c. 83, but the former section was not repealed.

This section provided that "in any action in any of Her Majesty's Superior Courts of Record at Westminster or in Dublin for the infringement of letters patent, ... the defendant in pleading thereto, shall deliver with his pleas . . . . particulars of any objections on which he means to rely at the trial in support of the pleas in the said action . . . . ; and at the trial of such action no evidence shall be allowed to be given in support of any objection impeaching the validity of such letters patent which shall not be contained in the particulars delivered as aforesaid: Provided

S. 29.

always, that the place or places at or in which and in what manner the invention is alleged to have been used or published prior to the date of the letters patent shall be stated in such particulars: Provided also, that it shall and may be lawful for any judge at Chambers to allow such defendant to amend the particulars delivered as aforesaid, upon such terms as to such judge shall seem fit."

From the similarity of the wording of the two sections above set out the decision of the Courts upon notices given under the first are applicable to those given under the second statute.

The requirements of the 5 & 6 Will. 4, c. 83, and the 15 & 16 Vict. c. 83, as to notices by the defendant, were confined to notices affecting the validity of the patent; and the defendant might therefore object to the want of registration of an assignment of the patent to the plaintiff, although it was not specially mentioned in his notices of objection. (*Chollet* v. *Hoffman*, 26 L. J., Q. B. 449.)

This seems to be altered by subs. (2) of the present section, which deals with objections which do not affect the validity of the patent sued upon.

Both under the old statutes and the present Act the defendant is required to give a notice of the objections on which he relies by way of defence, and therefore, subject to what is said hereafter, the decided cases are still useful as pointing out what these particulars should be.

The reported cases upon the sufficiency of notices of objections may be conveniently collected under the following heads:—

(1.) *As to the first and true inventor.*

It was held that notice of objections delivered under the 5th section of the 5 & 6 Will. 4, c. 83, need not state *who* was the first inventor, or under what circumstances the invention had been previously used. (*Russell* v. *Ledsam*, 12 L. J., Exch. 439.)

S. 29.

(2.) *As to prior user.*

By the Act of 1852 the particulars were required to state "the place or places at or in which and in what manner the invention is alleged to have been used or published prior to the date of the letters patent." Under the present Act they are required to state "*the time and place* of the previous publication or user alleged." So that now the *time and place* of prior user or publication must be given, but nothing is said of the *manner in which* the invention has been used or published. And an order for particulars ought to follow the words of the section. (*Flower* v. *Lloyd*, 45 L. J., Ch. 746.) This will somewhat change the practice, but a review of the cases under the old statutes is still useful as pointing out what particulars should be delivered.

The cases decided under the 5th section of the 5 & 6 Will. 4, c. 83, are conflicting.

In *Bulnois* v. *Mackenzie* (4 Bing. N. C. 132) the Court thought it doubtful whether it could require the defendant to furnish the names of those who are alleged to have used the plaintiff's invention, and refused to make the order, as it might prejudice the defendant. A similar application on *scire facias* to repeal a patent was refused. (*Reg.* v. *Walton*, 2 Q. B. 969.) And see *Carpenter* v. *Walker* (1 Web. P. C. 268 (n.).) But *Coltman*, J., ordered names, addresses, and descriptions to be given. (*Galloway* v. *Bleaden*, 1 Web. P. C. 268 (n.).)

The Court ordered the words "and divers other people" to be struck out of the notice of objections in *Fisher* v. *Dewick* (1 Web. P. C. 551 (n.)), *Galloway* v. *Bleaden* (1 Web. P. C. 268 (n.)); but refused to do so in *Bentley* v. *Keighley* (13 L. J., C. P. 167) and *Carpenter* v. *Walker* (1 Web. P. C. 268 (n.).) And the defendant was permitted to preface his statement of specific instances of alleged prior user with the words "amongst other instances" in the case of *Penn* v. *Bibby* (L. R., 1 Eq. 548) and *Curtis* v. *Platt* (8 L. T. Rep., N. S. 657). A notice delivered under this statute was held sufficient if it

S. 29

limited the inquiry to a particular species and class of persons, who were using it in a particular trade. (*Jones* v. *Berger*, 1 Web. P. C. 550.) But the words "and elsewhere" were struck out. (*Ibid.*) It was not a sufficient notice of an objection to say that the invention was wholly or in part used before, but it ought to point out what portions were previously in use. (*Heath* v. *Unwin*, 1 Web. P. C. 551; *Russell* v. *Ledsam*, 12 L. J., Exch. 439.)

But in a more recent case the defendant, who had given a general notice that the invention was not new, was allowed to show that one of two inventions described in the specification was old, and that therefore the patent was bad. (*Sugg* v. *Silber*, 2 Q. B. D. 493.)

It was not generally sufficient to give the name of the *town* where the invention has been used (*Flower* v. *Lloyd*, Solicitors' Journal, 1876, p. 860; *Holland* v. *Fox*, 1 W. R. 448); but the plaintiff ought to be put in possession of all the defendant himself knows, and to have such information as would enable him to make the necessary inquiries at the places named, and identify the instances alleged (*Palmer* v. *Cooper*, *per* Parke, B., 9 Exch. 236; *Curtis* v. *Platt*, 8 L. T. Rep., N. S. 657), unless the defendant relied upon a *general* user by all manufacturers at the place named. (*Palmer* v. *Wagstaffe*, 22 L. J., Exch. 295.) But *Field*, J., refused to follow this case (*Flower* v. *Lloyd*, Solicitors' Journal, 1876, p. 860), which seems inconsistent with *Morgan* v. *Fuller* (L. R., 2 Eq. 297), where particulars alleging that the patented invention had been, before the date of the patent, "commonly used by carriage builders generally throughout Great Britain," and by "various carriage builders in or near London, Liverpool, Manchester, and Southampton, and various other of the principal towns of Great Britain," were held insufficient. The Court, however, intimated that where the objection points to the public use of a particular *preparation*, the words "by various makers in or near London" might be sufficient: and that if the defendant could not give the names of the

carriage builders *in or near London*, &c., he would be required to specify the class or classes of carriages with respect to which the alleged prior user had taken place, and that might have been held sufficient. S. 29.

The decisions as to what particulars of prior user had to be given under the 41st section of the 15 & 16 Vict. c. 83, are also conflicting.

In *Penn* v. *Bibby* (L. R., 1 Eq. 548) the defendant was ordered to amend his particulars of objections by specifying "the persons by whom, the places where, the dates at, and the manner in which" there had been user prior to the date of the plaintiff's patent. And see *Palmer* v. *Cooper* (23 L. J., Exch. 82) and *Grover and Baker Sewing Machine Co.* v. *Wilson* (W. N. 1870, p. 78).

On the other hand, it was held in *Palmer* v. *Wagstaffe* (22 L. J., Exch. 295), that where the defendant relied upon a general user of the supposed invention, it is sufficient to state that the invention was used by manufacturers generally at a particular place, without naming any person or specifying any manufactory. And see *Bentley* v. *Keighley* (13 L. J., C. P. 167) and *Bulnois* v. *Mackenzie* (4 Bing. N. C. 127).

The practice was, however, settled by the Court of Appeal in the case of *Flower* v. *Lloyd* (45 L. J., Ch. 746; Seton on Decrees, p. 349), where it was decided that the order for further and better particulars should follow the words of section 41 of the Act of 1852, and require the defendant to state in his particulars merely "the place or places at, or in which, and in what manner, the invention is alleged to have been used or published prior to the date of the patent," and this order was followed in *Plimpton* v. *Spiller* (20 Solicitors' Journal, 1876, p. 860).

But under this order the defendant was bound to furnish full and sufficient particulars, and *Field*, J., where the defendant had furnished in his particulars the names and addresses of three persons, and stated that the patented process had also been used by "other persons in *London* and

S. 29. *Birmingham*," ordered the words in inverted commas to be struck out, unless the defendant gave more specific information; his Lordship, however, adding, "I do not say that they need give the name and address of every such person, but they must give fair information." (*Plimpton* v. *Spiller*, Solicitors' Journal, 1876, p. 860.)

So in *Crossley* v. *Tomey* (2 Ch. D. 533), the defendant was ordered, in answer to interrogatories, to set out the names of some of the persons who were alleged by him to have used the invention prior to the date of the patent. *Chitty*, J., has also held that the plaintiff is entitled to the names and addresses of the persons by whom prior user is alleged to have been made as well as the places where the prior user has taken place. Also that, if the plaintiff or defendant makes out a proper case, the Court has jurisdiction to order interrogatories, with reference to those matters which may be covered by the particulars, to be answered. (*Birch* v. *Mather*, 22 Ch. D. 629.)

(3.) *As to prior publication.*

Notices delivered under the 5th section of the 5 & 6 Will. 4, c. 83, were required to specify all the books or publications intended to be relied on (*Jones* v. *Berger*, 1 Web. P. C. 548), and it was not sufficient to say, in certain magazines or journals (specifying them), "and also in other books and writings." (*Bentley* v. *Keighley*, 13 L. J., C. P. 167.)

Particulars delivered under the 41st section of the Act of 1852 alleged that, "before the date of the alleged letters patent the alleged invention had been published in England in the *Commissioners' Patents Journal* of the 6th of July, 1863, and in the *Scientific American* of the 25th January, 1863, and in *sketches and drawings deposited in the Patent Office Library in July*, 1865:—*Held*, that the defendant must give better particulars, stating the pages of the publications mentioned in the above objections, but not the lines, and identifying the drawings in writing, whether contained in

books or not. (*Plimpton* v. *Spiller*, 20 Solicitors' Journal, 1876, p. 860.) S. 29.

Where the defendant had given notice to admit a large number of specifications, and among them all specifications of the plaintiff, a judge at Chambers made an order on the defendant either to give the names and dates of the specifications of the plaintiff intended to be used, or that they should be excluded. The defendant then gave notice for all the plaintiff's specifications between 1840 and 1850, and contended at the trial that this was a compliance with the judge's order. *Erle*, J., at the trial ruled that it was not, on the ground that such an indefinite notice tended to embarrass the opposite party, and to deprive him of the means of preparation intended by the statute, it being admitted that the plaintiff had several other patents for various inventions in that interval. This view was adopted by the Court in a considered judgment. (*Lister* v. *Leather*, 8 Ell. & B. 1029, and 3 Jur., N. S. 816.) In a recent case (*The London and Leicester Hosiery Co.* v. *Higham*, not reported) in which the plaintiff sought to recover damages for the infringement of a complicated machine, and the defendant set out a large number of specifications in his particulars of objections to prove prior publication, the Court made an order in the following form, viz.: That the defendant do deliver further and better particulars of objections, by stating what portions of the specifications in the particulars already delivered referred to, are alleged to anticipate the plaintiff's inventions, with references to pages and lines of such specifications, and also what portions of the plaintiff's inventions are alleged to have been published or used prior to the dates of the several letters patent therefore, with references to the claiming clauses of the specifications of such letters patent.

(4.) *As to the specification.*

All the reported cases relate to decisions prior to the

S. 29.

passing of the Act of 1852. The following notices were held sufficient: "that the invention is not properly set forth in the specification" (*Heath* v. *Unwin*, 12 L. J., Exch. 48; *Leaf* v. *Topham*, 14 L. J., Exch. 231); that the plaintiff's specification does not "sufficiently distinguish between what was old and what was new" (*Jones* v. *Berger*, 5 M. & G. 208); that the plaintiff did not state in his specification "the most beneficial method with which he was then acquainted of practising his said invention." (*Ibid.*) A notice "that the specification is calculated to deceive" would seem to be sufficient to let in evidence as to any particular passage in the specification being false (*Neilson* v. *Harford*, 1 Web. P. C. 324 (n.)); and where the notice of objection simply stated the specification to be insufficient, if the plaintiff was content to take that as notice, it was held that any objection as to the sufficiency of the specification was admissible at the trial. (*Ibid.* 332.) The objection "that the invention for which the said letters patent were granted is more extensive than, and did not correspond with, the invention described in the specification," was held insufficient, as the attention of the plaintiff should be called to the particular part or parts of the specification. (*Fisher* v. *Dewick*, 1 Web. P. C. 551 (n.).)

A notice that the plaintiff has not caused any specification sufficiently describing the nature of the supposed invention to be duly enrolled in Chancery was held to be too obscure, as it might mean either that there is no specification existing among the rolls of the Court, or that the specification enrolled is defective in not sufficiently describing the invention. (*Leaf* v, *Topham*, 14 L. J., Exch. 231.)

(5.) *As to fraud and misrepresentation.*

Where the defendant pleaded that the report of the Judicial Committee of the Privy Council, and the letters patent thereon, were procured by fraud, covin, and misrepresentation, the notice of objections ought to state the

species of fraud, covin, and misrepresentation by which the patent was procured, on which the defendant intends to rely. (*Russell* v. *Ledsam*, 11 M. & W. 647.) S. 29.

Further and better particulars.

If the particulars of breaches or of objections are too general, or tend to embarrass, application should be made to a judge at Chambers, by the defendant in the former, and the plaintiff in the latter case, for further and better particulars. If this is not done, evidence of any act of infringement, or of prior user, which come within the literal meaning of the words in the particulars, however large and general they may be, is admissible at the trial. (*Sykes* v. *Howarth*, 12 Ch. D. 826; *Hull* v. *Bolland*, 25 L. J., Exch. 304; *Neilson* v. *Harford*, 1 Web. P. C. 331.) Where the admission of such evidence is likely to create surprise or introduce a new point, the opposite party will probably be allowed to bring forward fresh evidence. (*Sykes* v. *Howarth*, *supra*.)

The judge at Chambers had no power to introduce into an order for further and better particulars, any terms relative to the admissibility of evidence at the trial which are inconsistent with the provisions of the 41st section of the Act of 1852. (*Palmer* v. *Cooper*, 23 L. J., Exch. 82.)

The judge at Chambers had power under the 41st section of the 15 & 16 Vict. c. 83, to allow the plaintiff to amend his particulars of breaches, and the defendant to amend his notice of objections, but such leave was only granted as to instances coming to the knowledge of the plaintiff or defendant subsequent to the notice delivered or the answer put in, and on payment of costs. (*Penn* v. *Bibby*, L. R., 1 Eq. 548; *Finnegan* v. *James*, L. R., 19 Eq. 73; *Curtis* v. *Platt*, 8 L. T. Rep., N. S. 657.) And this may be done after the action has been set down for trial. (*Wilson* v. *Gann*, 23 W. R. 546.) But in such cases the Court will place the plaintiff in the same position as to discontinuing the action, or disclaiming a portion of his

S. 29.

invention, as he would have been in if the original particulars of objection had contained the new instances of prior publication proposed to be introduced by amendment; and accordingly all costs incurred by the plaintiff subsequently to the delivery of the original particulars of objection will be ordered to be paid to him by the defendant in case he elects, within a time fixed by the order, to discontinue his action. (*Edison Telephone Co.* v. *India Rubber Co.*, 17 Ch. D. 137; following *Baird* v. *Moule's Patent Earth Closet*, Ib. 139, (n.), which see for form of order; and *Aveling* v. *McLaren*, Ib. p. 139 (n.).)

The judge has in some cases amended the notice of objection during the course of the trial. (*Renard* v. *Levinstein*, 11 L. T. Rep., N. S. 505: *Daw* v. *Eley*, L. R., 1 Eq. 38.)

And where the defendants do not confine themselves to meeting the case opened by the plaintiff, but open and call evidence to prove an entirely different case, the plaintiff was entitled to call evidence in reply; and, notwithstanding the 41st section of 15 & 16 Vict. c. 83, to give instances of infringement not included in his particulars of breaches delivered in the action. (*Adair* v. *Young*, W. N. 1879, p. 8.)

Where a new trial was ordered, the defendant was allowed to give notice of acts of prior user that had come to his knowledge since the first trial. (*Bovill* v. *Goodier*, 36 L. J., Ch. 360.)

The defendant was held entitled to his costs of notice of objections, and of the evidence in support of them, when the plaintiff abandoned his action before trial. (*Greaves* v. *The Eastern Counties Railway Co.*, 28 L. J., Q. B. 290.)

When, at the trial of an action, the Court was of opinion that there had been an infringement by the defendant, but held on a legal ground that the patent was void, a certificate under sect. 43 of the Act of 1852 (which corresponds with this section, subsect. 6), that breach of the patent by the defendant had been proved, was refused. (*United Telephone Co.* v. *Harrison*, 21 Ch. D. 720.) The certificate of the judge under the 43rd section of the Act, 1852, was a condition

precedent to the right of a defendant to costs in respect of particulars. (*Honiball* v. *Bloomer*, 24 L. J., Exch. 11; and see *Losh* v. *Hague*, 5 M. & W. 387; and *Batley* v. *Kynock*, L. R., 20 Eq. 632.) S. 29.

S. 30. In an action for infringement of a patent, the Court or a judge may on the application of either party make such order for an injunction, inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon as the Court or a judge may see fit. Order for inspection, &c., in action.

This is in effect a re-enactment of the provisions of the 42nd section of the Act of 1852, and cases decided under that section are equally explanatory and illustrative of this. All the powers conferred upon the Court or a judge by this section are already possessed by them under other Acts of Parliament and rules of practice. The subject is best considered under the following heads:

1. *Injunction.*

The injunction here spoken of is either interlocutory or final. A Court of Chancery always had power to grant injunctions, such jurisdiction arising from the imperfection and inadequacy of legal remedies.

Power was given to the Courts of law by ss. 79 to 82 of the C. L. P. A., 1854 (17 & 18 Vict. c. 125), as amended by ss. 32 & 33 of the C. L. P. A., 1860 (23 & 24 Vict. c. 126), to grant writs of injunction to parties injured who had brought actions. In future, however, no writ of injunction shall issue. (Rules of the Supreme Court, Order L., rule 11.) Under these Acts, as under the 42nd section of the Patent Law Amendment Act of 1852, and under this section of the present Act, the injunction can only be granted after an action has been brought for an infringement.

By the 24th section (subsection 8) of the Judicature Act,

S. 30. 1873, however, an injunction may be granted by an interlocutory order *in all cases* in which it shall appear to the Court to be just or convenient that such order should be made. This section is a general supplement to all Acts of Parliament. (*Cooper* v. *Whittingham*, 15 Ch. D. 507.) In proper cases the order will be granted although no action has been commenced.

The practice under this section is regulated by Rules of the Supreme Court, Order L., rules 6 and 12. In cases of emergency the order will be made *ex parte*, either on the application of the plaintiff (*Melhuish* v. *Milton*, 24 W. R. 679; *Hennessey* v. *Bohmann*, W. N. 1877, p. 14), or on the application of any other party, where the Court or a judge are satisfied that to proceed on notice might entail irreparable or serious mischief. (Order LII., rule 3.)

Where notice of motion has been given, an interlocutory injunction will not be made *ex parte*, even though pressure of public business prevents the motion being brought on. (*Graham* v. *Campbell*, 7 Ch. D. 490.)

When an interlocutory injunction is granted, the plaintiff is required to give an undertaking to abide any order the Court may make as to the payment of damages by him to the defendant in respect of injury sustained by reason of the injunction (*Wakefield* v. *Duke of Buccleuch*, 11 Jur., N. S. 523; *Plimpton* v. *Spiller*, 4 Ch. D. 286), even where the order is made in favour of the Crown. (*Secretary for War* v. *Chubb*, W. N. 1880, p. 128.)

An interlocutory injunction may be granted to restrain an infringement where the patentee has had a reasonably long and uninterrupted enjoyment of it, notwithstanding that there may be some doubt as to its validity, or where its validity has been determined in another action, and the Court sees no reason to doubt the propriety of the result, or where the conduct of the defendant is such as to enable the Court to say that, as against the defendant himself, there is no reason to doubt the validity of the patent; or where the

patentee would otherwise have to bring a multitude of actions against the purchasers of the patented articles sold by the defendant. (*Kay* v. *Marshall*, 2 Web. P. C. 39; *Stevens* v. *Keating*, 2 Web. P. C. 177; *Harmer* v. *Playne*, 14 Ves. 130; *Dudgeon* v. *Thomson*, 30 L. T. Rep., N. S. 244; *The Universities of Oxford and Cambridge* v. *Richardson*, 6 Ves. 706; *Renard* v. *Levinstein*, 10 L. T. Rep., N. S. 94, affirmed p. 177; *Losh* v. *Hague*, 1 Web. P. C. 200; *Plimpton* v. *Spiller*, 4 Ch. D. 286; *Bovill* v. *Goodier*, L. R., 2 Eq. 195; *Curtis* v. *Cutts*, 8 L. J., Ch. 184; *Hill* v. *Thompson*, 1 Web. P. C. 229.) S. 30.

Illustrations.

(A.) Interlocutory injunctions were granted:

(1.) Where the patent had been enjoyed for thirteen years, and its validity had been established once at law and once in Chancery. (*Davenport* v. *Goldberg*, 2 H. & M. 282.)

(2.) Where the patent was thirteen years old notwithstanding that the title was doubtful. (*Harmer* v. *Playne*, 14 Ves. 130.)

(3.) Where the patent was twelve years old and successful proceedings had been taken against four previous infringers, notwithstanding that a fresh fact tending to impeach the novelty of the invention was brought forward. (*Newall* v. *Wilson*, 2 De G. M. & G. 282; and see *Stevens* v. *Keating*; 2 Web. P. C. 175, 176.)

(4.) Where the patent had been enjoyed for eleven years. (*Muntz* v. *Foster*, 2 Web. P. C. 93.)

(5.) Where the patent was eight years old, but the defendant had neglected a prior opportunity of contesting the validity of the patent. (*Betts* v. *Menzies*, 3 Jur., N. S. 357.)

(6.) Where the patent had been enjoyed for six years, notwithstanding objections taken to the specification. (*Bickford* v. *Skewes*, 1 Web. P. C. 213; 211.)

(7.) Where the plaintiff establishes his legal title, even though the patent has been granted only for a year or less. (*Gardner* v. *Broadbent*, 2 Jur., N. S. 1041; and see *Neilson* v. *Harford*, 1 Web. P. C. 373; *Russell* v. *Cowley*, 2 Coop., C. C. 59 (n).)

(8.) Where facts proved, such as the conduct of the defendant, justify it, even though the patent is less than a year old, and its validity has not been established. (*Clark* v. *Fergusson*, 1 Giff. 184; and see *Muntz* v. *Greenfell*, 2 Coop. 61 (n).)

(9.) Where an interdict was granted against the defendant by the

S. 30.

Court of Sessions in 1873, the patent being granted in 1866. (*Dudgeon* v. *Thomson*, 30 L. T. Rep., N. S. 244.

(10.) Where the Court were equally divided as to the validity of a patent, injunction continued until a fresh action was brought. (*Boulton* v. *Bull*, 3 Ves. 140.)

(11.) Against the master of a ship, who was not a part owner, to restrain him from using patented pumps, which had been fitted up on board the ship before he had taken command of her, and had never been worked in British waters, on the ground that he intended to use the patented invention. (*Adair* v. *Young*, 12 Ch. D. 13.)

(B.) Interlocutory injunctions refused in the following cases:

(1.) Where the plaintiff failed to prove that there has been an *active user* of the invention, even where the patent has been in force for eight years. (*Plimpton* v. *Malcolmson*, 44 L. J., Ch. 257.)

(2.) Where the patented improvements had been put in practice by the patentee for ten years, but had only been enjoyed by him without the licence of a prior patentee for about one year. (*Heugh* v. *Magill*, W. N., 1877, p. 62.)

(3.) Where two parties had obtained patents for the same invention, Kindersley, V.C., would not interfere by injunction, but left them to try the legal right by *scire facias*. (*Copeland* v. *Webb*, 11 W. R. 134.)

(4.) Where an undertaking by the defendant to keep an account afforded the Court the means of doing justice. (*Jones* v. *Pearce*, 2 Coop. 58; *Mitchell* v. *Barker*, 39 Lond. Jour. 531; but see *Renard* v. *Levinstein*, 2 Hem. & M. 628.)

An interlocutory injunction will not be granted unless asked for at an early period, or where the patentee has been guilty of delay, or has acquiesced in the infringements. (*Bridson* v. *Benecke*, 12 Beav. 1; *Bovill* v. *Crate*, L. R., 1 Eq. 388; *Smith* v. *London and South Western Railway Co.*, Kay, 408.)

Illustrations.

(1.) Where plaintiff knew of infringement in August, wrote letters of complaint in November, and commenced suit following July, an interlocutory injunction refused. (*Bovill* v. *Crate*, L. R., 1 Eq. 388.)

(2.) Knowledge of infringement in August, 1835, application for injunction, 1839, refused. (*Bacon* v. *Jones*, 4 My. & Cr. 433.)

(3.) Infringement discovered in January, bill filed following De-

cember. Injunction refused, although the patent had been established against another defendant. (*Bridson* v. *Benecke*, 12 Beav. 1.) S. 30.

(4.) Patent granted 1846, infringement 1847, bill filed 1849. Injunction refused. (*Baxter* v. *Combe*, 1 Ir. Ch. R. 284.)

(5.) Information of infringement in March, application for injunction July, inquiries and correspondence having taken place in the interval. *Held*, that the plaintiff had come in time. (*Losh* v. *Hague*, 1 Web. P. C. 200.)

(6.) Omission to proceed by *scire facias* to set aside a patent granted for part of an invention already protected is no evidence of *acquiescence*, unless the subsequent patent is used. (*Newall* v. *Wilson*, 2 De G. M. & G. 282.)

(7.) Where there are several infringers of a patent, and an action is brought against one only, distinct notice ought to be given by the patentee to the other infringers, if injunctions and damages are intended ultimately against them. (*Smith* v. *The London and South Western Railway Co.*, Kay, 408; *Hancock* v. *Moulton*, M. Dig. 506.)

Before the Court will grant an interlocutory injunction the patentee must establish a *primâ facie* case of infringement. (*Neilson* v. *Betts*, L. R., 5 H. L. 1; *The Electric Telegraph Co.* v. *Nott*, 2 Coop. 41; *Hancock* v. *Moulton*, M. Dig. 506; *Heath* v. *Unwin*, 16 L. J., Ch. 283; *Collard* v. *Allison*, 4 M. & C. 487); or of threatened infringement (*Frearson* v. *Loe*, 9 Ch. D. 48.)

Illustrations.

(1.) Positive evidence having been given by a workman that he had seen the patented article manufactured in the manufactory when he was working by a process not distinguishable from that patented, if uncontradicted, is sufficient to establish a *primâ facie* case. (*Neilson* v. *Betts*, L. R., 5 H. L. 1.)

(2.) Where the alleged infringement consists of the sale of a patented article, the plaintiff must prove not only the sale but also that the article was not made by himself or his agent. (*Betts* v. *Willmott*, L. R., 6. Ch. 239.)

The plaintiff must proceed with his action with due promptness, otherwise the injunction will be discharged (*Bickford* v. *Skewes*, 4 My. & Cr. 498.)

An injunction will not be suspended pending an appeal. (*Flower* v. *Lloyd*, 36 L. T. Rep., N. S. 444.)

S. 30.

Or because the defendant has entered into contracts for the supply of the article alleged to be an infringemet. (*Ibid.*)

An injunction may be granted to restrain the sale both before and after the expiration of a patent of articles made by an infringer (*Crossley* v. *Beverley*, 1 Web. P. C. 119), even though the patent has expired at the date of the application for the injunction (*Crossley* v. *The Derby Gas Light Co.*, 4 L. J., Ch. 25); but in this case it must be established that such articles are actually in existence. (*Price's Patent Candle Company* v. *Bauwen's Patent Candle Company*, 4 K. & J., 727.)

2. *Inspection.*

The inspection mentioned in the 42nd section of the Act of 1852, and in this section, is an inspection of the instrument manufactured or machinery or process used by the parties, with a view to evidence of infringement, and does not refer to an inspection of books. (*Vidi* v. *Smith*, 23 L. J., Q. B. 342; *Bovill* v. *Moore*, 2 Coop. C. C. 56.)

Where, as in ordinary cases, the duty of establishing that the patented thing has been pirated lies on the patentee, limited orders of inspection for the purpose of enabling him to discharge that duty, are granted. But such order cannot be granted where the piracy alleged has taken place abroad. (*Neilson* v. *Betts*, L. R., 5 H. L. 1.)

It must, however, be shown that the inspection is material for the purpose of proving the plaintiff's case. (*Piggott* v. *Anglo-American Telegraph Co.*, 19 L. T. Rep., N. S. 46; *Amies* v. *Kelsey*, 22 L. J., Q. B. 84; *Batley* v. *Kynock*, L. R., 19 Eq. 90.)

Where the plaintiff and defendant are competitors in trade, an order to inspect the defendant's works should be confined to scientific men, and not be made to include the plaintiff himself. (*Flower* v. *Lloyd*, W. N. 1876, pp. 169, 230.)

The order for inspection may be made notwithstanding that the defendant carries on his manufacture in secret, and would disclose important trade secrets. (*Bovill* v. *Moore*, 2

Coop. C. C. 56 (n.); *Piggott* v. *Anglo-American Telegraph Co.*, 19 L. T. Rep., N. S. 46; *Russell* v. *Crichton*, 15 Dec. of Court of Sess. 1270.) S. 30.

The order may direct that machinery inspected be put to work during the inspection. (*Davenport* v. *Jepson*, 1 N. R. 307; *Russell* v. *Crichton*, 15 Dec. of Court of Sess. 1270.)

Samples of the goods manufactured may also be ordered to be taken (*Davenport* v. *Jepson*, 1 N. R. 307); as also samples for the purpose of chemical analysis (*Patent Type Founding Co.* v. *Walter*, John. 727; but see same case, 5 H. & N. 192.)

An order of inspection may also be obtained to inspect machines made by the defendant in an action brought by a patentee against his licensee. (*Jones* v. *Lees*, 25 L. J., Exch. 241.)

An application to inspect can be made as soon as the action is commenced, and before statement of claim is delivered. (*Amies* v. *Kelsey*, 22 L. J., Q. B. 84.)

As to the affidavit necessary to support the application see *Shaw* v. *The Bank of England*, 22 L. J., Exch. 26; *Meadows* v. *Kirkman*, 29 L. J., Exch. 205.

In the case of *Russell* v. *Cowley* (1 Web. P. C. 458) the Court not only ordered that the plaintiff's witnesses should inspect the defendant's machinery at work, but that defendant's witnesses should inspect the plaintiff's patented machinery at work, pending an action for infringement, the object of the Court being to enable the parties to give the best evidence as to whether the defendant had been guilty of infringement or not.

Where the defendant dealt in machines which were, as was alleged by the plaintiff, an infringement of his patent, the defendant was not ordered to allow the plaintiff to inspect all the machines in his stock; but was directed to verify on affidavit the several kinds of machines that he had sold or exposed for sale, and to produce one machine of each class for inspection. (*The Singer Sewing Machine Co.* v. *Wilson*, 5 N. R. 505; and see *Morgan* v. *Seaward*, 1 Web. P. C. 169.)

S. 30.

3. *Account or Damages.*

In addition to the jurisdiction given by this section of the Act the Courts have power under *Sir Hugh Cairns' Act* (21 & 22 Vict. c. 27) to order an account of profits or an inquiry into damages. A patentee is not, however, entitled to both, but must elect which form of relief he will adopt. (*De Vitre* v. *Betts*, L. R., 6 H. L. 319; *Neilson* v. *Betts*, L. R., 5 H. L. 1; *Hills* v. *Evans*, 8 Jur., N. S. 531.)

Sir Hugh Cairns' Act, remains in force notwithstanding the passing of the Jud. Acts, and still is of importance in its provisions, as it enables the Court to grant damages in substitution for an injunction, and so to compensate the plaintiff for infringement of his patent, not only up to the date of the issue of the writ, but up to the hearing of the action, or the expiration of the patent if that shall have happened first. (*Fritz* v. *Hobson*, 14 Ch. D. 542.)

Where a bill prayed in the alternative an inquiry as to damages, or an account of profits, but no issue as to damages was submitted to the jury, the Court refused to refer an inquiry to assess damages to Chambers, but granted the alternative. (*Needham* v. *Oxley*, 8 L. T. Rep., N. S. 604.)

Where the patent has expired during the litigation, but the plaintiff succeeds in showing that at the time of instituting proceedings for an injunction he was entitled to that relief, the Court may, under *Sir H. Cairns' Act*, grant him an inquiry as to damages (*Davenport* v. *Rylands*, L. R., 1 Eq. 302), or an account of profits (*Fox* v. *Dellestable*, 15 W. R. 194), but will not do so if such proceedings were taken so immediately before the expiration of the patent as to render it impossible to obtain an interlocutory injunction (*Betts* v. *Gallais*, L. R., 10 Eq. 392).

The right to a decree for an account of the profits made by the manufacture and use of articles in infringement of a patent, is incident to the right to an injunction to restrain future infringements; and where no case is made for the

injunction, the account will not be decreed. (*Smith* v. *The London and South Western Railway Co.*, Kay, 408; *Bailey* v. *Taylor*, 1 R. & M. 73.) S. 30.

This rule applies notwithstanding that it may appear at the hearing that, since an interim injunction was moved for, the defendants have sold articles which, had the facts and law been then sufficiently ascertained, the Court would have restrained them from selling. (*Price's Patent Candle Co.* v. *Bauwen's Patent Candle Co.*, 4 K. & J. 727.)

For illustrations of the practice of the Courts in ordering an account of profits, or an inquiry into damages against infringers, see *Edwards* v. *Normandy*, 12 W. R. 548; *Kernot* v. *Potter*, 3 De G. F. & J. 447; *George* v. *Beaumont*, 27 Rep. Arts, 2nd Series, 252; *Bacon* v. *Spottiswoode*, 1 Beav. 382; *Crossley* v. *Derby Gas Light Co.*, 3 M. & Cr. 428; *Holland* v. *Fox*, 23 L. J., Q. B. 357; against a licensee, *Hadden* v. *Smith*, 17 L. J., Ch. 43; against a person manufacturing patented machines under an agreement, *Moxon* v. *Bright*, L. R., 4 Ch. 292; as to costs where the defendant submits, *Nunn* v. *D'Albuquerque*, 34 Beav. 595. For form of order see *Betts* v. *De Vitre*, 12 L. T. Rep., N. S. 51; L. R., 6 H. L. 319.

Proceedings under an order, directing an account of profits, will, on appeal, be stayed till the hearing of the appeal (which ought to be advanced), where the discovery given by the account would enable the plaintiff to take proceedings against the customers of the defendants, and the defendants, supposing them to be ultimately successful, would thus sustain irreparable injury in their business. (*Adair* v. *Young*, 11 Ch. D. 136; but see *Saxby* v. *Easterbrook*, L. R., 7 Exch. 207.)

The amount of compensation to which a plaintiff is entitled for the infringement of his patent should be calculated by reference to the rate at which he has been in the habit of granting licenses, and he is not entitled to any additional sum in respect of contracts which he has missed by reason of the defendant's piracy. (*Penn* v. *Jack*, L. R., 5 Eq. 81.)

A patentee is entitled to compensation both from the

S. 30.

person who manufactures in infringement of his patent, and also from the person who uses the article so manufactured (*Penn* v. *Bibby*, 3 Eq. 308). But where the user of an unlicensed machine has paid royalty to the patentee no further royalty is payable by the manufacturer. (Ibid. L. R., 5 Eq. 81.)

As to the form of order that should be made, see *Davenport* v. *Rylands*, in which Wood, V.-C., said: "The inquiry will be in the form, 'what damage the plaintiff has sustained,' and not 'what damage, if any,' he has sustained, as it would be in the case of a trade-mark. There is this difference between the case of a trade-mark and that of a patent: in the former case the article sold is open to the whole world to manufacture, and the only right the plaintiff seeks is that of being able to say, 'Don't sell any goods under my mark.' He may find his customers fall off in consequence of the defendant's manufacture; but it does not necessarily follow that the plaintiff can claim damages for every article manufactured by the defendant, even though it be under that mark. On the other hand, every sale without license of a patented article must be a damage to the patentee." (L. R., 1 Eq. 308; cited *per James*, V.-C., *Betts* v. *Gallais*, L. R., 10 Eq. 393.)

The inquiry is limited to six years prior to the commencement of the proceedings (*Davenport* v. *Rylands*, L. R., 1 Eq. 308; *Crossley* v. *Derby Gas Light Co.*, 1 Web. P. C. 119); or in the case of the assignee of a patent to the date of such assignment. (*Ellwood* v. *Christy*, 5 N. R. 312.)

A defendant, against whom an inquiry as to damages has been granted, must make an affidavit as to the number of the patented machines sold by him, and the names and addresses of the purchasers. (*Murray* v. *Clayton*, L. R., 15 Eq. 115.)

Certificate of validity questioned and costs thereon.

S. 31. In an action for infringement of a patent, the Court or a judge may certify that the validity of the patent came in question; and if the Court or a judge so certifies, then in any subsequent action for infringement,

the plaintiff in that action on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless the Court or judge trying the action certifies that he ought not to have the same. S. 31.

The subject-matter of this section was formerly dealt with by the provisions of s. 3 of the 5 & 6 Will. 4, c. 83, and s. 43 of the 15 & 16 Vict. c. 83, and cases decided under both these statutes are useful to the interpretation of the present section. It is to be observed that the "full costs, charges, and expenses" here spoken of are only those in any subsequent "action for infringement," and do not apply to a proceeding by way of revocation, or other litigation. Moreover, the section would seem not to come into operation unless there has been a *trial*. See *Greaves* v. *The Eastern Counties Railway Co.* (28 L. J., Q. B. 290) and *Penn* v. *Bibby* (L. R., 3 Eq. 308).

The words "that the validity of the patent came in question" appear in all three statutes, and constitute a condition precedent to the grant of the certificate.

The validity of the patent comes in question under a plea that the alleged improvements are not new. (*Gillett* v. *Wilby*, 1 Web. P. C. 270.)

Although the pleas may be sufficient to raise the question of the validity of the patent, yet, per *Erskine*, J., the certificate ought not to be granted where the defendant consents to a verdict, without any evidence being given, as such certificate affects third parties, and the verdict by consent might be the result of collusion between the parties. (*Stocker* v. *Rodgers*, 1 C. & K. 99; and see per *Wood*, V.-C., in *Davenport* v. *Rylands*, L. R., 1 Eq. 308; *Betts* v. *De Vitre*, 11 Jur., N. S. 9.)

Where the Court considers the plaintiff entitled to full costs as between solicitor and client, the order should contain an express direction that the costs be so taxed notwithstanding the provision that he shall have such full costs, unless the

S. 31.

judge shall certify that he ought not to have them. (*Lister* v. *Leather*, 4 K. & J. 425.) After taxation the judge has no power to grant a certificate. (*Gillett* v. *Green*, 7 M. & W. 347.)

A certificate under this section is not a "usual certificate," and consequently the plaintiff is not entitled to it on the ground that defendant has settled the action by agreeing to pay certain damages and costs, with all "usual certificates." (*Bovill* v. *Hadley*, 17 C. B., N. S. 435.)

The certificate does not apply to the action in which it is obtained (*Penn* v. *Bibby*, L. R., 3 Eq. 308), but to all subsequent actions whether the validity of the patent is questioned or not. (*Davenport* v. *Rylands*, L. R., 1 Eq. 302.)

It is unnecessary now, as formerly, to put the certificate in evidence in any subsequent action.

Remedy in case of groundless threats of legal proceedings.

S. 32. Where any person claiming to be the patentee of an invention, by circulars, advertisements, or otherwise threatens any other person with any legal proceedings or liability in respect of any alleged manufacture, use, sale, or purchase of the invention, any person or persons aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as may have been sustained thereby, if the alleged manufacture, use, sale, or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats: Provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent. (*a*)

(*a*) The object of this section would seem to be to ensure that the issue, in actions of this kind, shall be whether infringement in fact is being committed. To justify threats of legal proceedings such as are here spoken of the person

making them must be possessed of a valid patent, and the person threatened must be guilty of infringing his rights under such patent, or, he must with due diligence commence and prosecute an action for infringement of his patent. The defendant in the action must, to have a good defence, be in a position to maintain an action for the infringement of which he complains. S. 32.

This is an important change in the law.

Prior to the passing of this section an action such as is therein referred to would lie if the plaintiff affirmatively proved that the defendant's claim was not a *bonâ fide* claim in support of a right which, with or without cause, he fancied he had, but a *malâ fide* and malicious attempt to injure the plaintiff by asserting a claim of right against his own knowledge that it was without any foundation. (*Wren* v. *Weild*, L. R., 4 Q. B. 730.)

An injunction, however, could be obtained if the plaintiff made out that the defendant intended to persevere in making the representations complained of, although his allegation of infringement by the plaintiff was untrue, quite irrespective to any question of *mala fides*. Moreover, a patentee who issued circulars alleging infringement of his patent, was not bound to follow up such circulars by taking legal proceedings. (*Halsey* v. *Brotherhood*, 15 Ch. D. 514, and comments upon *Rollins* v. *Hinks*, L. R., 13 Eq. 355, and *Axmann* v. *Lund*, L. R., 18 Eq. 330.)

Infringement.

As the issue of infringement will be raised in these actions, as well as in actions directly charging that wrong, the substantive law upon the subject is given here in a concise form.

An infringement has been defined as the doing any of the acts specified in the prohibitory clauses of the letters patent. (*Walton* v. *Bateman*, 1 Web. P. C. 616.)

The form of letters patent given in the schedule to the present Act contains the following prohibition:—"We do by

S. 32.

these presents, for us our heirs and successors, strictly command all our subjects whatsoever within our kingdom of Great Britain and Ireland, and the Isle of Man, that they do not at any time during the continuance of the said term of fourteen years either directly or indirectly make use of or put in practice the said invention, or any part of the same, nor in anywise imitate the same, nor make or cause to be made any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof, without the consent of the patentee."

It is quite immaterial with what *intent* the acts are done (*Stead* v. *Anderson*, 2 Web. P. C. 156; *Heath* v. *Unwin*, 25 L. J., C. P. 19; per *Shadwell*, V.C., 15 Sim. p. 553; *Wright* v. *Hitchcock*, L. R., 5 Exch. 37), but if there be neither using nor vending of the invention for profit, the mere making for the purpose of experiment, and not for a fraudulent purpose or under a claim of right, ought not to be considered within the prohibition. (Per *Jessel*, M.R., in *Frearson* v. *Loe*, 9 Ch. D. 66; *Muntz* v. *Foster*, 2 Web. P. C. 101; *Higgs* v. *Godwin*, Ell. Bl. & Ell. 529; *Betts* v. *Willmott*, L. R., 6 Ch. 239; *Jones* v. *Pearce*, 1 Web. P. C. 125.)

The question of infringement is a mixed question of law and fact. (*Curtis* v. *Platt*, 35 L. J., Ch. 852.) Where a question of infringement depends merely on the construction of the specification, it is entirely for the judge; but where it depends upon other circumstances, such as the degree of difference or of similitude between two machines, it is a mixed question of law and fact; what the jury find to have been done is the matter of fact, but the judge must apply that fact according to the rules of law, and is entitled and bound to say whether what has been done amounts to an infringement. (*Seed* v. *Higgins*, 8 H. L. Cas. 550; *De la Rue* v. *Dickinson*, 7 Ell. & Bl. p. 755.)

An action of infringement cannot be maintained for acts done on a British ship on the high seas. (*Newall* v. *Elliott*, 4 N. R. 429.)

Letters patent may be infringed, S. 32.

A. By directly or indirectly putting in practice the patented invention.

Illustrations.

(1.) An English patent for the manufacture of a substance to be applied as capsules to cover the mouths of bottles, is infringed by a person who purchases such capsules from a foreign manufacturer, fixes them upon bottles outside the limits of the patent, but sends such bottles, with the capsules affixed, to his agent in England for transhipment and exportation. (*Neilson* v. *Betts*, L. R., 5 H. L. Cas. 1; see also *Nobel's Explosives Company* v. *Jones, Scott & Co.*, 17 Ch. D. 721, 48 L. T. Rep., N. S. 490; *Caldwell* v. *Vanvlissengen*, 21 L. J., Ch. 97; and *Vavasseur* v. *Krupp*, 9 Ch. D. 351.)

(2.) A patent consisted of the application of cards or strips of leather covered with wire to rollers at "wide distances." A person who contracted to clothe rollers, and supplied to a "nailer" cards of such width that when applied to the rollers they must of necessity leave wide spaces, and who himself paid the nailer, was held to have infringed the patent, though he alleged that his business was that of a card-maker only and did not include the nailer's work. *Semble*, the conclusion would have been the other way if he had merely supplied the cards without making the nailer his agent. (*Sykes* v. *Howarth*, 12 Ch. D. 826.)

B. By directly or indirectly putting in practice a new and material part of the patented invention.

Illustrations.

(1.) A patent for a combination of A. B. and C. *may* be infringed by using a combination of A. and B., or A. and C., or B. and C. But whether such user is an infringement or not can only be determined by considering the nature of the invention, by ascertaining what A. B. and C. are, how they contribute to the object of the invention, and what relation they bear to each other; and by seeing that the subordinate combinations are sufficiently claimed by the specification. (*Lister* v. *Leather*, 8 Ell. & B. 1031; *Clark* v. *Adie* (first app.), 10 Ch. 674; 2 App. Cas. 335; *Harrison* v. *Anderston Foundry Co.*, 1 App. Cas. 578, 593; *White* v. *Fenn*, 15 W. R. 348; *Electric Telegraph Co.* v. *Brett*, 10 C. B. 838; *Smith* v. *London and North Western Railway Co.*, 2 Ell. & B. 69; *Sellers* v. *Dickinson*, 5 Exch. 312; *Newton* v. *Grand Junction Railway Co.*, 5 Exch. 331.)

(2.) A specification claimed the application of centrifugal force by

S. 32.

the use of "a weight." A machine similar in many respects, but, though using weight, or pressure occasioned by weight, as a force, did not use "*a* weight." *Held*, no infringement. (*Seed* v. *Higgins*, 8 H. L. Cas. 550.)

(3.) The use of a part of a patented combination, when that part is not itself patentable, is not an infringement of the combination. (*Parkes* v. *Stevens*, L. R., 8 Eq. 358; 5 Ch. 36.)

(4.) Though the manufacture in this country of the several parts of a patented machine, and the exportation of those parts, may not be an infringement of a patent for a new combination of machinery, when the parts exported are old, it is otherwise where the parts exported are new, and are claimed as new. (*Goucher* v. *Clayton*, 11 Jur., N. S. 462.)

(5.) In a patent for a combination of processes altogether new, leading to one end, any use made of any of the ingredients singly, or any use made of such ingredients in partial combination, some of them being omitted, or any use of all or some of such ingredients in proportion essentially different from those specified, and yet producing a result equally beneficial with the result obtained by the proportions specified, will not constitute an infringement. (*Hill* v. *Thompson*, 8 Taunt. 391.)

(6.) A patent for a new combination of a blast and an exhaust in connection with a mill, in which only the *lower* stone rotates, is infringed by the use of the same combination in connection with a mill in which the *upper* stone rotates. (*Bovill* v. *Keyworth*, 7 Ell. & B. 725.)

(7.) A patent for a reaping machine, the several parts of which are not claimed, is not infringed by the manufacture of the blade or cutter similar to that described in the specification, which does not of itself constitute a machine; but the patent may be infringed by a person who subsequently makes the cutter into a machine which is identical with, or an imitation of, the patented machine. (*M'Cormick* v. *Gray*, 31 L. J., Exch. 42.)

C. By the purchase and sale or offering for sale a patented article.

Illustrations.

(1.) The manufacture of a patent article for the purpose of sale, and offering it for sale, although no sale is actually effected, is an infringement. (*Oxley* v. *Holden*, 8 C. B., N. S. 666: *Wright* v. *Hitchcock*, 39 L. J., Exch. 97; *Muntz* v. *Foster*, 2 Web. P. C. 101; *Gibson* v. *Brand*, 1 Web. P. C. 630; *Minter* v. *Williams*, 1 Web. P. C. 137.)

(2.) The importation into this country, and sale here, of goods manufactured abroad, by a process patented in this country, is an

infringement) *Von Heyden* v. *Neustadt*, 14 Ch. D. 230; *Elmslie* v. *Boursier*, L. R., 9 Eq. 217; *Walton* v. *Lavater*, 29 L. J., C. P. 275); provided it is clear that the goods were not made and sold by the patentee or his agents. (*Betts* v. *Willmott*, L. R., 6 Ch. 239.)

(3.) A license to A. to manufacture a patent article is an authority to his vendees to sell it without the consent of the patentee. (*Thomas* v. *Hunt*, 17 C. B., N. S. 183.)

(4.) A. does not infringe a patent for the use of well-known chemical substances, in a specified manner, to obtain a particular result, by selling such well-known chemical substances to B., with knowledge that B. intends to use them in infringement of the patent, the validity of which he disputes.

If A. sells the known chemical substances to B., not only with knowledge that B. intends to use them in infringement of the patent, but also, in consideration of such purchase, indemnifies B. from all consequences of such purchase and use, both A. and B. knowing the patent to be valid, the agreement for indemnity is invalid as against public policy, but A. is not guilty of infringement.

If, under the same circumstances, the patent is disputed or likely to be disputed, the indemnity is valid, but A. is not guilty of infringement. (*Townsend* v. *Haworth*, 12 Ch. D. 831 (n.).)

D. By putting in practice a colourable imitation of the patented invention, by the use of mechanical or chemical equivalents, or in any other way. (*Dudgeon* v. *Thomson*, 3 App. Cas. 34.)

The principle which protects a patentee against the use by others of mechanical equivalents is inapplicable in a case where the whole invention depends on the peculiar machinery by means of which a well-known object is attained. (*Curtis* v. *Platt*, 35 L. J., Ch. 852; *Bovill* v. *Pimm*, 11 Exch. 718; *Barker* v. *Grace*, 17 L. J., Exch. 122; *Flower* v. *Lloyd*, W. N. 1877, p. 132; *Saxby* v. *Clunes*, 43 L. J., Exch. 228; *Murray* v. *Clayton*, L. R., 10 Ch. 675 (n.).)

Illustrations.

(1.) A.'s invention consisted in stoppering bottles containing aërated water, by means of a cylinder or plug of hard wood, having a *greater* specific gravity than water. B.'s invention consisted in having internal stoppers of *less* specific gravity than the liquid contained in the bottle, the stoppering being effected by means of a weight or closed device

S. 32.

arranged to be temporarliy applied to the stopper, so that the specific gravity of the stopper and closing device combined, exceeded the specific gravity of the liquid contained in the bottle. *Held*, a colourable imitation. (*Barrett* v. *Vernon*, 45 L. T. Rep., N. S. 755, and see *Thorn* v. *Worthing Skating Rink Co.*, 6 Ch. D. 417.)

(2.) A. obtained a patent for improvements in giving signals and sounding alarums in distant places, by means of electric currents transmitted through *metallic circuits*. B. obtained the same result by employing the earth for the transmission of the return circuit:—*Held* an infringement; for although B.'s circuit was not *wholly metallic*, it was so in that part which formed the substance of A.'s patent, viz.: that part which gave the signal. (*The Electric Telegraph Co.* v. *Brett*, 10 C. B. 838; see also *Walton* v. *Potter*, 1 Web. P. C. 585; *United Telephone Co.* v. *Harrison*, 21 Ch. D. 720.)

(3.) A patent, for welding iron in the manufacture of tubes by circular pressure through dies or holes, is infringed by welding produced by passing the iron through grooved rollers, although the result obtained is not so perfect. (*Russell* v. *Cowley*, 1 Web. P. C. 463.)

(4.) A. invented an apparatus for the manufacture of sulphate of soda, consisting of two iron retorts connected together, the essence of the invention consisting of the use of two chambers which could be kept at different temperatures. B. for the same purpose used two chambers, one of iron, and one of brick, connected together and heated by separate furnaces:—*Held*, an infringement. (*Gamble* v. *Kurtz*, 3 C. B. 425.)

(5.) A. patented the use of carburet of manganese in the process for the conversion of iron into cast steel. B. manufactured cast steel by the use of oxide of manganese and carbonaceous matter, which during the process formed carburet of manganese, and produced the same effect, at a cheaper rate:—*Held*, a new invention, and no infringement. (*Unwin* v. *Heath*, 5 H. L. Cas. 505.)

(6.) A. obtained a patent for the improved manufacture of metal plates for sheathing the bottoms of ships. B., who was alleged to have infringed, claimed to be working under a prior patent obtained by C. The following points were characteristic in A.'s process:—

(*a.*) An alloy of 60 per cent. of copper and 40 per cent. of zinc.

(*b.*) Both metals were to be of the best quality, and pure.

C.'s patent directed:—

(*a.*) An alloy of 55½ per cent. of copper and 44½ per cent. of zinc.

(*b.*) Other metals could be used with the alloy of copper and zinc.

The metal sheathing manufactured by B. was found to consist of pure zinc and copper in the proportion of 3 to 2.

Held, an infringement. If the metals had been originally combined

in a pure state, the infringement was plain and direct, if purified in the course of the process, it was a colourable evasion. (*Muntz* v. *Foster*, 2 Web. P. C. 93, 96.) S. 32.

(7.) A patent was granted for an invention for the purification of gas by means of precipitated or hydrated oxides of iron. The specification was held to include such precipitated or hydrated oxides only as were obtained by artificial means. The use of a natural substance, such as bog ochre, containing precipitated oxide of iron, so long as it was used in its native condition, was held not to be an infringement of the patent; but upon this substance being re-oxidized or renovated in the manner described in the specification, or in any other manner, it was brought into the condition of being one of the plaintiff's patented purifying materials, that is, a hydrated or precipitated oxide artificially obtained, the use of which became an infringement. (*Hills* v. *Liverpool Gas Co.*, 32 L. J., Ch. 28.)

(8.) A patent for manufacturing type in the proportion of 75 per cent. of tin, and 25 per cent. of antimony, is infringed by the employment of different proportions of those metals if, in the opinion of the jury, such variations amount only to a colourable evasion of the patent. (*Patent Type Founding Co.* v. *Richards*, Johns. 381.)

Miscellaneous.

Patent for one invention only.

S. 33. Every patent may be in the form in the first Schedule to this Act, and shall be granted for one invention only, but may contain more than one claim; but it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it comprises more than one invention. (*a*)

(*a*) The provision that every patent shall be granted for "one invention only" is new. The Act contains no direct provision that the examiner shall report whether the application and specification are confined to one invention, and no direct provision that the comptroller may require an amendment in such a case. By the 86th section, p. 165, the comptroller has power to refuse to grant a patent for an invention of which *the use* would be contrary to law. This, however, does not justify a refusal on the ground that the specifica-

S. 33.

tion describes more than one invention. The comptroller may, however, it is presumed, refuse to seal on the ground that, in the face of the present section, he has no power to do so. When any such case arises, the applicant is entitled to be heard personally or by his agent, before the comptroller can refuse to seal, provided the applicant has complied with all the other requirements of the Act and Rules. (Sect. 94, p. 168.)

There does not appear to be any provision for an appeal from the refusal of the comptroller to seal on this ground, to the law officers or any other authority. The 7th section (p. 30) gives an appeal only when the comptroller requires an amendment, and the comptroller under this section only has power to amend when the examiner reports that the nature of the invention is not fairly described, or when the application, specification, or drawings are not prepared in the prescribed manner, or when the title does not sufficiently indicate the subject-matter of the invention. It may be contended that the comptroller's refusal to accept is made subject to appeal by sect. 9 (4, p. 33), but this subsection would seem to refer to a refusal to accept upon the grounds dealt with in the preceding sections. Some difficulty as to the practice under this section appears to have been felt, for it is provided by rule 23 (p. 196) that where a person making application for a patent includes therein by mistake, inadvertence, or otherwise, more than one invention, he may, after the refusal of the comptroller to accept such application, amend the same so as to apply to one invention only, and may make application for separate patents for each invention accordingly. Every such application shall bear the date of the first application, and shall, together therewith, be proceeded with in the manner prescribed by the said Act and by these rules as if every such application had been originally made on that date for one invention only.

It is to be observed that this section does not make the use of the form of letters patent, given in the first schedule

to this Act, compulsory. In fact it is provided that this, as well as the other forms in the first schedule, may be altered or amended by rules made by the Board of Trade. (Section 101 (2), p. 171.) S. 33.

A comparison of the forms of letters patent given in the Act of 1852, and in the schedule of the present Act, will make it evident that there are many verbal alterations in the new form which are apparently made, not with the intent of altering the effect of the grant, but merely to shorten the document and modernize the mode of expression. Most of the more important of the operative words fortunately remain unchanged, but it will probably turn out that, notwithstanding the intention of the draftsman, the new words will introduce some unintended changes in the effect of the grant. Some of the verbal alterations introduced merely for the sake of brevity involve obvious absurdity. Thus, for instance, the word "patentee" is, in the third recital, defined as including the inventor together with his executors, administrators and assigns, or any of them. The first proviso makes the patent void if the "patentee," (which by the definition includes his executors, administrators, and assigns) is not "the first and true inventor."

The form appears to be objectionable also in this, that the true effect of the grant cannot be ascertained by the construction of the document itself. The complete terms of the grant do not appear upon the face of the instrument. Thus the patent is void if the patentee does not pay all fees "by law required to be paid," without stating, as the old form did, what those fees are. Again, the patent is void if the patentee does not supply the public service with all such articles of the said invention as may be required, in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled in manner *for the time being* by law provided. The following are the more important differences between the old and new form—

1. The new form recites that the inventor hath by and in

S. 33. his complete specification particularly described the nature of his invention. This does not appear in the old form.

2. The command to justices of the peace, mayors, sheriffs, bailiffs, constables, head boroughs, and other officers and ministers of the Crown not to molest, trouble, or hinder the patentee in the due and lawful use and exercise of the invention, which appears in the old form, is omitted from the new form.

3. The proviso that the grant shall not give privilege to the patentee to use or imitate any invention or work invented by any other subject, and publicly used, to whom letters patent have been granted for the sole use, exercise and benefit thereof, which formed part of the old form, is omitted from the new form.

4. The proviso that if the inventor, his executors or administrators shall not particularly describe and ascertain the nature of the said invention, and in what manner the same is to be performed in the complete specification, which appeared in the old form, is omitted from the new form.

Patent on application of representative of deceased inventor.

S. 34. (1.) If a person possessed of an invention dies without making application for a patent for the invention, application may be made by, and a patent for the invention granted to, his legal representative. (*a*)

(2.) Every such application must be made within six months of the decease of such person, and must contain a declaration by the legal representative that he believes such person to be the true and first inventor of the invention.

(*a*) Letters patent are personal property, and the "legal representative" here spoken of would appear to be the executor or administrator, and not the heir at law. This provision is new and of great value. Before the passing of

this section the legal personal representative of a person who had made an invention, but had not taken out letters patent for it, could not obtain the grant. (*Marsden* v. *The Saville Street Foundry*, 3 Exch. D. 203.) S. 34.

S. 35. A patent granted to the true and first inventor shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection. Patent to first inventor not invalidated by application in fraud of him.

It is important to bear in mind that the protection from publication consequent upon a fraudulent application only extends over the period of provisional protection, and that therefore the true and first inventor should apply for his patent and obtain provisional protection for himself during that period.

An action may be brought for fraudulently obtaining a patent in breach of an agreement (*Smith* v. *Dickinson*, 3 B. & P. 630).

S. 36. A patentee may assign his patent for any place in or part of the United Kingdom, or Isle of Man, as effectually as if the patent were originally granted to extend to that place or part only. Assignment for particular places.

A patent in the form given in the schedule to this Act is a grant to the inventor, his executors, administrators and assigns, therein referred to as the patentee. So that the original grant contemplates a possible assignment. The 35th section of the Act of 1852 authorized the assignment of a patent for England, Scotland, or Ireland respectively, as if the patent had been originally granted to extend to those countries only (and see *Bovill* v. *Finch*, L. R., 5 C. P. 523). This power is carried still further by the present section. The present Act defines the word "patentee" as the person for the time being entitled to the benefit of the patent

S. 36. (section 46, p. 126), so that an assignee of a patent may exercise the power conferred by this section.

Letters patent are personal property, and on the death of a grantee they pass to his executors or administrators, and not to his heir, and may be assigned prior to registration of probate. (*Ellwood* v. *Christy*, 34 L. J., C. P. 130.) An assignment of an interest in a patent must be by deed.

There is no implied warranty of title or quality on the sale and assignment of a patent, and the purchaser, in the absence of an express warranty, takes the seller's right, such as it is, without regard to whether it can be sustained upon litigation or not. (*Hall* v. *Conder*, 2 C. B., N. S. 22; on appeal, p. 53; *Smith* v. *Neale*, 2 C. B., N. S. 67; *Smith* v. *Buckingham*, 18 W. R. 314.)

But if the sale is fraudulent it may be set aside, and the purchase money may be recovered back. (*Lovell* v. *Hicks*, 2 Y & C. 46.)

Loss or destruction of patent.

S. 37. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the comptroller, the comptroller may at any time cause a duplicate thereof to be sealed.

This is a re-enactment, with extension, of the 22nd section of the Act of 1852. The practice under that section was to petition the Lord Chancellor, and support the same by an affidavit verifying the facts alleged therein. A fresh fee of £5 was imposed.

Form N., p. 225, is provided for applications under this section. The fee for duplicate of Letter-Patent is £2, see p. 212.

Proceedings and costs before law officer.

S. 38. The law officers may examine witnesses on oath and administer oaths for that purpose under this part of this Act, and may from time to time make, alter, and rescind rules regulating references and appeals to the law officers and the practice and procedure before them under this part of this Act; and in any proceeding before either

of the law officers under this part of this Act, the law officer may order costs to be paid by either party, and any such order may be made a rule of the Court. (*a*) S. 38.

(*a*) See sections 7, 11 and 18, and notes thereto, and rules made by the law officers, p. 208.

S. 39. The exhibition of an invention at an industrial or international exhibition, certified as such by the Board of Trade, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor or his legal personal representative to apply for and obtain provisional protection and a patent in respect of the invention or the validity of any patent granted on the application, provided that both the following conditions are complied with, namely,— Exhibition at industrial or international exhibition not to prejudice patent rights.

(*a.*) The exhibitor must, before exhibiting the invention, give the comptroller the prescribed notice of his intention to do so; and

(*b.*) The application for a patent must be made before or within six months from the date of the opening of the exhibition.

This section deals with the subject-matter of sect. 3 of the Industrial Exhibitions Act, 1865 (28 Vict. c. 3), and of sect. 2 of the Protection of Inventions Act, 1870 (33 & 34 Vict. c. 27). Both these Acts are repealed by the present Act. A form of notice of intended exhibition of an unpatented invention is given at p. 226. A fee of 10*s.* has to be paid on giving the notice, p. 212.

S. 40.

Publication of illustrated journal, indexes, &c.

S. 40. (1.) The comptroller shall cause to be issued periodically an illustrated journal of patented inventions, as well as reports of patent cases decided by courts of law, and any other information that the comptroller may deem generally useful or important. Every applicant for a patent must furnish with his complete specifications an additional drawing illustration of the features of novelty constituting his invention, prepared in the prescribed manner, accompanied by a concise explanatory statement, to be published in the "Illustrated Journal."

(2.) Provision shall be made by the comptroller for keeping on sale copies of such journal, and also of all complete specifications of patents for the time being in force, with their accompanying drawings, if any. (*a*)

(3.) The comptroller shall continue, in such form as he may deem expedient, the indexes and abridgments of specifications hitherto published, and shall from time to time prepare and publish such other indexes, abridgments of specifications, catalogues, and other works relating to inventions, as he may see fit.

(*a*) It will be observed that under this section it is the complete specifications of patents *for the time being in force* only that are to be kept on sale. This is by no means satisfactory, as the specifications of expired patents are of equal importance in the trial of the novelty issues in patent actions, and the absence of a sufficient supply of such specifications causes great inconvenience.

Patent Museum.

S. 41. The control and management of the existing

Patent Museum, and its contents, shall from and after the commencement of this Act, be transferred to and vested in the Department of Science and Art, subject to such directions as Her Majesty in Council may see fit to give. S. 41.

S. 42. The Department of Science and Art may at any time require a patentee to furnish them with a model of his invention on payment to the patentee of the cost of the manufacture of the model; the amount to be settled, in case of dispute, by the Board of Trade. Power to require models on payment.

S. 43. (1.) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of any of Her Majesty's Courts in the United Kingdom, or Isle of Man, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connexion with the manufacture or preparation of anything intended to be sold in or exported from the United Kingdom or Isle of Man. Foreign vessels in British waters.

(2.) But this section shall not extend to vessels of any foreign state of which the laws authorise subjects of such foreign state, having patents or like privileges for the exclusive use or exercise of inventions within its territories, to prevent or interfere with the use of such inventions in British vessels while in the ports of such foreign state, or in the waters within the jurisdiction of its courts, where such inventions are not so used for the manufacture or preparation of anything intended to be sold in or exported from the territories of such foreign state.

S. 43. This is a re-enactment, with verbal alterations, of the 26th section of the Act of 1852.

See *Caldwell* v. *Vanvlissengen*, 21 L. J., Ch. 97.

Assignment to Secretary for War of certain inventions.

S. 44. (1.) The inventor of any improvement in instruments or munitions of war, his executors, administrators, or assigns (who are in this section comprised in the expression the inventor) may (either for or without valuable consideration) assign to Her Majesty's Principal Secretary of State for the War Department (herein-after referred to as the Secretary of State), on behalf of Her Majesty, all the benefit of the invention and of any patent obtained or to be obtained for the same; and the Secretary of State may be a party to the assignment.

(2.) The assignment shall effectually vest the benefit of the invention and patent in the Secretary of State for the time being on behalf of Her Majesty, and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and effectual (notwithstanding any want of valuable consideration), and may be enforced accordingly by the Secretary of State for the time being.

(3.) Where any such assignment has been made to the Secretary of State, he may at any time before the application for a patent for the invention, or before publication of the specification or specifications, certify to the comptroller his opinion that, in the interest of the public service, the particulars of the invention and of

the manner in which it is to be performed should be kept secret.

(4.) If the Secretary of State so certifies, the application and specification or specifications, with the drawings (if any), and any amendment of the specification or specifications, and any copies of such documents and drawings, shall, instead of being left in the ordinary manner at the patent office, be delivered to the comptroller in a packet sealed by authority of the Secretary of State.

(5.) Such packet shall until the expiration of the term or extended term during which a patent for the invention may be in force, be kept sealed by the comptroller, and shall not be opened save under the authority of an order of the Secretary of State, or of the law officers.

(6.) Such sealed packet shall be delivered at any time during the continuance of the patent to any person authorised by writing under the hand of the Secretary of State to receive the same, and shall if returned to the comptroller be again kept sealed by him.

(7.) On the expiration of the term or extended term of the patent, such sealed packet shall be delivered to any person authorised by writing under the hand of the Secretary of State to receive it.

(8.) Where the Secretary of State certifies as aforesaid, after an application for a patent has been left at the patent office, but before the publication of the specification or specifications, the application, specification or specifications, with

S. 44.

the drawings (if any), shall be forthwith placed in a packet sealed by authority of the comptroller, and such packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the Secretary of State.

(9.) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which the Secretary of State has certified as aforesaid.

(10.) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but save as in this section otherwise directed, the provisions of this part of this Act shall apply in respect of any such invention and patent as aforesaid.

(11.) The Secretary of State may, at any time by writing under his hand, waive the benefit of this section with respect to any particular invention, and the specifications documents and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12.) The communication of any invention for any improvement in instruments or munitions of war to the Secretary of State, or to any person or persons authorised by him to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

This section is a re-enactment, with verbal alterations, of the 22 Vict. c. 13. S. 44.

Existing Patents.

Provisions respecting existing patents.

S. 45. (1.) The provisions of this Act relating to applications for patents and proceedings thereon shall have effect in respect only of applications made after the commencement of this Act.

(2.) Every patent granted before the commencement of this Act, or on an application then pending, shall remain unaffected by the provisions of this Act relating to patents binding the Crown, and to compulsory licenses.

(3.) In all other respects (including the amount and time of payment of fees) this Act shall extend to all patents granted before the commencement of this Act, or on applications then pending, in substitution for such enactments as would have applied thereto if this Act had not been passed.

(4.) All instruments relating to patents granted before the commencement of this Act required to be left or filed in the Great Seal Patent Office shall be deemed to be so left or filed if left or filed before or after the commencement of this Act in the patent office.

All applications for patents made prior to the coming into operation of the Act (January 1, 1884) will be conducted according to the old law, section 113 (p. 178) and subsection (1.) of this section. Every patent granted prior to the above date, or on an application pending prior thereto, will be subject to the new law, just as much as a patent granted after the above date, except in two respects, viz. :—

S. 45.

(1.) That they will not bind the Crown. See section 27 and notes thereon, p. 76; and

(2.) The patentee shall not be subject to the provisions relating to compulsory licenses. See section 22 and notes thereon, p. 59.

As to the payment of fees see rules 42 to 45 inclusive, p. 200.

Definitions.

Definitions of patent, patentee, and invention.

S. 46. In and for the purposes of this Act—

"Patent" means letters patent for an invention:

"Patentee" means the person for the time being entitled to the benefit of a patent:

"Invention" means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies (that is, the Act of the twenty-first year of the reign of King James the First, chapter three, intituled "An Act concerning monopolies and dispensations with penal laws and the forfeiture thereof"), and includes an alleged invention. (*a*)

In Scotland "injunction" means "interdict."

(*a*) The 6th section of the Statute of Monopolies is as follows:—"Provided also, and be it declared and enacted, that any declaration before mentioned (against monopolies) 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 or 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 accompted 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." S. 46.

This definition of the word "invention" leaves the law unchanged, and whatever is good subject-matter within the 6th section of the Statute of Monopolies is still patentable.

The following classification of patentable and unpatentable inventions is founded upon the cases decided under the above section of the Act of James the First.

1. *Patentable Inventions.*

(A.) The production of a known substance by a new process. (*Simpson* v. *Holliday*, L. R., 1 H. L. 315; *Stevens* v. *Keating*, 2 Web. P. C. 181; *Young* v. *Fernie*, 4 Giff. 611; *Curtis* v. *Platt*, 3 Ch. D. 138.)

Illustrations.

(1.) A patent was granted for a process of manufacturing iron tubes by drawing them through fixed dies or holes *without the use of a mandrel.* Before, the patent iron tubes were made by drawing them through rollers, a mandrel being placed inside the tube so as to form an internal support:—*Held*, good subject-matter. (*Russell* v. *Cowley*, 1 C. M. & R. 864.)

(2.) The process of obtaining gelatine by submitting large pieces of hides to the action of caustic alkali, or by reducing them to pulp in a paper machine, and employing blood to purify the product was known. A process consisting in cutting the hides into shavings, thin slices, or films, whereby the use of blood in the process of purification became unnecessary was held patentable. (*Wallington* v. *Dale*, 23 L. J., Exch. 49.)

(3.) The direct use of seeds, leaves and other substances containing oily or resinous matter in the manufacture of gas, instead of making it from the oils, resins, and gums extracted therefrom, was held a good subject-matter if new. (*Booth* v. *Kennard*, 26 L. J., Exch. 23.)

(4.) A process of precipitating animal and vegetable matter contained in sewage water by means of slaked lime, by which a manure of commercial value was obtained, held patentable. (*Higgs* v. *Godwin*, 27 L. J., Q. B. 421.)

(5.) A patent was held good which claimed the use of the hydrated oxides of iron to remove sulphuretted hydrogen in the manufacture of

S. 46.

gas, in the way described. (*Hills* v. *London Gas Light Co.*, 29 L. J., Exch. 409.)

(6.) A method of disposing plates of iron so as to secure buildings from fire, held good subject-matter. (*Hartley's Case*, 2 H. Bl. 493.)

(B.) A new combination of old materials, even though in use for the same purpose, so as to produce a new result, or an old result more expeditiously, or in a more economical manner, or of a better quality. (*Murray* v. *Clayton*, L. R., 7 Ch. 584; *Cannington* v. *Nuttall*, L. R., 5 H. L. 205; *Huddart* v. *Grimshaw*, Dav. P. C. 267; *Hill* v. *Thompson*, 1 Web. P. C. 237; *Brunton* v. *Hawkes*, 4 B. & Ald. 550.)

Illustrations.

(1.) The shearing of cloth from list to list by shears, and the shearing it from end to end by rotary cutters was known. A machine to shear from list to list by rotary cutters held patentable. (*Lewis* v. *Davis*, 1 Web. P. C. 488.)

(2.) Machines for carding wool, &c., consisted, prior to the invention of the plaintiff, of a series of large cylinders on which smaller cylinders revolved, the last of the series of smaller cylinders being termed a "fancy roller," and was used to raise the fibre on the surface of the larger roller. The rollers were covered with "cards" (strips of leather thickly studded with short wires). These cards were cleaned by means of a hand-scraper, an objectionable method, inasmuch as from the fact of the person using the scraper having to stand at a side of the machine, and thus being unable to draw the scraper in an exact line with the gates of the cards (passages between the wires), the cards were liable to be injured. The plaintiff obtained a grant of letters patent for improvements in fancy rollers, by the introduction of wide spaces between the cards, which produced an exhaust current of air, and made the rollers operate in their function as fancy rollers. In addition to this, the fancy rollers were applicable and employed for cleaning the other card-covered cylinders. *Held*, on the principle of *Murray* v. *Clayton*, L. R., 7 Ch. 577, that the improvements were a proper subject-matter for a patent. (*Sykes* v. *Howarth*, 12 Ch. D. 826.)

(3.) The application of soap and water in combination with rollers in the process of felting, held good subject-matter, notwithstanding that the use of soap and water, and of rollers separately in the same process, was old. (*Allen* v. *Rawson*, 1 C. B. 551.)

S. 46.

(4.) An invention consisting in exhausting the air from the cases of millstones combined with the application of a blast to the grinding surfaces, held patentable, notwithstanding that both the blast and the exhaust had previously been used separately in working mills. (*Bovill* v. *Keyworth*, 7 Ell. & B. 725.)

(5.) The application of a flame as described, for softening the fibres of the wood, while being bent in combination with a clamping apparatus for securing the wood in its bent form until the fibres are set, is a patentable invention. (*Dangerfield* v. *Jones*, 13 L. T. Rep., N. S. 142.)

(6.) A specification claimed, (*a*) the general construction, arrangement, and combination of machinery, apparatus or means for producing crimped plaited frills or trimmings in a sewing-machine, as hereinbefore described; (*b*) the application and use of a reciprocating knife for crimping fabrics in a sewing-machine, substantially as hereinbefore mentioned. Anterior to the date of the patent, frills or ruffles were made by hand, the materials being folded by a knife and then sewn by a machine. *Held*, good subject-matter. (*Wright* v. *Hitchcock*, L. R., 5 Exch. 37.)

(7.) In 1829 A. obtained a patent for the use of hot air in furnaces. In 1837 B. 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 B. under a license from A. 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. *Held*, that such combination was a patentable invention. (*Crane* v. *Price*, 4 M. & G. 580, and see *Clark* v. *Adie*, per Lord *Blackburn*, 2 App. Cas. 335.)

(8.) A. obtained a patent in 1874 for improvements in interlocking apparatus for railway points and signals. The object of the invention was the prevention of accidents on railways arising from conflicting signals or improperly arranged switches or points. These objects were attained by the operation of nine separate parts, which were divisible into those effecting (1) the actuating process, and (2) the locking-gear. All the nine parts were in themselves old, and no new result was obtained by their combination, in 1874.

The apparatus for the actuating process was identical in parts, principle, and result, with an invention patented in 1871. The locking apparatus was substantially the same as that for which a patent had been granted in 1870. It was proved that a person of ordinary mechanical knowledge could combine these two inventions without further experiments. *Held*, that A.'s patent was not of

S. 46. sufficient novelty to constitute the subject of a valid patent. (*Saxby* v. *The Gloucester Wagon Co.*, 7 Q. B. D. 305.)

(C.) An addition to an old machine or process is a patentable invention, but must be confined to the improvement. (*Boulton* v. *Bull*, 2 H. Bl. 489; *Morris* v. *Branson*, 1 Web. P. C. 51; *Hornblower* v. *Boulton*, 8 T. Rep. 104; *R.* v. *Arkwright*, 1 Web. P. C. 71; *Ex parte Fox*, 1 Web. P. C. 431; *Lister* v. *Leather*, 8 Ell. & B. 1017.)

(D.) The application of a known machine, process, or material, to a *new purpose*, producing a practical beneficial result, provided there is novelty and invention in the mode of application. (*Penn* v. *Bibby*, L. R., 2 Ch. 127; *Harwood* v. *Great Northern Railway Co.*, 31 L. J., Q. B. 198, on appeal, 11 H. L. Cas. 654; *Bailey* v. *Roberton*, per Lord *Blackburn*, 3 App. Cas. p. 1079.)

Illustrations.

(1.) A claim for the application of india-rubber, in a state of solution, as a cement between two fabrics to make a waterproof covering, is good, notwithstanding the application of other substances, and of india-rubber in other states, to the same purpose. (*Macintosh* v. *Everington*, 6 Rep. Arts, N. S. 317, 365.)

(2.) Application and adaptation of caoutchouc or india-rubber, as a substitute for the fillets or sheets of leather in cards for carding wool, &c., held patentable. (*Walton* v. *Potter*, 1 Web. P. C. 597.)

(3.) The application of a known alloy of copper and zinc to the purpose of sheathing the bottom of ships, being both new and useful, was held to be the subject-matter of a patent. (*Muntz* v. *Foster*, 2 Web. P. C. 103.)

(4.) The application of a known nipping lever for causing the rotation of wheels, by means of a sliding box which was new, held patentable. (*Pow* v. *Taunton*, 9 Jur. 1056.)

(5.) A patent may be obtained for the use of a solution of one or more chemical substances for a particular purpose, without confining the claim to any particular mode of use or application. (*Bailey* v. *Roberton*, per Lord *Cairns*, L.C., 3 App. Cas. 1064; and Lord *Blackburn*, Ib. p. 1077.)

(6.) A process of extracting the colouring matter from fresh madder, by means of hot water and acid, being known, the application of the

same process to spent madder was held patentable if the jury thought it a *new* manufacture. (*Steiner* v. *Heald*, 20 L. J., Exch. 410.) S. 46.

(7.) A. obtained a patent in 1839 for an improvement in packing hydraulic and other machines by means of a lining of soft metal, the effect of which was to make certain parts of the machine air and fluid tight. B. obtained a patent in 1843 for the application of the same metal to the surfaces in contact of machines in rapid motion and subject to pressure, thereby diminishing friction, and preventing the evolution of heat. *Held*, that B.'s patent was not anticipated by A.'s patent. (*Newton* v. *Vaucher*, 6 Exch. 859.)

(8.) Patent for bearings for shafts of screws and submerged propellers. The inner surfaces were grooved to receive fillets of wood, which projected to some extent beyond the inner surfaces of the metal bearings, so as to prevent the shaft coming into contact with the metal of the bearings, and these spaces admitted of the water flowing freely between the shaft and the inner surfaces of the metal bearings. The only examples of prior use was in grindstones and water-wheels. *Held*, a good patent. (*Penn* v. *Bibby*, L. R., 2 Ch. 127.)

(E.) A new principle or idea as regards an art or manufacture, coupled with a mode of carrying that principle or idea into practice, as by a machine, although the principle or the machine would not alone be patentable. (*Otto* v. *Linford*, 46 L. T. Rep., N. S. 35; *Badische Anilin und soda Fabrik* v. *Levinstein*, 24 Ch. D. 156; *Patterson* v. *Gas Light and Coke Co.*, 2 Ch. D., p. 833; *Boulton* v. *Bull*, 2 H. Bl., p. 496: *Jupe* v. *Pratt*, 1 Web. P. C. 146; *Neilson* v. *Harford*, 1 Web. P. C. 342; *The Househill Iron Co.* v. *Neilson*, 1 Web. P. C. 683; *Hills* v. *London Gas Light Co.*, 29 L. J., Ex. 409; *Minter* v. *Wells*, 4 L. J., Exch. 2.)

2. *Unpatentable Inventions.*

(A.) The mere application of a known machine, process, or material in the old way to an analogous purpose, without any novelty in the mode of application. (*Harwood* v. *The Great Northern Railway Co.*, 11 H. L. Cas. 654; *Horton* v. *Mabon*, 16 C. B., N. S. 141; *Ormson* v. *Clarke*, 32 L. J., C. P. 8; on appeal, 32 L. J., C. P. 291; *Losh* v. *Hague*, 1 Web. P. C. 208; *White* v. *Toms*, 37 L. J., Ch. 204.)

S. 46.

Illustrations.

(1.) The adaptation of a sliding door to a spherical lamp, sliding doors having previously been applied to cylindrical lamps. (*Parkes* v. *Stevens*, L. R., 5 Ch. 36.) The substitution of a slide for a hinge, whether applied to the door of a house, the door of a carriage, or the door of a lamp. (Ibid. L. R., 8 Eq. 367.)

(2.) Channelled plates of iron, with square-headed bolts and screws, having previously been used for the purpose of fastening timbers together when placed vertically upon one another, and when placed horizontally side by side, and when placed end to end, a patent cannot be maintained for similar plates applied as fishes or fish-joints for railway rails. (*Harwood* v. *Great Northern Railway Co.*, 11 H. L. Cas. 654.)

(3.) Calendering, by passing the cloth between a smooth roller and a bowl, the surface velocity of the two being unequal; and embossing, by passing the cloth between a roller, which had the pattern to be transmitted to the cloth engraved upon it, and a bowl, the surface velocity of the two being equal, being well known, the employment of a roller with *circular* grooves round its surface, driven at a greater speed than the bowl connected with it, so as to perform the calendering and embossing by one operation, was held not patentable, the particular combination of machinery not being claimed. (*Ralston* v. *Smith*, 11 H. L. Cas. 223.)

(4.) A caisson for excavating and sinking shafts, &c., on land being known, a patent cannot be obtained for the application of a similar caisson, worked in the same mode, for building and working under water. (*Bush* v. *Fox*, 5 H. L. Cas. 707.)

(5.) The use of a model or mandrel, for producing given forms of pliable materials, being old, a patent for the application of a model or mandrel in the form of a bottle in making envelopes for bottles, held bad, the only novelty consisting in the form of the utensil produced and the sort of material applied. (*The Patent Bottle Envelope Co.* v. *Seymer*, 28 L. J., C. P. 22.)

(6.) The use of certain machinery for the purposes of burnishing linen and cotton yarn being known, a patent cannot be obtained for applying the same machinery for the same purpose to yarns of wool and hair, or to fabrics or piece-goods of cotton, linen, silk, wool, hair or other fabrics. (*Brook* v. *Aston*, 27 L. J., Q. B. 145.)

(7.) The use of steel watch springs, in substitution of whalebone, cane, and other substances in forming ladies' petticoats, held not the subject-matter of a patent. (*Thompson* v. *James*, 32 Beav. 570.)

(8.) A patent for the application of animal fibre, by preference Russian wool, or wool of a coarse texture, in the manufacture of

artificial hair to be made up as ladies' head-dresses, and for upholstery, and other like purposes, held bad. (*Rushton* v. *Crawley*, L. R., 10 Eq. 522.) S. 46.

(9.) The spinning of dry cotton at a short reach, and the use of moisture in spinning at long reaches, being known, the application of the short reach to the spinning of flax, when in a state of maceration, was held not to be patentable. (*Kay* v. *Marshall*, 2 Web. P. C. 71, on appeal, 79.)

(10.) The jury having found that double-angle iron was a known article of commerce, of a variety of sizes, and applied to a variety of purposes, it was held that a patent could not be maintained for the mere application of double-angle iron to the construction of the troughs of the hydraulic joints of telescope gas-holders. (*Horton* v. *Mabon*, 12 C. B., N. S. 437; on appeal, 16 C. B., N. S. 141.)

(11.) The compensating value having been used in the pedal bellows of organs, the application of a compensating value to a pneumatic lever (a kind of bellows) was not the subject-matter of a patent. (*Willis* v. *Davison*, 1 N. R. 234.)

(B.) There can be no patent for a mere principle or idea uncoupled with a mode of carrying the principle or idea into effect. (*Boulton* v. *Bull*, 2 H. Bl. 463; *Hornblower* v. *Boulton*, 8 Term Rep. p. 101 and p. 106; *Jupe* v. *Pratt*, 1 Web. P. C. 146; *Neilson* v. *Harford*, 1 Web. P. C. 295; *Househill Iron Co.* v. *Neilson*, 1 Web. P. C. 673; *Otto* v. *Linford*, 46 L. T. Rep., N. S. 35; *Patterson* v. *Gas Light and Coke Co.*, 2 Ch. D. 827; 3 App. Cas. 239.)

By the word "principle" is meant "any law of nature, or any property of matter apart from any mode of turning it to account in the practical operations of manufacture, or the business, and acts, and utilities of life." (*The Househill Iron Co.* v. *Neilson*, 1 Web. P. C. 683.) It includes "either the radical elementary truths of science, or those consequential axioms which are founded on radical truths, but which are used as fundamental truths by those who do not find it expedient to have recourse to first principles. (*Boulton* v. *Bull*, 2 H. Bl. 479.)

A person who first discovers the theory and reason of that which before had been done empirically, is not entitled to a

S. 46.

patent for that principle, but if by reason of knowing the theory, he is enabled to make some improvements, he may take out a patent for those improvements (*Patterson* v. *The Gas Light and Coke Co.*, *per* Lord *Blackburn*, 3 App. Cas. 246); nor for a mere working direction and instruction, although it may be of the greatest possible practical value and utility. (Ibid. 2 Ch. D. 834.)

Novelty.

The power of granting patents for manufactures, reserved to the Crown by the 6th section of the Statute of Monopolies (see p. 126), extends only to such new manufactures within this realm which others at the time of making such letters patent shall not use. By reference to the form of letters patent given in the schedule to the present Act, p. 183 (the use of which, however, is not compulsory, see section 12, p. 43, and section 33, p. 113), it will be found that it is therein recited that the patentee hath by his solemn declaration represented to the Crown that he is the true and first inventor, and that the invention for which the patent is granted is not in use by any other person to the best of his knowledge and belief. The grant of letters patent is also made subject to a proviso that if the said invention is not a new invention as to the public use and exercise thereof within the United Kingdom of Great Britain and Ireland, and Isle of Man, or that the said patentee is not the first and true inventor thereof within the realm as aforesaid, the letters patent shall forthwith determine, and be void to all intents and purposes.

These words are to the same effect as those used in the form of letters patent given in the Act of 1852, and it has been held that a patent granted in accordance with that form is not invalidated by a prior user in a British Colony. (*Rolls* v. *Isaacs*, 19 Ch. D. 268.)

The publication of a certain application of a known material, will not invalidate a subsequent patent for a new

and different application of the same material. (*Newton* v. *Vaucher*, 6 Exch. 859.) S. 46.

So when the object of two patents is the same, but the mode of effecting that object, which is the thing claimed, is different, the prior patent does not affect the novelty of the subsequent one. (*Hullett* v. *Hague*, 2 B. & Ad. 370.) Again, the antecedent existence of an invention which was so far similar, that, if subsequent in date to the patent, it would have been held a colourable and clumsy imitation for the purpose of effecting the same result, was held not to invalidate the patent by anticipation. (*Daw* v. *Eley*, L. R., 3 Eq. 496.)

The exhibition of a useless machine which has turned out a failure does not affect the rights of a patentee who has made a successful machine, although there may be a degree of similarity between the details of the two machines. (*Murray* v. *Clayton*, per *James*, L.J., L. R., 7 Ch. 581; and see *Minter* v. *Mower*, 1 Web. P. C. 140.) Neither is it enough that there has been a general disclosure of the object to be attained, unless it is also clearly pointed out how that object is to be attained. (*Neilson* v. *Betts*, L. R., 5 H. L. 2.)

A patent is not invalidated because another person has, prior to the date of the patent, discovered the same thing, provided it has not become public, and the patentee is himself also an original discoverer. (*Dolland's Patent*, cited in *Boulton* v. *Bull*, 2 H. Bl. 469; *Lewis* v. *Marling*, 1 Web. P. C. 493; *Hill* v. *Thompson*, 1 Web. P. C. 244; *Cornish* v. *Keene*, 1 Web. P. C. 508.) Nor on the ground that the patented invention includes the subject-matter of a prior patent; but if such prior patent has not expired, the subsequent patent cannot be worked without first obtaining the license of the prior patentee. (*Lister* v. *Leather*, 8 Ell. & Bl. 1004; *Crane* v. *Price*, 1 Web. P. C. 413.) Nor by trials of an incomplete invention, by way of experiments only, although performed in public. (*The Householl Co.* v. *Neilson*, 9 C. & F. 788; *In re Newall &*

S. 46.

Elliott, 4 C. B., N. S. 269; *Hills* v. *London Gas Light Co.*, 5 H. & N. 312; *Galloway* v. *Bleaden*, 1 Web. P. C. 525; *Cornish* v. *Keene*, 1 Web. P. C. 508, 519; *Stead* v. *Williams*, 2 Web. P. C. 136.) The secret user of an invention will not anticipate a subsequent patent for that invention, for the words "known and used" mean, known to the public and openly used. (*Smith* v. *Davidson*, 19 C. S. 691; *Hills* v. *London Gas Light Co.*, 5 H. & N. 336; *Bentley* v. *Fleming*, 1 C. & K. 587; *Carpenter* v. *Smith*, 1 Web. P. C. 530, 540; *Heath* v. *Smith*, 23 L. J., Q. B. 166.)

The 35th section (p. 117) of the present Act provides that a patent granted to the true and first inventor shall not be invalidated by the application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention *subsequent* to that fraudulent application during the period of provisional protection.

It is for the jury to determine whether a patented invention has been anticipated by a prior public user. (*Cornish* v. *Keene*, 3 Bing. N. C. 588; *Elliott* v. *Aston*, 1 Web. P. C. 222; *Spencer* v. *Jack*, 11 L. T. Rep., N. S. 242.)

A patent may be anticipated, and, therefore, rendered void in any of the following ways:—

(A.) By prior public user of the invention.

(B.) By prior publication of the invention.

(C.) By offering the patented article for sale.

(D.) By want of novelty in part of the invention.

These will be considered in the above order.

A. *By prior public user of the invention.*

If the invention was in public use prior to the grant, the patent is void. This is so notwithstanding that there has been no user *by* the public, and that the article has not been manufactured for the purpose of sale. (*Harwood* v. *The Great Northern Railway Co.*, 11 H. L. Cas. 654; *Betts* v. *Neilson*, L. R., 3 Ch. 429; *The Househill Co.* v. *Neilson*, 1 Web.

P. C 673; *Carpenter* v. *Smith*, 9 M. & W. 300; *Cornish* v. *Keene*, 1 Web. P. C. 508.) S. 46.

Illustrations.

(1.) A patent for making or paving public streets and highways, and public and private roads, courts and bridges with timber or wooden blocks, was invalidated by proof that the porch of a private dwelling-house had been paved in a similar manner prior to the patent. (*Stead* v. *Williams*, 2 Web. P. C. 126; *Stead* v. *Anderson*, 2 Web. P. C. 147.)

(2.) Patent for improvements in the manufacture of iron and steel. Proved that, before the date of the patent, five persons had used the process independently, three of them without concealment, and all five had publicly and generally sold, for their own profit, the article thereby produced. Patent held void. (*Heath* v. *Smith*, 23 L. J., Q. B. 166.)

(3.) A. whilst engaged in carrying into effect a contract for the erection of a pier, invented certain machinery, which he used on the works for four months before applying for a patent, not for the purpose of testing it by experiment, but in carrying out the contract, during which time it was open to the inspection of the public. *Held*, that the patent was bad. (*In re Adamson's Patent*, 25 L. J., Ch. 456.)

(4.) Patent for a lock. Proof that the lock had been put upon a gate in a public place, and used for many years prior to the patent. *Held*, that this was a public user, and that the patent was void. (*Carpenter* v. *Smith*, 1 Web. P. C. 530, 540.)

(5.) A. obtained a patent for fishes and fish-joints for connecting the rails of railways. The fishes were made of iron, with a groove on the outer surface, for the purpose of preventing the square heads of the bolts passing through them and the rail, from turning round, and also for the purpose of procuring greater strength with an equal weight of metal than could have been obtained from a fish of the same thickness throughout. Before these letters patent had been granted, grooved iron plates, with bolts let into the groove, had been used for the purpose of fastening timbers placed vertically upon one another, or placed horizontally side by side. In one case of a bridge, channelled plate with bolts had been used for the purpose of fishing a scarf joint, where the ends of two timbers met together, but it had not been used with the view either of fixing the heads of the bolts, or with the view of obtaining greater strength with an equal weight of metal. *Held*, that there had been a prior user of the invention. (*Harwood* v. *The Great Northern Railway Co.*, 11 H. L. Cas. 654.)

S. 46.

(6.) Patent for "certain improvements in steam-engines, and in machinery for propelling vessels." The invention patented consisted (*inter alia*) in an improvement on paddle-wheels for propelling vessels, whereby the float-boards or paddles are made to enter and come out of the water in positions the best adapted for giving full effect to the power applied. It was proved at the trial that, before the date of the patent, the patentee ordered an engineer, under an injunction of secrecy, to make two pairs of paddle-wheels upon the principle of the patent. The wheels when completed were packed at the engineer's factory, and sold to, and exported by, the plaintiff, who was the assignee of the patent, and the managing director of a foreign company, by whom the paddle-wheels were used *abroad*. The plaintiff paid the engineer for the wheels. *Held*, no such public user as would invalidate the patent. (*Morgan* v. *Seaward*, 2 M. & W. 544.)

(7.) Patent for the manufacture of capsules. It was proved that between the time of the application for, and the issuing of the letters patent, the plaintiff manufactured a quantity of the capsules. They were made by his own workmen, and were not sold before the patent was granted. *Held*, that the manufacture of capsules by the plaintiff, prior to the grant, did not invalidate the patent. (*Betts* v. *Menzies*, 28 L. J., Q. B. 361.)

(8.) Patent for improvements on shearing machines. It was proved by the defendant, that the specification of a similar machine had previously been enrolled in America, that a model of an exactly similar machine had been exhibited to three or four persons in England, and that a manufacturer in England had commenced the construction of a machine from the American specification. This, however, was never completed, and it was proved by the plaintiffs that the same manufacturer had purchased the plaintiffs' machines. *Held*, that the patent was not invalidated. (*Lewis* v. *Marling*, 10 B. & C. 26.)

(9.) A. obtained a patent for bleaching liquor. There was a general ignorance among bleachers of the liquor, but one bleacher had used it in his trade for five or six years before the patent, but had kept it secret from all but his two partners, and two servants. *Held*, that the patent was invalid. (*Tennant's Case*, 1 Web. P. C. 125.)

(10.) A claim that the invention consists "in the application of a self-adjusting leverage to the back and seat of a chair, whereby the weight on the seat acts as a counter-balance to the pressure on the back," is bad, if it be proved that a chair on the same principle had been made and sold before, although the operation of it was encumbered by additional machinery. (*Minter* v. *Mower*, 1 Web. P. C. 142; and see *Jones* v. *Pearce*, 1 Web. P. C. 122.)

B. *By prior publication of the invention.* S. 46.

If the invention and the mode in which it can be used has been made known to the public by a description in a work which has been publicly circulated, or in a specification, or in any way, the patent is void, though it is not shown that it was ever actually put in use, provided the prior publication discloses a practical mode of producing the result obtained by the subsequent discovery. (*Bush* v. *Fox*, 5 H. L. Cas. 707; *Betts* v. *Menzies*, 10 H. L. Cas. 117; *Neilson* v. *Betts*, L. R., 5 H. L. 2; *Hills* v. *Evans*, 31 L. J., Ch. 463; *Patterson* v. *The Gas Light and Coke Co.*, 3 App. Cas. 239; per Lord *Blackburn*, p. 244; *Plimpton* v. *Malcolmson*, 3 Ch. D. 531; *Stead* v. *Williams*, 13 L. J., C. P. 218; *Muntz* v. *Foster*, 2 Web. P. C. 96.)

Illustrations.

(1.) Patent for improvements in the construction of skates granted Aug. 25th, 1865. Two years previously an American book, containing a brief description of the invention (but not sufficiently particular to enable persons to manufacture the skates), and five weeks previously an American book of illustrations, containing a drawing of the invention, were sent to the Library of the Patent Office in London. The book of illustrations was not entered in the book of donations, or in the catalogue, but it was placed on a bookshelf in a room open to the public, and was seen there by a librarian, prior to the plaintiff's patent. *Held*, no prior publication. (*Plimpton* v. *Spiller*, 6 Ch. D. 412.)

(2.) A witness had seen in a German journal in a public library in this country, a description of an invention which he, though ignorant of German, by the aid of certain plates and technical words could make out:—*Held*, that there had been publication of the invention. (*The United Telephone Co.* v. *Harrison Cox-Walker & Co.*, 19 Ch. D. 268.)

(3.) A patent was held invalid, for want of novelty, by the deposit of a foreign book in the British Museum, such book containing the specification of a French patent for an invention, in great part the same as that for which the English patent was granted. (*Heurteloup's Patent*, 1 Web. P. C. 553.)

(4.) Patent for purifying coal gas granted to a Gas Referee, March 9th, 1872. The invention was described in an official Report by all the gas referees jointly, bearing date January 31, 1872, but kept back from the official authorities, the Board of Trade, until the 26th March, 1872, and not generally circulated for some days after. *Held*, that the

S. 46.

patent was void for want of novelty; the information in the report becoming public property the moment the referees knew its contents. The fact that the invention was confidentially communicated by the patentee to the other referees is immaterial, as an agreement to keep it secret would be a breach of duty and *ultra vires*. (*Patterson* v. *The Gas Light and Coke Co.*, 3 App. Cas. 239.)

(5.) Provisional specification filed 17th March, and afterwards abandoned. A second specification filed for same invention 10th April. Patent sealed 12th October, but dated 10th April. *Held*, no publication, as patent was sealed during provisional protection. (*Oxley* v. *Holden*, 30 L. J., C. P. 68.)

(6.) A patent is not vitiated by an imperfect description, or mere sketch, of the patented invention in a prior provisional specification, when such invention has been omitted from the prior final specification. (*Stoner* v. *Todd*, 4 Ch. D. 58.)

(7.) A. obtained a patent in 1849 for the use of the hydrated oxides of iron in purifying coal gas from sulphuretted hydrogen. B. had obtained a patent in 1840, the specification of which, after speaking of the use of black oxide of manganese for removing sulphuretted hydrogen, continued, "the same effect may be produced by the application of the oxide of zinc, and the oxides of iron." *Held*, that, as there are many oxides of iron, the hydrated and anhydrous, the natural and artificial, some of which will, and some will not answer the purpose, there was no anticipation. (*Hills* v. *London Gas Light Co.*, 29 L. J., Ex. 409.)

(8.) A patent for "improvements in preserving animal substances," in which the invention consists in preserving *fresh* meat by dipping it into a solution of bisulphite of lime, is anticipated by a prior patent for "improvements in preserving organic substances," in which the invention consists in preserving meat already *partially preserved*, either by salting, drying or smoking, or the like, by dipping it into a like solution. (*Bailey* v. *Roberton*, 3 App. Cas. 1055.)

(9.) A. in 1860 took out a patent of improvements in obtaining motive power. The invention consisted in the application and use of an inflammable gas mixed with a proper proportion of air and ignited inside the cylinder of an engine, the expansion produced acting upon and moving the piston. The specification stated that gas and air both entered the cylinder without becoming entirely mixed, and existed behind the piston in distinct strata. In 1861, A. obtained a second patent, containing alterations, by introducing gas in subdivided streams, each stream surrounded and accompanied by a stream of air. The working of these engines was accompanied with a shock and generation and waste of heat.

S. 46.

B. in 1876 obtained a patent for improvements in gas motor engines. The principle of his invention consisted in putting a cushion of air between the combustible material and the piston, thereby obtaining gradual expansions, instead of sudden shocks. *Held*, that B.'s patent had not been anticipated. (*Otto* v. *Linford*, 46 L. T. Rep., N. S. 35.)

(10.) A patent for improvements in evaporation, consisting of a method of forcing, by means of bellows, air through the liquid subjected to evaporation, by pipes connected with larger pipes, and placed as mentioned in the specification, is not anticipated by a patent effecting the same object, by a coil of pipes (lying at the bottom of the vessel), perforated by small holes, or by a shallow cullender placed at the bottom of the vessel. (*Hullett* v. *Hague*, 2 B. & Ad. 370.)

C. *By offering the patented article for sale.*

A patent is invalidated if prior to the grant the patented article is offered for sale, although no sale is actually effected. (*Oxley* v. *Holden*, 8 C. B., N. S. 666; *Honiball* v. *Bloomer*, 2 Web. P. C. 200; *Wood* v. *Zimmer*, 1 Web. P. C. 44 (n); *Morgan* v. *Seaward*, 1 Web. P. C. 194; *Heath* v. *Smith*, 3 Ell. & Bl. 256.)

Illustrations.

(1.) Patent for locks invalidated by the prior manufacture in England of seven and a half dozen of the locks for exportation to *America*. (*Carpenter* v. *Smith*, 1 Web. P. C. 530.)

(2.) The publicly making and selling an article to one individual, though there was no demand or use for it by the public, held to have invalidated a subsequent patent. (*Losh* v. *Hague*, 1 Web. P. C. 205.)

(3.) A patent may be invalidated by the prior deposit of the patented articles in a warehouse for sale, although no sale takes place. (*Mullins* v. *Hart*, 3 Car. & K. 297.)

(4.) If during a delay in the issue of a patent, not due to any default of the patentee, he manufactures the patented article before the date of the patent for the purpose of being sold after it has been sealed, there is no anticipation. (*Betts* v. *Menzies*, 4 Jur., N. S. 477.)

D. *By want of novelty in part of the invention.*

If the specification contains an independent claim of what is not new, the whole patent is void. But if the part that is

S. 46.

not now, is claimed only as a subsidiary invention, to be used only in connection with the principal invention, which is now, the patent will not be invalidated. (*Templeton* v. *Macfarlane*, 1 H. L. Cas. 595; *Plimpton* v. *Spiller*, 6 Ch. D. 412; *Braham* v. *Hardcastle*, Holroyd, 81; *Gibson* v. *Brand*, 4 M. & G. 179; *Frearson* v. *Loe*, per *Jessel*, M.R., 9 Ch. D. p. 58.)

Illustrations.

(1.) Patent for improvements in the construction of ships' anchors, windlasses, and chain cables. The windlasses and chain cables were new, but the anchors were old. *Held*, that the patent as a whole was void. (*Brunton* v. *Hawkes*, 4 B. & Ald. 541.)

(2.) Patent, for improvements in the smelting and working of iron, claimed improvements by which the iron in slags or cinders could be brought into the state of bar iron, and also the discovery of the employment of lime to prevent that quality in iron called "cold short." Lime had before been used for this purpose. *Held*, that the patent was void. (*Hill* v. *Thompson*, 8 Taunt. 375.)

(3.) Patent for "machinery for preparing and spinning flax, hemp and other fibrous substances, by power." The specification stated the invention to consist of "new machinery for macerating flax and other fibrous substances previous to drawing and spinning it, which is called the preparing it; and also for improved machinery for spinning the same after having been so prepared." The machinery for preparing the flax was new. The second part of the invention consisted in placing the drawing rollers only two-and-a-half inches from the retaining rollers. Before the patent, flax and other fibrous substances were spun with machines by which the reach was varied according to the staple or fibre of the article to be spun, and that had been a fundamental principle of dry spinning. Cotton had also been spun at a short reach. The use of moisture in spinning flax had been previously adopted though in a different manner. *Held*, that as the application of the short reach to the spinning of flax, when in a state of maceration, was merely the application of known machinery, to the new macerated state of the flax, it was not good subject-matter, and therefore that the whole patent was void. (*Kay* v. *Marshall*, 5 Bing. N. C. 492; in H. L. 8 C. & F. 245.)

(4.) The patentee claimed, first, a mode of applying rollers and runners to the footstand of skates, so that they might be cramped or turned so as to cause the skate to run in a curved line by the canting or tilting of the footstand; and, secondly, the mode of securing the

runners and making them reversible, as above described. *Held*, that, assuming that there was nothing novel in the mode of securing the runners to the footstand, yet the want of novelty in the second claim did not invalidate the patent, because the second claim must be read as claiming a subsidiary invention to be used only in connection with the principal invention. (*Plimpton* v. *Spiller*, 6 Ch. D. 412.) S. 46.

Utility.

The form of patent given in the schedule to the present Act, and the form given in the Act of 1852, contain the proviso that if the grant "is contrary to law, or prejudicial or inconvenient to our subjects in general," the patent shall be void. The 6th section of the Statute of Monopolies limits the grant of patents to such cases as are "not contrary to the law, nor mischievous to the state, by raising prices of commodities at home, or hurt of trade, or generally inconvenient."

A grant of a monopoly for an invention which is *altogether useless* is mischievous to the state, to the hurt of trade, or generally inconvenient, within the meaning of this section. (*Morgan* v. *Seaward*, 2 M. & W. 562.)

Patents recite that "whereas we being willing to encourage all inventions which may be for the *public good*," and as *Wood*, V.C., has pointed out, the whole theory of the patent law is based on the assumption that the invention for which the patent is granted is something of real value. (*Dangerfield* v. *Jones*, 13 L. T. Rep., N. S. 142, and see *Darcy* v. *Allin*, Noy. R. 182; *Edgeberry* v. *Stephens*, 1 Web. P. C. 35; *Turner* v. *Winter*, 1 Web. P. C. 80.)

It is, therefore, essential to the validity of a patent, that the invention thereby protected should be useful (*Rex* v. *Arkwright*, 1 Web. P. C. 72; *Hill* v. *Thompson*, 1 Web. P. C. 237; *Crossley* v. *Potter*, Macr. P. C. 245; *Manton* v. *Parker*, 1 Web. P. C. 192 (n.); *Manton* v. *Manton*, Dav. P. C. 348), and it is necessary that it should be useful, not only at the time the patent is granted, but during the whole term of the

S. 46.

grant. (*Simpson* v. *Holliday*, 20 Now. Lon. Jour., N. S. 107, 120.) But the legal meaning of the term "useful" is very slight utility indeed. (*Hinks* v. *Safety Lighting Co.*, 4 Ch. D. 607; *Neilson* v. *Harford*, 1 Web. P. C. 314; *Losh* v. *Hague*, 1 Web. P. C. 205.) Greater cheapness in the production of an article is sufficient utility. (*Cornish* v. *Keene*, 1 Web. P. C. 506.)

A patent will not be held void because the patented invention is not useful for every purpose described in the specification (*Haworth* v. *Hardcastle*, 1 Bing. N. C. 189; *Morgan* v. *Seaward*, 1 Web. P. C. 197; *Frearson* v. *Loe*, per *Jessel*, M.R., 9 Ch. D. 64) nor because a part of a machine, not described in the specification as an essential part of the machine, turns out to be useless (*Lewis* v. *Marling*, 1 Web. P. C. 496); it is sufficient if it is generally useful. (*Cornish* v. *Keene*, 1 Web. P. C. 506.)

Where the patent is for an improvement on a prior patented invention, it is immaterial whether the first patent is useful or not, if the latter invention is so. (*Lewis* v. *Davis*, 1 Web. P. C. 488.)

The utility of an invention is a question for the jury (*Hill* v. *Thompson*, 1 Web. P. C. 237; *Cornish* v. *Keene*, 1 Web. P. C. 506), and the circumstance of an invention not getting into general use is a presumption against its utility (*Morgan* v. *Seaward*, 1 Web. P. C. 186; *In re Bakewell's Patent*, 15 Moo. P. C. C. 385; *In re Allan's Patent*, L. R., 1 P. C. 507; *In re Simister's Patent*, 1 Web. P. C. 721; *In re Herbert's Patent*, L. R., 1 P. C. 399), but this presumption is rebutted by proof that immediately after the patent was taken out, the inventor improved upon his original invention, and made and sold the improved invention. (*Otto* v. *Linford*, 46 L. T. Rep., N. S. 35.) It is not necessary that each part of an invention should have been actually tried and proved to answer; the evidence of scientific persons, that it would answer, may be sufficient. (*Neilson* v. *Harford*, 1 Web. P. C. 314.)

PART III.

DESIGNS.

Registration of Designs.

S. 47. (1.) The comptroller may, on application by or on behalf of any person claiming to be the proprietor of any new or original design not previously published in the United Kingdom, register the design under this part of this Act. **S. 47.** Application for registration of designs.

(2.) The application must be made in the form set forth in the first Schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the patent office in the prescribed manner.

(3.) The application must contain a statement of the nature of the design, and the class or classes of goods in which the applicant desires that the design be registered.

(4.) The same design may be registered in more than one class.

(5.) In case of doubt as to the class in which a design ought to be registered, the comptroller may decide the question.

(6.) The comptroller may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal therefrom to the Board of Trade.

(7.) The Board of Trade shall, if required, hear the

S. 47. applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

Drawings, &c., to be furnished on application.

S. 48. (1.) On application for registration of a design the applicant shall furnish to the comptroller the prescribed number of copies of drawings, photographs or tracings of the design sufficient, in the opinion of the comptroller, for enabling him to identify the design; or the applicant may, instead of such copies, furnish exact representations or specimens of the design.

(2.) The comptroller may, if he thinks fit, refuse any drawing, photograph, tracing, representation or specimen which is not, in his opinion, suitable for the official records.

Certificate of registration.

S. 49. (1.) The comptroller shall grant a certificate of registration to the proprietor of the design when registered.

(2.) The comptroller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, grant a copy or copies of the certificate.

Copyright in Registered Designs.

Copyright on registration.

S. 50. (1.) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.

(2.) Before delivery on sale of any articles to which a

S. 50.

registered design has been applied, the proprietor must (if exact representations or specimens were not furnished on the application for registration) furnish to the comptroller the prescribed number of exact representations or specimens of the design ; and if he fails to do so, the comptroller may erase his name from the register, and thereupon his copyright in the design shall cease.

Marking registered designs.

S. 51. Before delivery on sale of any articles to which a registered design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark, or with the prescribed word or words or figures, denoting that the design is registered ; and if he fails to do so the copyright in the design shall cease, unless the proprietor shows that he took all proper steps to ensure the marking of the article.

Inspection of registered designs.

S. 52. (1.) During the existence of copyright in a design the design shall not be open to inspection except by the proprietor, or a person authorised in writing by the proprietor, or a person authorised by the comptroller or by the Court, and furnishing such information as may enable the comptroller to identify the design, nor except in the presence of the comptroller, or of an officer acting under him, nor except on payment of the prescribed fee ; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof.

(2.) When the copyright in a design has ceased, the

S. 52.

design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

Information as to existence of copyright.

S. 53. On the request of any person producing a particular design, together with its mark of registration, or producing only its mark of registration, or furnishing such information as may enable the comptroller to identify the design, and on payment of the prescribed fee, it shall be the duty of the comptroller to inform such person whether the registration still exists in respect of such design, and if so, in respect of what class or classes of goods, and stating also the date of registration, and the name and address of the registered proprietor.

Cesser of copyright in certain events.

S. 54. If a registered design is used in manufacture in any foreign country and is not used in this country within six months of its registration in this country, the copyright in the design shall cease.

Register of Designs.

Register of designs.

S. 55. (1.) There shall be kept at the patent office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may from time to time be prescribed.

(2.) The register of designs shall be *primâ facie* evidence of any matters by this Act directed or authorised to be entered therein.

Fees.

S. 56.

S. 56. There shall be paid in respect of applications and registration and other matters under this part of this Act such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury shall from time to time direct. Fees on registration, &c.

Industrial and International Exhibitions.

S. 57. The exhibition at an industrial or international exhibition, certified as such by the Board of Trade, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof, provided that both the following conditions are complied with; namely,— Exhibition at industrial or international exhibition not to prevent or invalidate registration.

(*a.*) The exhibitor must, before exhibiting the design or article, or publishing a description of the design, give the comptroller the prescribed notice of his intention to do so; and

(*b.*) The application for registration must be made before or within six months from the date of the opening of the exhibition.

Legal Proceedings.

S. 58. During the existence of copyright in any design— Penalty on piracy of registered design.

S. 58.

(*a.*) It shall not be lawful for any person without the license or written consent of the registered proprietor to apply such design or any fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered, for purposes of sale to any article of manufacture or to any substance artificial or natural or partly artificial and partly natural; and

(*b.*) It shall not be lawful for any person to publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, knowing that the same has been so applied without the consent of the registered proprietor.

Any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding fifty pounds to the registered proprietor of the design, who may recover such sum as a simple contract debt by action in any court of competent jurisdiction.

Action for damages.

S. 59. Notwithstanding the remedy given by this Act for the recovery of such penalty as aforesaid, the registered proprietor of any design may (if he elects to do so) bring an action for the recovery of any damages arising from the application of any such design, or of any fraudulent or obvious imitation thereof for the purpose of sale, to any article of manufacture or substance, or from the publication sale or exposure for sale by any person of any article or substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, such person knowing that the proprietor had not given his consent to such application.

Definitions.

S. 60. In and for the purposes of this Act— **S. 60.**

"Design" means any design applicable to any article of manufacture, or to any substance, artificial or natural, or partly artificial and partly natural, whether the design is 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 it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined, not being a design for a sculpture, or other thing within the protection of the Sculpture Copyright Act of the year 1814 (fifty-fourth George the Third, chapter fifty-six). Definition of "design," "Copyright."

"Copyright" means the exclusive right to apply a design to any article of manufacture or to any such substance as aforesaid in the class or classes in which the design is registered.

S. 61. The author of any new and original design shall be considered the proprietor thereof, unless he executed the work on behalf of another person for a good or valuable consideration, in which case such person shall be considered the proprietor, and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to any such article or substance as aforesaid, either exclusively of any other person or otherwise, and also every person on whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor Definition of proprietor.

S. 61. of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise.

PART IV.

TRADE MARKS.

Registration of Trade Marks.

Application for registration.

S. 62. (1.) The comptroller may, on application by or on behalf of any person claiming to be the proprietor of a trade mark, register the trade mark.

(2). The application must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the Patent Office in the prescribed manner.

(3.) The application must be accompanied by the prescribed number of representations of the trade mark, and must state the particular goods or classes of goods in connexion with which the applicant desires the trade mark to be registered.

(4.) The comptroller may, if he thinks fit, refuse to register a trade mark, but any such refusal shall be subject to appeal to the Board of Trade, who shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(5.) The Board of Trade may, however, if it appears expedient, refer the appeal to the Court; and in that event the Court shall have jurisdiction to hear and determine the appeal and may make such order as aforesaid. S. 62.

S. 63. Where registration of a trade mark has not been or shall not be completed within twelve months from the date of the application, by reason of default on the part of the applicant, the application shall be deemed to be abandoned. Limit of time for proceeding with application.

S. 64. (1.) For the purposes of this Act, a trade mark must consist of or contain at least one of the following essential particulars: Conditions of registration of trade mark.

(*a.*) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

(*b.*) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

(*c.*) A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use.

(2.) There may be added to any one or more of these particulars any letters, words or figures, or combination of letters, words or figures, or of any of them.

(3.) Provided that any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures used as a trade mark before the thirteenth day of August,

S. 64.

one thousand eight hundred and seventy-five may be registered as a trade mark under this part of this Act.

Connexion of trade mark with goods.

S. 65. A trade mark must be registered for particular goods or classes of goods.

Registration of a series of marks.

S. 66. When a person claiming to be the proprietor of several trade marks which, while resembling each other in the material particulars thereof, yet differ in respect of (*a*) the statement of the goods for which they are respectively used or proposed to be used, or (*b*) statements of numbers, or (*c*) statements of price, or (*d*) statements of quality, or (*e*) statements of names or places, seeks to register such trade marks, they may be registered as a series in one registration. A series of trade marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade marks composing a series shall be deemed and treated as registered separately.

Trade marks may be registered in any colour.

S. 67. A trade mark may be registered in any colour, and such registration shall (subject to the provisions of this Act) confer on the registered owner the exclusive right to use the same in that or any other colour.

Advertisement of application.

S. 68. Every application for registration of a trade mark under this part of this Act shall as soon as may be after its receipt be advertised by the comptroller.

Opposition to registration.

S. 69. (1.) Any person may within two months of the first advertisement of the application, give notice in duplicate at the patent office of opposition to registration of the trade mark, and the comptroller shall send one copy of such notice to the applicant.

(2.) Within two months after receipt of such notice or

such further time as the comptroller may allow, the applicant may send to the comptroller a counter statement in duplicate of the grounds on which he relies for his application, and if he does not do so, shall be deemed to have abandoned his application. S. 69.

(3.) If the applicant sends such counter statement, the comptroller shall furnish a copy thereof to the person who gave notice of opposition, and shall require him to give security in such manner and to such amount as the comptroller may require for such costs as may be awarded in respect of such opposition; and if such security is not given within fourteen days after such requirement was made or such further time as the comptroller may allow, the opposition shall be deemed to be withdrawn.

(4.) If the person who gave notice of opposition duly gives such security as aforesaid, the comptroller shall inform the applicant thereof in writing, and thereupon the case shall be deemed to stand for the determination of the Court.

Assignment and transmission of trade mark.

S. 70. A trade mark, when registered, shall be assigned and transmitted only in connexion with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.

Conflicting claims to registration.

S. 71. Where each of several persons claims to be registered as proprietor of the same trade mark, the comptroller may refuse to register any of them until their rights have been determined according to law, and the

S. 71. comptroller may himself submit or require the claimants to submit their rights to the Court.

Restrictions on registration.

S. 72. (1.) Except where the Court has decided that two or more persons are entitled to be registered as proprietors of the same trade mark, the comptroller shall not register in respect of the same goods or description of goods a trade mark identical with one already on the register with respect to such goods or description of goods.

(2.) The comptroller shall not register with respect to the same goods or description of goods a trade mark so nearly resembling a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive.

Further restriction on registration.

S. 73. It shall not be lawful to register as part of or in combination with a trade mark any words the exclusive use of which would by reason of their being calculated to deceive or otherwise, be deemed disentitled to protection in a court of justice, or any scandalous design.

Saving for power to provide for entry on register of common marks as additions to trade marks.

S. 74. (1.) Nothing in this Act shall be construed to prevent the comptroller entering on the register, in the prescribed manner, and subject to the prescribed conditions, as an addition to any trade mark—

(*a.*) In the case of an application for registration of a trade mark used before the thirteenth day of August one thousand eight hundred and seventy-five—

Any distinctive device, mark, brand, heading, label, ticket, letter, word, or figure,

S. 74.

or combination of letters, words, or figures, though the same is common to the trade in the goods with respect to which the application is made;

(*b.*) In the case of an application for registration of a trade mark not used before the thirteenth day of August one thousand eight hundred and seventy-five—

Any distinctive word or combination of words, though the same is common to the trade in the goods with respect to which the application is made;

(2.) The applicant for entry of any such common particular or particulars must, however, disclaim in his application any right to the exclusive use of the same, and a copy of the disclaimer shall be entered on the register.

(3.) Any device, mark, brand, heading, label, ticket, letter, word, figure, or combination of letters, words, or figures, which was or were, before the thirteenth day of August one thousand eight hundred and seventy-five, publicly used by more than three persons on the same or a similar description of goods shall, for the purposes of this section, be deemed common to the trade in such goods.

Effect of Registration.

Registration equivalent to public use.

S. 75. Registration of a trade mark shall be deemed to be equivalent to public use of the trade mark.

S. 76. The registration of a person as proprietor of a

S. 76. Right of first proprietor to exclusive use of trade mark.

trade mark shall be *primâ facie* evidence of his right to the exclusive use of the trade mark, and shall, after the expiration of five years from the date of the registration, be conclusive evidence of his right to the exclusive use of the trade mark, subject to the provisions of this Act.

Restrictions on actions for infringement, and on defence to action in certain cases.

S. 77. A person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of a trade mark unless, in the case of a trade mark capable of being registered under this Act, it has been registered in pursuance of this Act, or of an enactment repealed by this Act, or, in the case of any other trade mark in use before the thirteenth of August one thousand eight hundred and seventy-five, registration thereof under this part of this Act, or of an enactment repealed by this Act, has been refused. The comptroller may, on request, and on payment of the prescribed fee, grant a certificate that such registration has been refused.

Register of Trade Marks.

Register of trade marks.

S. 78. There shall be kept at the patent office a book called the Register of Trade Marks, wherein shall be entered the names and addresses of proprietors of registered trade marks, notifications of assignments and of transmissions of trade marks, and such other matters as may be from time to time prescribed.

Removal of trade mark after fourteen years unless fee paid.

S. 79. (1.) At a time not being less than two months nor more than three months before the expiration of fourteen years from the date of the registration of a trade mark, the comptroller shall send notice to the registered proprietor that the trade mark will be removed from the

register unless the proprietor pays to the comptroller before the expiration of such fourteen years (naming the date at which the same will expire) the prescribed fee; and if such fee be not previously paid, he shall at the expiration of one month from the date of the giving of the first notice send a second notice to the same effect. S. 79.

(2.) If such fee be not paid before the expiration of such fourteen years the comptroller may, after the end of three months from the expiration of such fourteen years, remove the mark from the register, and so from time to time at the expiration of every period of fourteen years.

(3.) If before the expiration of the said three months the registered proprietor pays the said fee together with the additional prescribed fee, the comptroller may without removing such trade mark from the register accept the said fee as if it had been paid before the expiration of the said four teen years.

(4.) Where after the said three months a trade mark has been removed from the register for nonpayment of the prescribed fee, the comptroller may, if satisfied that it is just so to do, restore such trade mark to the register on payment of the prescribed additional fee.

(5.) Where a trade mark has been removed from the register for nonpayment of the fee or otherwise, such trade mark shall nevertheless for the purpose of any application for registration

S. 79.

during the five years next after the date of such removal, be deemed to be a trade mark which is already registered.

Fees.

Fees for registration, &c.

S. 80. There shall be paid in respect of applications and registration and other matters under this part of this Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury may from time to time direct.

Sheffield Marks.

Registration by Cutler's Company of Sheffield marks.

S. 81. With respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire, in the county of York (in this Act called the Cutlers' Company) and the marks or devices (in this Act called Sheffield marks) assigned or registered by the master, wardens, searchers, and assistants of that company, the following provisions shall have effect:

(1.) The Cutlers' Company shall establish and keep at Sheffield a new register of trade marks (in this Act called the Sheffield register):

(2.) The Cutlers' Company shall enter in the Sheffield register, in respect of cutlery, edge tools, or raw steel and the goods mentioned in the next subsection, all the trade marks entered before the commencement of this Act in respect of cutlery, edge tools, or raw steel and such goods in the register established under the Trade Marks

Registration Act, 1875, belonging to persons carrying on business in Hallamshire, or within six miles thereof, and shall also enter in such register, in respect of the same goods, all the trade marks which shall have been assigned by the Cutlers' Company and actually used before the commencement of this Act, but which have not been entered in the register established under the Trade Marks Registration Act, 1875. S. 81.

(3.) An application for registration of a trade mark used on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge, shall, if made after the commencement of this Act by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers' Company:

(4.) Every application so made to the Cutlers' Company shall be notified to the comptroller in the prescribed manner, and unless the comptroller within the prescribed time gives notice to the Cutlers' Company that he objects to the acceptance of the application, it shall be proceeded with by the Cutlers' Company in the prescribed manner:

(5.) If the comptroller gives notice of objection as aforesaid, the application shall not be proceeded with by the Cutlers' Company, but any person aggrieved may appeal to the Court.

(6.) Upon the registration of a trade mark in the Sheffield register the Cutlers' Company shall

S. 81.

give notice thereof to the comptroller, who shall thereupon enter the mark in the register of trade marks; and such registration shall bear date as of the day of application to the Cutlers' Company, and have the same effect as if the application had been made to the comptroller on that day:

(7.) The provisions of this Act, and of any general rules made under this Act, with respect to application for registration in the register of trade marks, the effect of such registration, and the assignment and transmission of rights in a registered trade mark shall apply in the case of applications and registration in the Sheffield register; and notice of every entry made in the Sheffield register must be given to the comptroller by the Cutlers' Company, save and except that the provisions of this sub-section shall not prejudice or affect any life, estate, and interest of a widow of the holder of any Sheffield mark which may be in force in respect of such mark at the time when it shall be placed upon the Sheffield register:

(8.) Where the comptroller receives from any person not carrying on business in Hallamshire or within six miles thereof an application for registration of a trade mark used on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge, he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company:

S. 81.

(9.) At the expiration of five years from the commencement of this Act the Cutlers' Company shall close the Cutlers' register of corporate trade marks, and thereupon all marks entered therein shall, unless entered in the Sheffield register, be deemed to have been abandoned:

(10.) A person may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of two or more trade marks:

(11.) A body of persons, corporate or not corporate, may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of a trade mark or trade marks:

(12.) Any person aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted under this Act may, in the prescribed manner, appeal to the comptroller, who shall have power to confirm reverse or modify the decision, but the decision of the comptroller shall be subject to a further appeal to the Court:

(13.) So much of the Cutlers' Company's Acts as applies to the summary punishment of persons counterfeiting Sheffield corporate marks, that is to say, the fifth section of the Cutlers' Company's Act of 1814, and the provisions in relation to the recovery and application of the penalty imposed by such last-mentioned section contained in the Cutlers' Company's Act of 1791, shall apply to any mark entered in the Sheffield register.

PART V.

GENERAL.

Patent Office and Proceedings thereat.

Patent Office.

S. 82. (1.) The Treasury may provide for the purposes of this Act an office with all requisite buildings and conveniences, which shall be called, and is in this Act referred to as, the Patent Office.

(2.) Until a new patent office is provided, the offices of the Commissioners of Patents for inventions and for the registration of designs and trade marks existing at the commencement of this Act shall be the patent office within the meaning of this Act.

(3.) The patent office shall be under the immediate control of an officer called the comptroller-general of patents, designs, and trade marks, who shall act under the superintendence and direction of the Board of Trade.

(4.) Any act or thing directed to be done by or to the comptroller may, in his absence, be done by or to any officer for the time being in that behalf authorised by the Board of Trade.

Officers and clerks.

S. 83. (1.) The Board of Trade may at any time after the passing of this Act, and from time to time, subject to the approval of the Treasury, appoint the comptroller-general of patents, designs, and trade marks, and so many examiners and other officers and clerks, with such designations and duties as the Board of Trade think fit, and may

from time to time remove any of those officers and clerks. S. 83.

(2.) The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and the same and the other expenses of the execution of this Act shall be paid out of money provided by Parliament.

Seal of patent office.

S. 84. There shall be a seal for the patent office, and impressions thereof shall be judicially noticed and admitted in evidence.

Trust not to be entered in registers.

S. 85. There shall not be entered in any register kept under this Act, or be receivable by the comptroller, any notice of any trust expressed implied or constructive.

Refusal to grant patent, &c., in certain cases.

S. 86. The comptroller may refuse to grant a patent for an invention, or to register a design or trade mark, of which the use would, in his opinion, be contrary to law or morality.

Entry of assignments and transmissions in registers.

S. 87. Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, or to a registered trade mark, the comptroller shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade mark, in the register of patents, designs, or trade marks, as the case may be. The person for the time being entered in the register of patents, designs, or trade marks, as proprietor of a patent, copyright in a design or trade mark, as the case may be, shall, subject to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the same and to give effectual receipts for any consideration for such assignment, license,

S. 87. or dealing. Provided that any equities in respect of such patent, design, or trade-mark may be enforced in like manner as in respect of any other personal property.

Inspection of and extracts from registers.

S. 88. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed; and certified copies, sealed with the seal of the patent office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

See notes to Sect. 23, p. 63.

Sealed copies to be received in evidence.

S. 89. Printed or written copies or extracts, purporting to be certified by the comptroller and sealed with the seal of the patent office, of or from patents specifications disclaimers and other documents in the patent office, and of or from registers and other books kept there, shall be admitted in evidence in all courts in Her Majesty's dominions, and in all proceedings, without further proof or production of the originals.

Rectification of register by Court.

S. 90. (1.) The Court may on the application of any person aggrieved by the omission without sufficient cause of the name of any person from any register kept under this Act, or by any entry made without sufficient cause in any such register, make such order for making expunging or varying the entry, as the Court thinks fit; or the Court may refuse the application; and in either case may make such order with respect to the costs of the proceeding as the Court thinks fit.

See notes to Sect. 23, p. 63.

(2.) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved. S. 90.

(3.) Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the comptroller.

S. 91. The comptroller may, on request in writing accompanied by the prescribed fee,— Power for comptroller to correct clerical errors.

(*a.*) Correct any clerical error in or in connexion with application for a patent, or for registration of a design or trade mark; or

(*b.*) Correct any clerical error in the name style or address of the registered proprietor of a patent, design, or trade mark.

See notes to Sect. 23, p. 63.

(*c.*) Cancel the entry or part of the entry of a trade mark on the register: Provided that the applicant accompanies his request by a statutory declaration made by himself, stating his name, address, and calling, and that he is the person whose name appears on the register as the proprietor of the said trade mark.

S. 92. (1.) The registered proprietor of any registered trade mark may apply to the Court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Act, and the Court may refuse or grant leave on such terms as it may think fit. Alteration of registered mark.

S. 92. (2.) Notice of any intended application to the Court under this section shall be given to the comptroller by the applicant; and the comptroller shall be entitled to be heard on the application.

(3.) If the Court grants leave, the comptroller shall, on proof thereof and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

Falsification of entries in registers.

S. 93. If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor.

Limit of discretionary power by comptroller.

S. 94. Where any discretionary power is by this Act given to the comptroller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a trade mark or design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.

See rules 11 to 16, inclusive, p. 193.

Power of comptroller to take directions of law officers.

S. 95. The comptroller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to either of the law officers for directions in the matter.

Certificate of comptroller to be evidence.

S. 96. A certificate purporting to be under the hand of the comptroller as to any entry, matter, or thing which he is authorised by this Act, or any general rules made thereunder, to make or do, shall be primâ facie evidence of the entry having been made, and of the contents thereof,

and of the matter or thing having been done or left undone. S. 96.

S. 97. (1.) Any application, notice, or other document authorised or required to be left made or given at the patent office or to the comptroller, or to any other person under this Act, may be sent by a prepaid letter through the post; and if so sent shall be deemed to have been left made or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post. Applications and notices by post.

(2.) In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

S. 98. Whenever the last day used by this Act, or by any rule for the time being in force, for leaving any document or paying any fee at the patent office shall fall on Christmas Day, Good Friday, or on a Saturday or Sunday, or any day observed as a holiday at the Bank of England, or any day observed as a day of public fast or thanksgiving, herein referred to as excluded days, it shall be lawful to leave such document or to pay such fee on the day next following such excluded day, or days if two or more of them occur consecutively. Provision as to days for leaving documents at office.

S. 99. If any person is, by reason of infancy lunacy or other inability, incapable of making any declaration or doing anything required or permitted by this Act or by any rules made under the authority of this Act, then the guardian or committee (if any) of such incapable person, or if there be none, any person appointed by any Court or judge possessing jurisdiction in respect of the property of Declaration by infant, lunatic, &c.

S. 99. incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted.

Transmission of certified printed copies of specifications, &c.

S. 100. Copies of all specifications, drawings, and amendments left at the Patent Office after the commencement of this Act, printed for and sealed with the seal of the Patent Office, shall be transmitted to the Edinburgh Museum of Science and Art, and to the Enrolments Office of the Chancery Division in Ireland, and to the Rolls Office in the Isle of Man, within twenty-one days after the same shall respectively have been accepted or allowed at the Patent Office; and certified copies of or extracts from any such documents shall be given to any person requiring the same on payment of the prescribed fee; and any such copy or extract shall be admitted in evidence in all courts in Scotland and Ireland and in the Isle of Man without further proof or production of the originals.

Power for Board of Trade to make general rules for classifying goods and regulating business of patent office.

S. 101. (1.) The Board of Trade may from time to time make such general rules and do such things as they think expedient, subject to the provisions of this Act—

(*a.*) For regulating the practice of registration under this Act:

(*b.*) For classifying goods for the purposes of designs and trade marks:

(*c.*) For making or requiring duplicates of specifications, amendment, drawings, and other documents: S. 101.

(*d.*) For securing and regulating the publishing and selling of copies, at such prices and in such manner as the Board of Trade think fit, of specifications, drawings, amendments and other documents:

(*e.*) For securing and regulating the making, printing, publishing and selling of indexes to, and abridgments of, specifications and other documents in the patent office; and providing for the inspection of indexes and abridgments and other documents:

(*f.*) For regulating (with the approval of the Treasury) the presentation of copies of patent office publications to patentees and to public authorities, bodies, and institutions at home and abroad:

(*g.*) Generally for regulating the business of the patent office, and all things by this Act placed under the direction or control of the comptroller, or of the Board of Trade.

(2.) Any of the forms in the first schedule to this Act may be altered or amended by rules made by the Board as aforesaid.

(3.) General rules may be made under this section at any time after the passing of this Act, but not so as to take effect before the commencement of this Act, and shall (subject as herein-after mentioned) be of the same effect as if they were

S. 101.

contained in this Act, and shall be judicially noticed.

(4.) Any rules made in pursuance of this section shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or, if not, then as soon as practicable after the beginning of the then next session of Parliament, and they shall also be advertised twice in the official journal to be issued by the comptroller.

(5.) If either House of Parliament, within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule or to the making of any new rules or rule.

Annual reports of comptroller.

S. 102. The comptroller shall, before the first day of June in every year, cause a report respecting the execution by or under him of this Act to be laid before both Houses of Parliament, and therein shall include for the year to which each report relates all general rules made in that year under or for the purposes of this Act, and an account of all fees, salaries, and allowances, and other money received and paid under this Act.

International and Colonial Arrangements.

International arrangements for protection

S. 103. (1.) If Her Majesty is pleased to make any arrangement with the government or governments of any foreign state or states for mutual

protection of inventions, designs, and trade marks, or any of them, then any person who has applied for protection for any invention, design, or trade mark in any such state, shall be entitled to a patent for his invention or to registration of his design or trade mark (as the case may be) under this Act, in priority to other applicants; and such patent or registration shall have the same date as the date of the protection obtained in such foreign state. S. 103. of inventions, designs, and trade marks.

Provided that his application is made, in the case of a patent within seven months, and in the case of a design or trade mark within four months, from his applying for protection in the foreign state with which the arrangement is in force.

Provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade mark in this country, as the case may be.

(2.) The publication in the United Kingdom, or the Isle of Man during the respective periods aforesaid of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during

S. 103.

such periods of the trade mark, shall not invalidate the patent which may be granted for the invention, or the registration of the design or trade mark:

(3.) The application for the grant of a patent, or the registration of a design, or the registration of a trade mark under this section, must be made in the same manner as an ordinary application under this Act: Provided that, in the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Act:

(4.) The provisions of this section shall apply only in the case of those foreign states with respect to which Her Majesty shall from time to time by Order in Council declare them to be applicable, and so long only in the case of each state as the Order in Council shall continue in force with respect to that state.

Provision for colonies and India.

S. 104. (1.) Where it is made to appear to Her Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks patented or registered in this country, it shall be lawful for Her Majesty from time to time, by Order in Council, to apply the provisions of the last preceding section, with such variations or additions, if any, as to Her Majesty in Council may seem fit, to such British possession.

(2.) An Order in Council under this Act shall, from a date to be mentioned for the purpose in the

Order, take effect as if its provisions had been contained in this Act; but it shall be lawful for Her Majesty in Council to revoke any Order in Council made under this Act. S. 104.

Offences.

S. 105. (1.) Any person who represents that any article sold by him is a patented article, when no patent has been granted for the same, or describes any design or trade mark applied to any article sold by him as registered which is not so, shall be liable for every offence, on summary conviction, to a fine not exceeding five pounds. Penalty on falsely representing articles to be patented.

(2.) A person shall be deemed, for the purposes of this enactment, to represent that an article is patented or a design or a trade mark is registered, if he sells the article with the word "patent," "patented," "registered," or any word or words expressing or implying that a patent or registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to, the article.

S. 106. Any person who, without the authority of Her Majesty, or any of the Royal Family, or of any Government Department, assumes or uses in connexion with any trade, business, calling, or profession, the Royal arms, or arms so nearly resembling the same as to be calculated to deceive, in such a manner as to be calculated to lead other persons to believe that he is carrying on his trade, business, calling, or profession by or under such authority Penalty on unauthorised assumption of Royal arms.

S. 106. as aforesaid, shall be liable on summary conviction to a fine not exceeding twenty pounds.

Scotland; Ireland; &c.

Saving for Courts in Scotland.

S. 107. In any action for infringement of a patent in Scotland the provisions of this Act, with respect to calling in the aid of an assessor, shall apply, and the action shall be tried without a jury, unless the Court shall otherwise direct, but otherwise nothing shall affect the jurisdiction and forms of process of the Courts in Scotland in such an action or in any action or proceeding respecting a patent hitherto competent to those ourts.

For the purposes of this section "court of appeal" shall mean any court to which such action is appealed.

Summary proceedings in Scotland.

S. 108. In Scotland any offence under this Act declared to be punishable on summary conviction may be prosecuted in the sheriff court.

Proceedings for revocation of patent in Scotland.

S. 109. (1.) Proceedings in Scotland for revocation of a patent shall be in the form of an action of reduction at the instance of the Lord Advocate, or at the instance of a party having interest with his concurrence, which concurrence may be given on just cause shown only.

(2.) Service of all writs and summonses in that action shall be made according to the forms and practice existing at the commencement of this Act.

Reservation of remedies in Ireland.

S. 110. All parties shall, notwithstanding anything in this Act, have in Ireland their remedies under or in respect of a patent as if the same had been granted to extend to Ireland only.

S. 111. (1.) The provisions of this Act conferring a special jurisdiction on the Court as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Scotland or Ireland in any proceedings relating to patents or to designs or to trade marks; and with reference to any such proceedings in Scotland, the term "the Court" shall mean any Lord Ordinary of the Court of Session, and the term "Court of Appeal" shall mean either Division of the said Court; and with reference to any such proceedings in Ireland, the terms "the Court" and "the Court of Appeal" respectively mean the High Court of Justice in Ireland and Her Majesty's Court of Appeal in Ireland.

S. 111. General saving for jurisdiction of courts.

(2.) If any rectification of a register under this Act is required in pursuance of any proceeding in a court in Scotland or Ireland, a copy of the order, decree, or other authority for the rectification, shall be served on the comptroller, and he shall rectify the register accordingly.

S. 112. This Act shall extend to the Isle of Man, and—

Isle of Man.

(1.) Nothing in this Act shall affect the jurisdiction of the courts in the Isle of Man, in proceedings for infringement or in any action or proceeding respecting a patent, design, or trade mark competent to those courts;

(2.) The punishment for a misdemeanor under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour, and with or without a fine not exceed-

S. 112.

ing one hundred pounds, at the discretion of the Court;

(3.) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

Repeal; Transitional Provisions; Savings.

Repeal and saving for past operation of repealed enactments, &c.

S. 113. The enactments described in the Third Schedule to this Act are hereby repealed. But this repeal of enactments shall not—

(*a.*) Affect the past operation of any of those enactments, or any patent or copyright or right to use a trade mark granted or acquired, or application pending, or appointment made, or compensation granted, or order or direction made or given, or right, privilege, obligation, or liability acquired, accrued, or incurred, or anything duly done or suffered under or by any of those enactments before or at the commencement of this Act; or

(*b.*) Interfere with the institution or prosecution of any action or proceeding, civil or criminal, in respect thereof, and any such proceeding may be carried on as if this Act had not been passed; or

(*c.*) Take away or abridge any protection or benefit in relation to any such action or proceeding.

Former registers to be deemed continued.

S. 114. (1.) The registers of patents and of proprietors kept under any enactment repealed by this Act

shall respectively be deemed parts of the same book as the register of patents kept under this Act. S. 114.

(2.) The registers of designs and of trade marks kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of designs and the register of trade marks kept under this Act.

Saving for existing rules.

S. 115. All general rules made by the Lord Chancellor or by any other authority under any enactment repealed by this Act, and in force at the commencement of this Act, may at any time after the passing of this Act be repealed altered or amended by the Board of Trade, as if they had been made by the Board under this Act, but so that no such repeal, alteration or amendment shall take effect before the commencement of this Act; and, subject as aforesaid, such general rules shall, so far as they are consistent with and are not superseded by this Act, continue in force as if they had been made by the Board of Trade under this Act.

Saving for prerogative.

S. 116. Nothing in this Act shall take away, abridge or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof.

General Definitions.

General definitions.

S. 117. (1.) In and for the purposes of this Act, unless the context otherwise requires,—

"Person" includes a body corporate:

"The Court" means (subject to the provisions for Scotland, Ireland, and the Isle of Man) Her Majesty's High Court of Justice in England:

S. 117.

"Law officer" means Her Majesty's Attorney-General or Solicitor-General for England:

"The Treasury" means the Commissioners of Her Majesty's Treasury:

"Comptroller" means the Comptroller General of Patents, Designs and Trade Marks:

"Prescribed" means prescribed by any of the Schedules to this Act, or by general rules under or within the meaning of this Act:

"British possession" means any territory or place situate within Her Majesty's dominions, and not being or forming part of the United Kingdom, or of the Channel Islands, or of the Isle of Man, and all territories and places under one legislature, as herein-after defined, are deemed to be one British possession for the purposes of this Act:

"Legislature" includes any person or persons who exercise legislative authority in the British possession; and where there are local legislatures as well as a central legislature, means the central legislature only.

In the application of this Act to Ireland, "summary conviction" means a conviction under the Summary Jurisdiction Acts, that is to say, with reference to the Dublin Metropolitan Police District the Acts regulating the duties of justices of the peace and of the police for such district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending it.

SCHEDULES.

THE FIRST SCHEDULE.

FORMS OF APPLICATION, &c.

£1 Stamp.

FORM A.

Section 5.

FORM OF APPLICATION FOR PATENT.

I, (*a*) *John Smith*, of 29, *Perry Street, Birmingham*, in the county of *Warwick*, *Engineer*, do solemnly and sincerely declare that I am in possession of an invention for (*b*) "*Improvements in Sewing Machines*;" that I am the true and first inventor thereof; and that the same is not in use by any other person or persons to the best of my knowledge and belief; and I humbly pray that a patent may be granted to me for the said invention.

(*a*) Here insert name, address and calling of inventor.

(*b*) Here insert title of invention.

And I make the above solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

(*c*) *John Smith.*

(*c*) Signature of inventor.

Declared at *Birmingham*, in the county of *Warwick*, this day of 18 .

Before me,

(*d*) *James Adams,*
Justice of the Peace.

(*d*) Signature and title of the officer before whom the declaration is made.

NOTE.—Where the above declaration is made out of the United Kingdom, the words "and by virtue of the Statutory Declarations Act, 1835," must be omitted; and the declaration must be made before a British consular officer, or where it is not reasonably practicable to make it before such officer, then before a public officer duly authorised in that behalf.

Sched. 1. Form B.

FORM B.

Form of Provisional Specification.

Improvements in Sewing Machines. (a)

I, (b) *John Smith*, of 29, *Perry Street, Birmingham*, in the county of *Warwick, Engineer*, do hereby declare the nature of my invention for "*Improvements in Sewing Machines*," to be as follows (c):—

* * * * *

(d) *John Smith.*

Dated this day of 18 .

(a) Here insert title as in declaration.
(b) Here insert name, address, and calling of inventor as in declaration.
(c) Here insert short description of invention.
(d) Signature of inventor.

NOTE.—No stamp is required on this document.

FORM C.

£3 Stamp.

Form of Complete Specification.

Improvements in Sewing Machines. (a)

I, (b) *John Smith*, of 29, *Perry Street, Birmingham*, in the county of *Warwick, Engineer*, do hereby declare the nature of my invention for "*Improvements in Sewing Machines*," and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement (c):—

* * * * *

Having now particularly described and ascertained the nature of my said invention and in what manner the same is to be performed, I declare that what I claim is (d).

1.

2.

3. &c.

(c) *John Smith.*

Dated this day of 18 .

(a) Here insert title as in declaration.
(b) Here insert name, address, and calling of inventor, as in declaration.
(c) Here insert full description of invention.
(d) Here state distinctly the features of novelty claimed.
(c) Signature of inventor.

FORM D.

Sched. 1. Form D.

Section 33.

Form of 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 *John Smith*, of 29, *Perry Street, Birmingham*, in the county of *Warwick, Engineer*, hath by his solemn declaration represented unto us that he is in possession of an invention for "*Improvements in Sewing Machines*," that he is the true and first inventor thereof, and that the same is not in use by any other person to the best of his knowledge and belief:

And whereas the said inventor hath humbly prayed that we would be graciously pleased to grant unto him (hereinafter together with his executors, administrators, and assigns, or any of them, referred to as the said patentee) our Royal Letters Patent for the sole use and advantage of his said invention:

And whereas the said inventor hath by and in his complete specification particularly described the nature of his invention:

And whereas we be willing to encourage all inventions which may be for the public good, are graciously pleased to condescend to his request:

Know ye, therefore, that we, of our especial grace, certain knowledge, and mere motion do by these presents, for us, our heirs and successors, give and grant unto the said patentee our especial license, full power, sole privilege, and authority, that the said patentee by himself, his agents, or licensees, and no others, may at all times hereafter during the term of years herein mentioned, make, use, exercise, and vend the said invention within our United Kingdom of Great Britain and Ireland, and Isle of Man, in such manner as to him or them may seem meet, and that the said patentee shall have and enjoy the whole profit and advantage from time to time accruing by reason of the said invention, during the

Sched. 1. Form D.

term of fourteen years from the date hereunder written of these presents: And to the end that the said patentee may have and enjoy the sole use and exercise and the full benefit of the said invention, We do by these presents for us our heirs and successors, strictly command all our subjects whatsoever within our United Kingdom of Great Britain and Ireland, and the Isle of Man, that they do not at any time during the continuance of the said term of fourteen years either directly or indirectly make use of or put in practice the said invention, or any part of the same, nor in anywise imitate the same, nor make or cause to be made any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof, without the consent license or agreement of the said patentee in writing under his hand and seal, on pain of incurring such penalties as may be justly inflicted on such offenders for their contempt of this our Royal command, and of being answerable to the patentee according to law for his damages thereby occasioned: Provided that these our letters patent are on this condition, that, if at any time during the said term it be made to appear to us, our heirs, or successors, or any six or more of our 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 within our United Kingdom of Great Britain and Ireland, and Isle of Man, or that the said patentee is not the first and true inventor thereof within this realm as aforesaid, these our letters patent shall forthwith determine, and be void to all intents and purposes, notwithstanding anything herein-before contained: Provided also, that if the said patentee shall not pay all fees by law required to be paid in respect of the grant of these letters patent, or in respect of any matter relating thereto at the time or times, and in manner for the time being by law provided; and also if the said patentee shall not supply or cause to be supplied, for our service all such articles of the said invention as may

be required by the officers or commissioners administering any department of our service in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled in manner for the time being by law provided, then, and in any other of the said cases, these our letters patent, and all privileges and advantages whatever hereby granted shall determine and become void notwithstanding anything herein-before contained: Provided also that nothing herein contained shall prevent the granting of licences 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 patentee that these our letters patent shall be construed in the most beneficial sense for the advantage of the said patentee. In witness whereof we have caused these our letters to be made patent this one thousand eight hundred and and to be sealed as of the one thousand eight hundred and

Sched. I. Form D.

Seal of Patent Office.

FORM E.

Section 47.

FORM OF APPLICATION FOR REGISTRATION OF DESIGN.

day of 18 .

You are hereby requested to register the accompanying Design, in Class in the name of (*a*) of who claims to be the Proprietor thereof, and to return the same to

Statement of nature of Design

Registration Fees enclosed £ „ *s.*

To the Comptroller,

Patent Office, 25, *Southampton Buildings, Chancery Lane, W.C.*

(Signed)

(*a*) Here insert legibly the name and address of the individual or firm.

Sched. 1. Form F.

Section 62.

FORM F.

FORM OF APPLICATION FOR REGISTRATION OF TRADE MARK.

(One representation to be fixed within this square, and two others on separate sheets of foolscap of same size.)

(Representations of a larger size may be folded, but must be mounted upon linen and affixed hereto.)

You are hereby requested to register the accompanying trade mark, [*In Class —Iron in bars, sheets, and plates; in Class —Steam engines and boilers; and in Class —Warming Apparatus*], in the name of (*a*) , who claims to be the Proprietor thereof.

(*a*) Here insert legibly the name, address and business of the individual or firm.

Registration Fees enclosed £ „ s.

To the Comptroller,
Patent Office, 25, *Southampton Buildings, Chancery Lane, W.C.*
(Signed)

NOTE.—If the trade mark has been in use before August 13, 1875, state length of user.

THE SECOND SCHEDULE.

Sched. 2.

Section 24.

Fees on Instruments for obtaining Patents, and Renewal.

(a.) Up to sealing.

	£	s.	d.	£	s.	d.
On application for provisional protection	1	0	0			
On filing complete specification ..	3	0	0			
				4	0	0
or						
On filing complete specification with first application				4	0	0

(b.) Further before end of four years from date of patent.

On certificate of renewal	50	0	0

(c.) Further before the end of seven years, or in the case of patents granted after the commencement of this Act, before the end of eight years from date of patent.

On certificate of renewal	100	0	0

Or in lieu of the fees of £50 ***and*** £100 ***the following annual fees:—***

Before the expiration of the fourth year from the date of the patent	10	0	0
Before the expiration of the fifth year from the date of the patent	10	0	0
Before the expiration of the sixth year from the date of the patent	10	0	0
Before the expiration of the seventh year from the date of the patent	10	0	0
Before the expiration of the eighth year from the date of the patent	15	0	0

Sched. 2.

Section 24.

	£	s.	d.
Before the expiration of the ninth year from the date of the patent	15	0	0
Before the expiration of the tenth year from the date of the patent	20	0	0
Before the expiration of the eleventh year from the date of the patent	20	0	0
Before the expiration of the twelfth year from the date of the patent	20	0	0
Before the expiration of the thirteenth year from the date of the patent	20	0	0

Section 113.

THE THIRD SCHEDULE.

Enactments repealed.

21 James I. c. 3. [1623.]	The Statute of Monopolies. In part; namely,— Sections ten, eleven, and twelve.
5 & 6 Will. 4. c. 62 [1835.] In part.	The Statutory Declarations Act, 1835. In part; namely,— Section eleven.
5 & 6 Will. 4. c. 83. [1835.]	An Act to amend the law touching letters patent for inventions.
2 & 3 Vict. c. 67. [1839.]	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 Vict. c. 100. [1842.]	An Act to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
6 & 7 Vict. c. 65. [1843.]	An Act to amend the laws relating to the copyright of designs.

Enactments repealed—continued.

Sched. 3.

Section 113.

7 & 8 Vict. c. 69. (*a*) [1844.] In part.	An Act for amending an Act passed in the fourth year of the reign of His late Majesty, intituled "An Act for the better administration of justice in His Majesty's Privy Council, and to extend its jurisdiction and powers." In part; namely,— Sections two to five, both included.
13 & 14 Vict. c. 104. [1850.]	An Act to extend and amend the Acts relating to the copyright of designs.
15 & 16 Vict. c. 83. [1852.]	The Patent Law Amendment Act, 1852.
16 & 17 Vict. c. 5. [1853.]	An Act to substitute stamp duties for fees on passing letters patent for inventions, and to provide for the purchase for the public use of certain indexes of specifications.
16 & 17 Vict. c. 115. [1853.]	An Act to amend certain provisions of the Patent Law Amendment Act, 1852, in respect of the transmission of certified copies of letters patent and specifications to certain offices in Edinburgh and Dublin, and otherwise to amend the said Act.
21 & 22 Vict. c. 70. [1858.]	An Act to amend the Act of the fifth and sixth years of Her present Majesty, to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.

(*a*.) NOTE.—Sections six and seven of this Act are repealed by the Statute Law Revision (No. 2) Act, 1874.

Sched. 3.

Enactments repealed—continued.

Section 113.	22 Vict c. 13. [1859.]	An Act to amend the law concerning patents for inventions with respect to inventions for improvements in instruments and munitions of war.
	24 & 25 Vict. c. 73. [1861.]	An Act to amend the law relating to the copyright of designs.
	28 & 29 Vict. c. 3. [1865.]	The Industrial Exhibitions Act, 1865.
	33 & 34 Vict. c. 27. [1870.]	The Protection of Inventions Act, 1870.
	33 & 34 Vict. c. 97. [1870.]	The Stamp Act, 1870. In part; namely,— Sections sixty-five, and in the Schedule the words and figures. "Certificate of the registration of a design . . . £5 0 0. And see section 65."
	38 & 39 Vict. c. 91. [1875.]	The Trade Marks Registration Act, 1875.
	38 & 39 Vict. c. 93. [1875.]	The Copyright of Designs Act, 1875.
	39 & 40 Vict. c. 33. [1876.]	The Trade Marks Registration Amendment Act, 1876.
	40 & 41 Vict. c. 37. [1877.]	The Trade Marks Registration Extension Act, 1877.
	43 & 44 Vict. c. 10. [1880.]	The Great Seal Act, 1880. In part; namely,— Section five.
	45 & 46 Vict. c. 72. [1882.]	The Revenue, Friendly Societies, and National Debt Act, 1882. In part; namely,— Section sixteen.

PATENTS RULES.

RULES RELATING TO APPLICATIONS FOR PATENTS FOR INVENTIONS AND PROCEEDINGS THEREON, AND REGISTRATION OF PATENTS; WITH LIST OF FEES AND RULES FOR APPEALS TO THE LAW OFFICERS.

BY virtue of the provisions of the Patents, Designs, and Trade Marks Act, 1883, the Board of Trade do hereby make the following Rules:—

SHORT TITLE.

Short title.

1. These Rules may be cited as the Patents Rules, 1883.

COMMENCEMENT.

Commencement.

2. These Rules shall come into operation from and immediately after the 31st day of December, 1883.

INTERPRETATION.

Interpretation.

3. In the construction of these Rules, any words herein used defined by the said Act shall have the meanings thereby assigned to them respectively.

FEES.

Fees.

4. The fees to be paid under the above-mentioned Act, in addition to the fees mentioned in the Second Schedule thereto, so far as it relates to patents, shall be those specified in the list of fees in the First Schedule to these Rules.

FORMS.

Forms. Alterations.

5. The Forms A, B, and C in the First Schedule to the said Act shall be altered or amended by the substitution

therefor respectively of the Forms A, A1, B, and C in the Second Schedule hereto.

Application.

6. (1.) An application for a patent shall be made either in the Form A or the Form A1 set forth in the Second Schedule hereto, as the case may be.

Specification.

(2.) The Form B in such Schedule of provisional specification and the Form C of complete specification shall respectively be used.

Other forms.

(3.) The remaining forms set forth in such Schedule may, as far as they are applicable, be used in any proceedings under these Rules.

Hours of business.

7. The Patent Office shall be open to the public every weekday during the hours of ten and four, except on the days and times following:—

Christmas Day.
Good Friday.
The day observed as Her Majesty's birthday.
The days observed as days of public fast or thanksgiving, or as holidays at the Bank of England.

Agency.

8. An application for a patent must be signed by the applicant, but all other communications between the applicant and the Comptroller and all attendances by the applicant upon the Comptroller may be made by or through an agent duly authorised to the satisfaction of the Comptroller, and if he so require resident in the United Kingdom.

Statement of address.

9. The application shall be accompanied by a statement of an address to which all notices, requisitions, and communications of every kind may be made by the Comptroller or by the Board of Trade, and such statement shall thereafter be binding upon the applicant unless and until a substituted statement of address shall be furnished by him to the Comptroller. He may in any particular case require that the address mentioned in this Rule be in the United Kingdom.

Size, &c., of documents.

10. All documents and copies of documents sent to or left at the Patent Office or otherwise furnished to the Comptroller or to the Board of Trade, shall be written or printed in large and legible characters in the English language upon strong wide ruled paper (on one side only), of a size of 13 inches by 8 inches, leaving a margin of two inches on the left-hand part thereof, and the signature of the applicants or agents thereto must be written in a large and legible hand. Duplicate documents shall at any time be left, if required by the Comptroller.

Exercise of discretionary power by Comptroller.

Notice of hearing.

11. Before exercising any discretionary power given to the Comptroller by the said Act adversely to the applicant for a patent or for amendment of a specification, the Comptroller shall give ten days' notice, or such longer notice as he may think fit, to the applicant of the time when he may be heard personally or by his agent before the Comptroller.

Notice by applicant.

12. Within five days from the date when such notice would be delivered in the ordinary course of post, or such longer time as the Comptroller may appoint in such notice, the applicant shall notify to the Comptroller whether or not he intends to be heard upon the matter.

Comptroller may require statement, &c.

13. Whether the applicant desires to be heard or not, the Comptroller may at any time require him to submit a statement in writing within a time to be notified by the Comptroller, or to attend before him and make oral explanations with respect to such matters as the Comptroller may require.

Decision to be notified to parties.

14. The decision or determination of the Comptroller in the exercise of any such discretionary power as aforesaid, shall be notified by him to the applicant, and any other person affected thereby.

Definition of "applicant."

15. The term "applicant" in Rules 11, 12, and 13 shall include an applicant whose specification bears a title the

same as or similar to that of the specification of a prior applicant, and has been reported on by the examiner.

Prior and second applicant may attend hearing.

16. Such prior and second applicant respectively may attend the hearing of the question whether the invention comprised in both applications is the same, but neither party shall be at liberty to inspect the specification of the other.

Industrial or international exhibitions.

17. Any person desirous of exhibiting an invention at an industrial or international exhibition, or of publishing any description of the invention during the period of the holding of the exhibition, or of using the invention for the purpose of the exhibition in the place where the exhibition is held shall, after having obtained from the Board of Trade a certificate that the exhibition is an industrial or international one, give to the Comptroller seven days' notice of his intention to exhibit, publish, or use the invention, as the case may be.

For the purpose of identifying the invention in the event of an application for a patent being subsequently made the applicant shall furnish to the Comptroller a brief description of his invention, accompanied, if necessary, by drawings, and such other information as the Comptroller may in each case require.

Power of amendment, &c.

18. Any document for the amending of which no special provision is made by the said Act may be amended, and any irregularity in procedure, which in the opinion of the Comptroller may be obviated without detriment to the interests of any person, may be corrected, if and on such terms as the Comptroller may think fit.

Documents by post.

19. Any application, notice, or other document authorised or required to be left, made, or given at the Patent Office or to the Comptroller or to any other person under these Rules, may be sent by a prepaid letter through the post, and if so

sent shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

In proving such service or sending it shall be sufficient to prove that the letter was properly addressed and put into the post.

Affidavits.

20. Affidavits may, except where otherwise prescribed by these Rules, be used as evidence in any proceedings thereunder when sworn to in any of the following ways, viz.:—

(1.) In the United Kingdom before any person authorised to administer oaths in the Supreme Court of Judicature or before a justice of the peace for the county or place where it is sworn or made.

(2.) In any place in the British dominions out of the United Kingdom before any court, judge, or justice of the peace or any person authorised to administer oaths there in any court.

(3.) In any place out of the British dominions before a British minister, or person exercising the functions of a British minister, or a British consul, vice-consul, or other person exercising the functions of a British consul, or a notary public, or before a judge or magistrate.

Statutory declarations.

21. Where any statutory declaration prescribed by these Rules, or used in any proceedings thereunder, is made out of the United Kingdom, the words, "and by virtue of the Statutory Declarations Act, 1835," must be omitted, and the declaration shall (unless the context otherwise requires) be made in the manner prescribed in Rule 20, sub-section (3).

Application with Provisional or Complete Specification.

Order of recording applications.

22. Applications for a patent sent by prepaid letter through the post shall, as far as may be practicable, be opened and numbered in the order in which the letters containing the

same have been respectively delivered in the ordinary course of post.

Applications left at the Patent Office otherwise than through the post shall be in like manner numbered in the order of their receipt at the Patent Office.

Application for separate patents by way of amendment.

23. Where a person making application for a patent includes therein by mistake, inadvertence, or otherwise, more than one invention, he may, after the refusal of the Comptroller to accept such application, amend the same so as to apply to one invention only, and may make application for separate patents for each such invention accordingly.

Every such application shall bear the date of the first application, and shall, together therewith, be proceeded with in the manner prescribed by the said Act and by these Rules as if every such application had been originally made on that date for one invention only.

Application by representative of deceased inventor.

24. An application for a patent by the legal representative of a person who has died possessed of an invention shall be accompanied by an official copy of or extract from his will or the letters of administration granted of his estate and effects in proof of the applicant's title as such legal representative.

Notice and advertisement of acceptance.

25. On the acceptance of an application with a provisional or complete specification, the Comptroller shall give notice thereof to the applicant, and shall advertise such acceptance in the official journal of the Patent Office.

Inspection on acceptance of complete specification.

26. Upon the publication of such advertisement of acceptance in the case of an application with a complete specification, the application and specification or specifications, with the drawings (if any), may be inspected at the Patent Office upon payment of the prescribed fee.

APPLICATION ON COMMUNICATION FROM ABROAD.

27. An application for a patent for an invention communicated from abroad shall be made in the Form A 1 set forth in the Second Schedule hereto. Communication from abroad.

SIZES AND METHODS OF PREPARING DRAWINGS ACCOMPANYING PROVISIONAL OR COMPLETE SPECIFICATIONS.

28. The drawings accompanying provisional or complete specifications shall be made upon half-sheets or sheets of imperial drawing paper, to be within a border line of 19 inches by 12 inches, or 27 inches by 19 inches, with a margin of ½ an inch all round. Size of drawings.

29. A copy of the drawings will be required upon *rolled imperial drawing paper* or upon thin Bristol board of the same dimensions as the original drawing or drawings. All the lines must be absolutely black, Indian ink of the best quality to be used, and the same strength or colour of the ink maintained throughout the drawing. Any shading must be in lines clearly and distinctly drawn, and as open as is consistent with the required effect. Section lines should not be too closely drawn. No colour must be used for any purpose upon the copy of the drawings. All letters and figures of reference must be bold and distinct. The border line should be one fine line only. The drawings must not be folded, but must be delivered at the Patent Office either in a perfectly flat state or rolled upon a roller so as to be free from creases or breaks.* Copies of drawings.

30. Where a complete specification is left at the Patent Office after a provisional specification has been accepted the

* As the drawings accompanying the provisional and complete specification respectively are copied at the Patent office for publication by the process of photo-lithography, this rule must be strictly observed in order that correct copies may be made.

complete specification and drawing or drawings accompanying the same, as well as the copy thereof, must be prepared in accordance with Rules 10, 28, and 29.

Illustrated Journal.

Additional drawing to be furnished.

31. Every applicant for the grant of a patent shall, in addition to the drawings to be furnished with his complete specification, furnish the Comptroller with a drawing illustrative of the feature or features of novelty constituting his invention. Such drawing must be prepared in the manner prescribed for the copy of the original drawing or drawings accompanying the specification, but must not cover a space exceeding 16 square inches. The drawing must be accompanied by a concise explanatory statement on foolscap paper and legibly written or printed.

Opposition to Grants of Patents.

Notice of opposition.

32. A notice of opposition to the grant of a patent shall state the ground or grounds on which the person giving such notice (hereinafter called the opponent) intends to oppose the grant, and shall be signed by him. Such notice shall state his address for service in the United Kingdom.

Copy for applicant.

33. On receipt of such notice a copy thereof shall be furnished by the Comptroller to the applicant.

Particulars of prior patent.

34. Where the ground or one of the grounds of opposition is that the invention has been patented in this country on an application of prior date, the title, number, and date of the patent granted in such prior application shall be specified in the notice.

Opponent's evidence.

35. Within 14 days after the expiration of two months from the date of the advertisement of the acceptance of a complete specification, the opponent shall leave at the Patent Office statutory declarations in support of his opposition, and deliver to the applicant a list thereof.

Applicant's evidence.

36. Within 14 days from the delivery of such list the applicant shall leave at the Patent Office statutory declarations in answer, and deliver to the opponent a list thereof, and within seven days from such delivery the opponent shall leave at the Patent Office his statutory declarations in reply, and deliver to the applicant a list thereof. Such last-mentioned declarations shall be confined to matters strictly in reply.

Evidence in reply.

Copies of the declarations mentioned in this and the last preceding Rule may be obtained either from the Patent Office or from the opposite party.

Closing of evidence.

37. No further evidence shall be left on either side except by leave of the Comptroller upon the written consent of the parties duly notified to him, or by special leave of the Comptroller on application made to him for that purpose.

38. Either party making such application shall give notice thereof to the opposite party, who shall be entitled to oppose the application.

Notice of hearing.

39. On the completion of the evidence the Comptroller shall appoint a time for the hearing of the case, and shall give to the parties seven days' notice at the least of such appointment.

Disallowance of opposition in certain cases.

40. On the hearing of the case no opposition shall be allowed in respect of any ground not stated in the notice of opposition, and where the ground or one of the grounds is that the invention has been patented in this country on an application of prior date, the opposition shall not be allowed upon such ground unless the title, number, and date of the patent granted on such prior application shall have been duly specified in the notice of opposition.

Decision to be notified to parties.

41. The decision of the Comptroller in the case shall be notified by him to the parties.

Certificates of Payment or Renewal.

Payment of fees of 50*l.* and 100*l.* for continuance of patent.

42. If a patentee intends at the expiration of the fourth or eighth year from the date of his patent to make the prescribed payment for keeping the same in force, he shall, seven days at least before such expiration, give notice to the Comptroller of such intention, and shall, before the expiration of such fourth or eighth year, as the case may be, leave at the Patent Office a form of certificate of payment, duly stamped, subject as hereinafter provided, with the prescribed fee of 50*l.* or 100*l.*, as the case may be.

As to patents granted before commencement of Act.

43. In the case of patents granted before the commencement of the said Act, the above Rule shall be read as if the words "seventh year" were therein written instead of the words "eighth year."

Payment of annual fees in lieu of 50*l.* and 100*l.*

44. If the patentee intends to pay annual fees in lieu of the above-mentioned fees of 50*l.* and 100*l.*, he shall, seven days at least before the expiration of the fourth and each succeeding year during the term of the patent, until and inclusive of the 13th year thereof, give notice to the Comptroller of such intention, and shall, before the expiration of such respective periods as aforesaid, leave at the Patent Office a form of certificate of payment, duly stamped with the fee prescribed to be paid at such periods respectively.

Certificate of payment.

45. On due compliance with these Rules, and as soon as may be after such respective periods as aforesaid, or any enlargement thereof respectively duly granted, the Comptroller shall give to the patentee a certificate that the prescribed payment has been duly made.

Enlargement of Time.

Enlargement of time for payments.

46. An application for an enlargement of the time for making a prescribed payment shall state in detail the circumstances in which the patentee by accident, mistake, or inadvertence has failed to make such payment, and the Comptroller may require the patentee to substantiate by such proof as he may think necessary the allegations contained in the application for enlargement.

In other cases.

47. The time prescribed by these Rules for doing any act, or taking any proceeding thereunder, may be enlarged by the Comptroller if he think fit, and upon such notice to other parties, and proceedings thereon, and upon such terms, as he may direct.

Amendment of Specification.

Request for leave to amend.

Advertisement.

48. A request for leave to amend a specification shall be signed by the applicant or patentee and accompanied by a copy of the original specification and drawings, showing in red ink the proposed amendment, and shall be advertised by publication of the request and the nature of the proposed amendment in the official journal of the Patent Office, and in such other manner (if any) as the Comptroller may in each case direct.

Notice of opposition.

49. A notice of opposition to the amendment shall state the ground or grounds on which the person giving such notice (hereinafter called the opponent) intends to oppose the amendment, and shall be signed by him. Such notice shall state his address for service in the United Kingdom.

Copy for the applicant.

50. On receipt of such notice a copy thereof shall be furnished by the Comptroller to the applicant or patentee, as the case may be (hereinafter called the applicant).

Opponent's evidence.

51. Within 14 days after the expiration of one month from the first advertisement of the application for leave to amend, the opponent shall leave at the Patent Office statutory declarations in support of his opposition and deliver to the applicant a list thereof.

Further proceedings.

52. Upon such declarations being left, and such list being delivered, the provisions of Rules 36, 37, 38, and 39 shall apply to the case, and the further proceedings therein shall be regulated in accordance with such provisions as if they were here repeated.

Decision to be notified to parties.

53. The decision of the Comptroller in the case shall be notified by him to the parties.

Requirements thereon.

54. Where leave to amend is given, the applicant shall, if the Comptroller so require, and within a time to be limited by him, leave at the Patent Office a new specification and drawings as amended, to be prepared in accordance with Rules 10, 28, and 29.

Leave by order of Court.

55. Where a request for leave to amend is made by or in pursuance of an order of the Court or a judge, an official or verified copy of the order shall be left with the request at the Patent Office.

Advertisement of amendment.

56. Every amendment of a specification shall be forthwith advertised by the Comptroller in the official journal of the Patent Office, and in such other manner (if any) as the Comptroller may direct.

Compulsory Licenses.

Petition for compulsory grant of licenses.

57. A petition to the Board of Trade for an order upon a patentee to grant a license shall show clearly the nature of the petitioner's interest, and the ground or grounds upon which he claims to be entitled to relief, and shall state in

detail the circumstances of the case, the terms upon which he asks that an order may be made, and the purport of such order.

58. The petition and an examined copy thereof shall be left at the Patent Office, accompanied by the affidavits, or statutory declarations, and other documentary evidence (if any) tendered by the petitioner in proof of the alleged default of the patentee. To be left with evidence at Patent Office.

59. Upon perusing the petition and evidence, unless the Board of Trade shall be of opinion that the order should be at once refused, they may require the petitioner to attend before the Comptroller, or other person or persons appointed by them, to receive his or their directions as to further proceedings upon the petition. Directions as to further proceedings unless petition refused.

60. If and when a *primâ facie* case for relief has been made out to the satisfaction of the Board of Trade, the petitioner shall upon their requisition, and on or before a day to be named by them, deliver to the patentee copies of the petition and of the affidavits or statutory declarations and other documentary evidence (if any) tendered in support thereof. Procedure. Petitioner's evidence.

61. Within 14 days after the day of such delivery the patentee shall leave at the Patent Office his affidavits or statutory declarations in opposition to the petition, and deliver copies thereof to the petitioner. Patentee's evidence.

62. The petitioner within 14 days from such delivery shall leave at the Patent Office his affidavits, or statutory declarations in reply, and deliver copies thereof to the petitioner; such last-mentioned affidavits or declarations shall be confined to matters strictly in reply. Evidence in reply.

Further proceedings.

63. Subject to any further directions which the Board of Trade may give the parties shall then be heard at such time, before such person or persons, in such manner, and in accordance with such procedure as the Board of Trade may, in the circumstances of the case, direct, but so that full opportunity shall be given to the patentee to show cause against the petition.

Register of Patents.

Entry of grant.

64. Upon the sealing of a patent the Comptroller shall cause to be entered in the Register of Patents the name, address, and description of the patentee as the grantee thereof, and the title of the invention.

Request for entry of subsequent proprietorship.

65. Where a person becomes entitled to a patent or to any share or interest therein, by assignment either throughout the United Kingdom and the Isle of Man, or for any place or places therein, or by transmission or other operation of law, a request for the entry of his name in the register as such complete or partial proprietor of the patent, or of such share or interest therein, as the case may be, shall be addressed to the Comptroller, and left at the Patent Office.

Signature of request.

66. Such request shall in the case of individuals be made and signed by the person requiring to be registered as proprietor, or by his agent duly authorised to the satisfaction of the Comptroller, and in the case of a body corporate by their agent, authorised in like manner.

Particulars to be stated in request.

67. Every such request shall state the name, address, and description of the person claiming to be entitled to the patent, or to any share or interest therein, as the case may be (hereinafter called the claimant), and the particulars of the assignment, transmission, or other operation of law, by virtue of which he requires to be entered in the register as proprietor, so as to show the manner in which, and the

person or persons to whom, the patent, or such share or interest therein as aforesaid, has been assigned or transmitted.

Production of documents of title and other proof.

68. Every assignment and every other document containing, giving effect to, or being evidence of, the transmission of a patent or affecting the proprietorship thereof as claimed by such request, except such documents as are matters of record, shall be produced to the Comptroller, together with the request above prescribed, and such other proof of title as he may require for his satisfaction.

As to a document which is a matter of record, an official or certified copy thereof shall in like manner be produced to the Comptroller.

Copies for Patent Office.

69. There shall also be left with the request an examined copy of the assignment or other document above required to be produced.

As to a document which is a matter of record, an official or certified copy shall be left with the request in lieu of an examined copy.

Body corporate.

70. A body corporate may be registered as proprietor by its corporate name.

Entry of orders of the Privy Council or of the Court.

71. Where an order has been made by Her Majesty in Council for the extension of a patent for a further term or for the grant of a new patent, or where an order has been made by the Court for the revocation of a patent or the rectification of the register under section 90 of the said Act, or otherwise affecting the validity or proprietorship of the patent, the person in whose favour such order has been made shall forthwith leave at the Patent Office an office copy of such order. The register shall thereupon be rectified or the purport of such order shall otherwise be duly entered in the register, as the case may be.

Entry of payment of fees on issue of certificate.

72. Upon the issue of a certificate of payment under Rule 45, the Comptroller shall cause to be entered in the Register of Patents a record of the amount and date of payment of the fee on such certificate.

Entry of failure to pay fees.

73. If a patentee fails to make any prescribed payment within the prescribed time or any enlargement thereof duly granted, such failure shall be duly entered in the register.

Entry of licenses.

74. An examined copy of every license granted under a patent shall be left at the Patent Office by the licensee, with a request that a notification thereof may be entered in the register. The licensee shall cause the accuracy of such copy to be certified as the Comptroller may direct, and the original license shall at the same time be produced and left at the Patent Office if required for further verification.

Hours of inspection of register.

75. The Register of Patents shall be open to the inspection of the public on every week day between the hours of ten and four, except on the days and at the times following:—

(*a*) Christmas Day, Good Friday, the day observed as Her Majesty's birthday, days observed as days of public fast or thanksgiving, and days observed as holidays at the Bank of England; or

(*b*) Days which may from time to time be notified by a placard posted in a conspicuous place at the Patent Office.

(*c*) Times when the register is required for any purpose of official use;

Certified copies of documents.

76. Certified copies of any entry in the register, or certified copies of, or extracts from, patents, specifications, disclaimers, affidavits, statutory declarations, and other public documents in the Patent Office, or of or from registers and other books kept there, may be furnished by the Comptroller on payment of the prescribed fee.

POWER TO DISPENSE WITH EVIDENCE, &c.

77. Where, under these Rules, any person is required to do any act or thing, or to sign any document, or to make any declaration on behalf of himself or any body corporate, or any document or evidence is required to be produced to or left with the Comptroller, or at the Patent Office, and it is shown to the satisfaction of the Comptroller that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Comptroller, with the sanction of the Board of Trade, and upon the production of such other evidence, and subject to such terms as they may think fit, to dispense with any such act or thing, document, declaration, or evidence.

REPEAL.

78. All general rules made by the Lord Chancellor, or by any other authority, under the Patent Law Amendment Acts, and in force on the 31st day of December, 1883, shall be and they are hereby repealed as from that date, without prejudice, nevertheless, to any application then pending. Repeal.

Dated the 21st day of December 1883.

(Signed) J. CHAMBERLAIN,

President of the Board of Trade.

RULES REGULATING THE PRACTICE AND PROCEDURE ON APPEALS TO THE LAW OFFICERS.

I. When any person intends to appeal to the law officer from a decision of the Comptroller in any case in which such appeal is given by the Act, he shall, within 14 days from the date of the decision appealed against, file in the Patent Office a notice of such his intention.

II. Such notice shall state the nature of the decision appealed against, and whether the appeal is from the whole, or part only, and if so, what part of such decision.

III. A copy of such notice of intention to appeal shall be sent by the party so intending to appeal to the law officers' clerk at room 549, Royal Courts of Justice, London; and when there has been an opposition before the Comptroller, to the opponent or opponents; and when the Comptroller has refused to seal a patent on the ground that a previous application for a patent for the same invention is pending, to the prior applicant.

IV. Upon notice of appeal being filed, the Comptroller shall forthwith transmit to the law officers' clerk all the papers relating to the matter of the application in respect of which such appeal is made.

V. No appeal shall be entertained of which notice is not given within 14 days from the date of the decision appealed against, or such further time as the Comptroller may allow, except by special leave upon application to the law officer.

VI. Seven days' notice, at least, of the time and place appointed for the hearing of any appeal, shall be given by

the law officers' clerk, unless special leave be given by the law officer that any shorter notice be given.

VII. Such notice shall in all cases be given to the Comptroller and the appellant; and, when there has been an opposition before the Comptroller, to the opponent or opponents; and, when the Comptroller has refused to seal a patent on the ground that an application for a patent for the same invention is pending, to the prior applicant.

VIII. The evidence used on appeal to the law officer shall be the same as that used at the hearing before the Comptroller; and no further evidence shall be given, save as to matters which have occurred or come to the knowledge of either party, after the date of the decision appealed against, except with the leave of the law officer upon application for that purpose.

IX. The law officer shall, at the request of either party, order the attendance at the hearing on appeal, for the purpose of being cross-examined, of any person who has made a declaration in the matter to which the appeal relates, unless in the opinion of the law officer there is good ground for not making such order.

X. Any person requiring the attendance of a witness for cross-examination shall tender to the witness whose attendance is required a reasonable sum for conduct money.

XI. Where the law officer orders that costs shall be paid by any party to another, he may fix the amount of such costs, and if he shall not think fit to fix the amount thereof, he shall direct by whom and in what manner the amount of such costs shall be ascertained.

XII. If any costs so ordered to be paid be not paid within 14 days after the amount thereof has been so fixed or ascer-

tained, or such shorter period as shall be directed by the law officer, the party to whom such costs are to be paid may apply to the law officer for an order for payment under the provisions of section 38 of the Act.

XIII. All documentary evidence required, or allowed by the law officer to be filed, shall be subject to the same regulations, in all respects, as apply to the procedure before the Comptroller, and shall be filed in the Patent Office, unless the law officer shall order to the contrary.

XIV. Any notice or other document required to be given to the law officers' clerk, under these rules, may be sent by a prepaid letter through the post.

HENRY JAMES, A.G.

FARRER HERSCHELL, S.G.

FIRST SCHEDULE.

LIST OF FEES PAYABLE ON AND IN CONNEXION WITH LETTERS PATENT.

Up to Sealing.

	£ s. d.	£ s. d.
1. On application for provisional protection	1 0 0	
2. On filing complete specification ..	3 0 0	
		4 0 0
or		
3. On filing complete specification with first application		4 0 0
4. On appeal from Comptroller to Law Officer. By appellant		3 0 0
5. On notice of opposition to grant of patent. By opponent		0 10 0
6. On hearing by Comptroller. By applicant and by opponent respectively		1 0 0
7. On application to amend specification :— Up to sealing. By applicant		1 10 0
8. After sealing. By patentee		3 0 0
9. On notice of opposition to amendment. By opponent		0 10 0
10. On hearing by Comptroller. By applicant and by opponent respectively		1 0 0
11. On application to amend specification during action or proceeding. By patentee ..		3 0 0

		£	s.	d.
12.	On application to the Board of Trade for a compulsory license. By person applying	5	0	0
13.	On opposition to grant of compulsory license. By patentee	5	0	0
14.	On certificate of renewal :— Before end of 4 years from date of patent	50	0	0
15.	Before end of 7 years, or in the case of patents granted under the "Patents, Designs, and Trade Marks Act, 1883," before the end of 8 years from date of patent	100	0	0
	or in lieu of the fees of 50*l.* and 100*l.*, the following annual fees :—			
16.	Before the expiration of the 4th year from the date of the patent	10	0	0
17.	„ „ 5th „ „	10	0	0
18.	„ „ 6th „ „	10	0	0
19.	„ „ 7th „ „	10	0	0
20.	„ „ 8th „ „	15	0	0
21.	„ „ 9th „ „	15	0	0
22.	„ „ 10th „ „	20	0	0
23.	„ „ 11th „ „	20	0	0
24.	„ „ 12th „ „	20	0	0
25.	„ „ 13th „ „	20	0	0
	On enlargement of time for payment of renewal fees :—			
26.	Not exceeding 1 month	3	0	0
27.	„ 2 months	7	0	0
28.	„ 3 months	10	0	0
29.	For every entry of an assignment, transmission, agreement, license or extension of patent	0	10	0
30.	For duplicate of letters patent .. each	2	0	0
31.	On notice to Comptroller of intended exhibition of a patent under section 39	0	10	0

	£	s.	d.
32. Search or inspection fee .. .. each	0	1	0
33. For office copies .. every 100 words (but never less than one shilling)	0	0	4
34. „ of drawings, cost according to agreement.			
35. For certifying office copies, MSS. or printed, each	0	1	0
36. On *request to Comptroller to correct a* clerical error	0	5	0
37. For certificate of Comptroller under section 96	0	5	0
38. For altering address in register	0	5	0

(Signed) J. CHAMBERLAIN,
President of the Board of Trade.

21st December, 1883.

Approved:

(Signed) CHARLES C. COTES,
HERBERT J. GLADSTONE,
Lords Commissioners of
Her Majesty's Treasury.

4th December, 1883.

THE SECOND SCHEDULE.

Forms.

			PAGE
A.—	Form of Application for Patent		215
A1.—	„ „ „ communicated from abroad		216
B.—	„	Provisional Specification	217
C.—	„	Complete „	217
D.—	„	Opposition to grant of Patent	218
E.—	„	Application for hearing by Comptroller ..	219
F.—	„	„ to amend Specification or Drawings	219
G.—	„	Opposition to Amendment of Specification or Drawings	220
H.—	„	Application for Compulsory Grant of License	220
H1.—	„	Petition for Compulsory Grant of Licenses	221
I.—	„	Opposition to Compulsory Grant of License	222
J.—	„	Application for Certificate of Payment or Renewal	222
K.—	„	Application for Enlargement of Time for Payment of Renewal Fee	223
L.—	„	Request to enter Name upon the Register of Patents	224
M.—	„	Request to enter Notification of License in Register	225
N.—	„	Application for Duplicate of Letters Patent	225
O.—	„	Notice of intended Exhibition of un-patented Invention	226
P.—	„	Request for Correction of Clerical Error ..	226
Q.—	„	Certificate of Comptroller	227
R.—	„	Notice for Alteration of an Address in Register	227
S.—	„	Application for Entry of Order of Privy Council in Register	228
T.—	„	Appeal to Law Officer	228

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

FORM A.

APPLICATION FOR PATENT.

PATENT.

(*a*)

, do solemnly

and sincerely declare that in possession of an invention

for (*b*)

that the true and first inventor thereof; and that the same is not in use by any other person or persons to the best of knowledge and belief; and humbly pray that a patent may be granted for the said invention.

And make the above solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

(*c*)

Declared at (*d*) in the this day of 18 .

Before me,

(*e*)

[Declared at (*d*) in the this day of 18 .

Before me,

(*e*)

(*f*)]

NOTE.—Where the above declaration is made out of the United Kingdom, the words "and by virtue of the Statutory Declarations Act, 1835," must be omitted, and the declaration must be made before a British consular officer, or, where it is not reasonably practicable to make it before such officer, then before a public officer duly authorised in that behalf.

(*a*) Here insert name, full address, and calling of applicant or applicants.

(*b*) Here insert title of invention.

(*c*) Signature of applicant or applicants.

(*d*) If declared by more than one applicant and at different times or places, insert after "Declared" the words "by the above-named."

(*e*) Signature and title of the person before whom the declaration is made."

(*f*) If not required as in note (*d*), strike out part within brackets.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

FORM A1.

PATENT.

APPLICATION FOR PATENT FOR INVENTIONS COMMUNICATED FROM ABROAD.

I (*a*) of in the county of do solemnly and sincerely declare that I am in possession of an invention for

(*a*) Here insert name, full address, and calling of applicant.

(*b*) Here insert title of invention.

(*b*)

which invention has been communicated to me from abroad by (*c*)

(*c*) Here insert name, address, and calling of communicant.

that I claim to be the true and first inventor thereof; and that the same is not in use within this realm by any other person or persons to the best of my knowledge and belief; and I humbly pray that a patent may be granted to me for the said invention.

And I make the above solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

(*d*)

(*d*) Signature of applicant.

Declared at in the county of this day of 18 .

Before me,

(*e*)

(*e*) Signature and title of the officer before whom the declaration is made.

NOTE.—Where the above declaration is made out of the United Kingdom the words, "and by virtue of the Statutory Declarations Act, 1835," must be omitted, and the declaration must be made before a British consular officer, or, where it is not reasonably practicable to make it before such officer, then before a public officer duly authorised in that behalf.

To be issued with FORM A or A1.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

FORM B.

PROVISIONAL SPECIFICATION.

(*To be furnished in Duplicate.*)

(*a*).

(*a*) Here insert title, as in declaration.

(*b*)

(*b*) Here insert name, full address, and calling of applicant or applicants, as in declaration.

do hereby declare the nature of said invention for to be as follows (*c*):

(*c*) Here insert short description of invention.

NOTE.—No stamp is required on this document, which must form the commencement of the Provisional Specification; the continuation to be upon wide-ruled foolscap paper (but on one side only) with a margin of two inches on left hand of paper. The Provisional Specification and the "Duplicate" thereof must be signed by the applicant or his agent on the last sheet, the date being first inserted as follows:—

"Dated this day of 18 ."

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

PATENT.

FORM C.

COMPLETE SPECIFICATION.

(*To be furnished in Duplicate—one unstamped.*)

(*a*)

(*a*) Here insert title, as in declaration.

(*b*)

do hereby declare the nature of invention for and in what manner

(*b*) Here insert name, full address, and calling of applicant or applicants, as in declaration.

the same is to be performed, to be particularly described and ascertained in and by the following statement (*c*):—

(*c*) Here insert full description of invention, *which must end with a distinct statement of claim or claims, in the following form:*

"Having now particularly described and ascertained the nature of my said invention, and in what manner the same is to be performed, I declare that what I claim is,

(1.)
(2.)
(3.) "

Here state distinctly the features of novelty claimed.

NOTE.—This document must form the commencement of the complete Specification; the continuation to be upon wide-ruled foolscap paper (but on one side only) with a margin of two inches on left-hand of paper. The complete Specification and the "Duplicate" thereof must be signed by the applicant or his agent on the last sheet, the date being first inserted as follows:—

"Dated this day of 18 ."

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

FORM D.

FORM OF OPPOSITION TO GRANT OF PATENT.

[To be accompanied by an unstamped copy.]

PATENT.

*I

* Here state name and full address.

hereby give notice of my intention to oppose the grant of Letters Patent upon application No. of , applied for by

upon the ground†

† Here state upon which of the grounds of opposition permitted by section 11 of the Act the grant is opposed.

(Signed)‡

‡ Here insert signature of opponent or agent.

To the Comptroller,
Patent Office, 25, *Southampton Buildings*,
Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

PATENT.

FORM E.

FORM OF APPLICATION FOR HEARING BY THE COMPTROLLER.

In Cases of Refusal to Accept, Opposition, or Applications for Amendments, &c.

SIR,

of (*a*)

hereby apply to be heard in reference to

(*a*) Here insert full address.

and request that I may receive due notice of the day fixed for the hearing.

Sir,

Your obedient Servant,

To the Comptroller,

Patent Office, 25, *Southampton Buildings*,

Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

PATENT.

FORM F.

FORM OF APPLICATION FOR AMENDMENT OF SPECIFICATION OR DRAWINGS.

*

seek leave to amend the specification of Letters Patent No. of 188 , as shown in red ink in the copy of the original specification hereunto annexed.

* Here state name and full address of applicant or patentee.

My reasons for making this amendment are as follows†

† Here state reasons for seeking amendment; and where the applicant is not the patentee, state what interest he possesses in the letters patent.

(Signed)

To the Comptroller,

Patent Office, 25, *Southampton Buildings*,

Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

PATENT.

FORM G.

FORM OF OPPOSITION TO AMENDMENT OF SPECIFICATION OR DRAWINGS.

[*To be accompanied by an unstamped copy.*]

* Here state name and full address of opponent.

*

hereby give notice of objection to the proposed amendment of the specification or drawings of Letters Patent No. of 188 for the following reason :†

† Here state reason of opposition.

(Signed)

To the Comptroller,
Patent Office, 25, *Southampton Buildings*,
Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

PATENT.

FORM H.

FORM OF APPLICATION FOR COMPULSORY GRANT OF LICENSE.

[*To be accompanied by an unstamped copy.*]

* Here state name and full address of applicant.

*

hereby request you to bring to the notice of the Board of Trade the accompanying petition for the grant of a license to me by †

† Here state name and address of patentee, and number and date of his patent.

(Signed)

NOTE.—The petition must clearly set forth the facts of the case and be accompanied by an examined copy thereof. *See* form next page.

To the Comptroller,
Patent Office, 25, *Southampton Buildings*,
Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

FORM H 1.

FORM OF PETITION FOR COMPULSORY GRANT OF LICENSES.

To the Lords of the Committee of Privy Council for Trade.

The Petition of (*a*) of in the county of , being a person interested in the matter of this petition as hereinafter described:—

(*a*) Here insert name, full address, and description.

Showeth as follows:—

1. A patent dated No. was duly granted to for an invention of (*b*)

(*b*) Here insert title of invention.

2. The nature of my interest in the matter of this petition is as follows:—(*c*)

(*c*) Here state fully the nature of petitioner's interest.

3. (*d*)

(*d*) Here state in detail the circumstances of the case under section 22 of the said Act, and show that it arises by reason of the default of the patentee to grant licenses on reasonable terms. The statement of the case should also show as far as possible that the terms of the proposed order are just and reasonable. The paragraphs should be numbered consecutively.

Having regard to the circumstances above stated, the petitioner alleges that by reason of the aforesaid default of the patentee to grant licenses on reasonable terms (*e*)

(*e*) Here state the ground or grounds on which relief is claimed in the language of section 22, subsections (*a*), (*b*), or (*c*), as the case may be.

Your petitioner therefore prays that an order may be made by the Board of Trade (*f*)

(*f*) Here state the purport and effect of the proposed order and the terms as to the amount of royalties, security for payment or otherwise, upon which the petitioner claims to be entitled to the relief in question.

or that the petitioner may have such other relief in the premises as the Board of Trade may deem just.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

FORM I.

FORM OF OPPOSITION TO COMPULSORY GRANT OF LICENSE.

PATENT.

* Here state name and full address.

* hereby give notice of objection to the application of for the compulsory grant of a License under Patent No. of 188 .

(Signed)

To the Comptroller,
Patent Office, 25, *Southampton Buildings*,
Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

FORM J.

APPLICATION FOR CERTIFICATE OF PAYMENT OR RENEWAL.

hereby transmit the fee prescribed for the continuation in force of Patent No. , of 18 , for a further period of .

Name *

Address

* Here insert name and full address of patentee or his agent.

To the Comptroller,
Patent Office, 25, *Southampton Buildings*,
Chancery Lane, London, W.C.

PATENT.

CERTIFICATE OF PAYMENT OR RENEWAL.

Letters Patent No. of 188 .

18 .

This is to certify that did this day of 18 , make the prescribed payment of £

in respect of a period of from , and that by virtue of such payment the rights of remain in force.*

* See section 17 of the Patents, Designs, and Trade Marks Act, 1883.

Seal.

Patent Office, *London*.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

FORM K.

PATENT.

FORM OF APPLICATION FOR ENLARGEMENT OF TIME FOR PAYMENT OF RENEWAL FEE.

SIR,

I hereby apply for an enlargement of time for month in which to make the payment of £ upon my Patent, No. , of 188 .

I am,
Sir,
Your obedient Servant,

(*a*)

To the Comptroller,
Patent Office, 25, *Southampton Buildings*,
Chancery Lane, London, W.C.

(*a*) Here insert full address to which receipt is to be sent.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

PATENT.

FORM L.

FORM OF REQUEST TO ENTER NAME UPON THE REGISTER OF PATENTS, AND OF DECLARATIONS IN SUPPORT THEREOF.

I (*a*),

(*a*) *Or* We. Here insert name, full address, and description.

hereby request that you will enter (*b*) name (*c*) in the Register of Patents,—

(*b*) My *or* our.
(*c*) *Or* names.

(*d*) claim to be entitled (*e*)

(*d*) I *or* We.
(*e*) Here insert the nature of the claim.

of the Patent No. of 188 , granted to (*f*)

(*f*) Here give name and address, &c. of patentee or patentees.

for (*g*)

(*g*) Here insert title of the invention.

by virtue of (*h*)

(*h*) Here specify the particulars of such document, giving its date, and the parties to the same, and showing how the claim here made is substantiated.

And in proof whereof I transmit the accompanying (*i*) with an examined copy thereof (*j*)

(*i*) Here insert the nature of the document.

(*j*) Where any document which is a matter of record is required to be left, a certified or official copy in lieu of an examined copy must be left.

I am,

Sir,

Your obedient Servant,

To the Comptroller,

Patent Office, 25, *Southampton Buildings*,

Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

FORM M.

PATENT.

FORM OF REQUEST TO ENTER NOTIFICATION OF LICENSE IN THE REGISTER OF PATENTS.

SIR,

I hereby transmit an examined copy of a license granted to me by
under Patent No. of 188 , as well as the original license for verification, and I have to request that a notification thereof may be entered in the Register.

I am,
Sir,
Your obedient Servant,

(*a*)

(*a*) Here insert full address.

To the Comptroller,
Patent Office, 25, *Southampton Buildings*,
Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

FORM N.

PATENT.

APPLICATION FOR DUPLICATE OF PATENT.

Date

SIR,

I regret to have to inform you that the Letters Patent, dated* No. granted to
for an invention of†
have been‡

I beg therefore to apply for the issue of a duplicate of such Letters Patent.§

[Signature of Applicant.]

To the Comptroller,
Patent Office, 25, *Southampton Buildings*,
Chancery Lane, London, W.C.

* Here insert date, No., name, and full address of Patentee.

† Here insert title of invention.

‡ Here insert the word "destroyed" or "lost," as the case may be.

§ Here state interest possessed by applicant in the Letters Patent.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

PATENT.

FORM O.

NOTICE OF INTENDED EXHIBITION OF AN UNPATENTED INVENTION.

* Here state name and full address of applicant.

† State "opened" or "is to open."

‡ Insert brief description of invention, with drawings if necessary.

* hereby give notice of my intention to exhibit a of at the Exhibition, which† of 18 , under the provisions of the Patents, Designs, and Trade Marks Act of 1883.

‡ herewith enclosed

(Signed)

To the Comptroller,
Patent Office, 25, *Southampton Buildings*,
Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

PATENT.

FORM P.

FORM OF REQUEST FOR CORRECTION OF CLERICAL ERROR.

(*a*) *Or* errors.
(*b*) Here state whether in application, specification, or register.

SIR,

I HEREBY request that the following clerical error (*a*) may be corrected in (*b*)

Signature
Full Address

To the Comptroller,
Patent Office, 25, *Southampton Buildings*,
Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

FORM Q.

CERTIFICATE OF COMPTROLLER-GENERAL.

PATENT.

Patent Office,
London,
188 .

I, , Comptroller-General of Patents, Designs, and Trade Marks, hereby certify

---

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

FORM R.

FORM OF NOTICE FOR ALTERATION OF AN ADDRESS IN REGISTER.

PATENT.

Sir,

(*a*)
hereby request that address now upon the Register may be altered as follows :—

(*b*)

(*a*) Here state name or names and full address of applicant or applicants.

(*b*) Here insert full address.

Sir,
Your obedient Servant,

To the Comptroller,
Patent Office, 25, *Southampton Buildings*,
Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

PATENT.

FORM S.

FORM OF APPLICATION FOR ENTRY OF ORDER OF PRIVY COUNCIL IN REGISTER.

(*a*) Here state name and full address of applicant.

(*a*)

hereby transmit an office copy of an Order in Council with reference to (*b*)

(*b*) Here state the purport of the order.

Sir,

Your obedient Servant,

To the Comptroller,
Patent Office, 25, *Southampton Buildings*,
Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

PATENT.

FORM T.

FORM OF APPEAL TO LAW OFFICER.

(*a*) Here insert name and full address of appellant.

I, (*a*) of (*a*)

hereby give notice of my intention to appeal to the Law Officer from (*b*)

(*b*) Here insert "the decision" or "that part of the decision," as the case may be.

(*c*) Here insert "refused [or allowed] application for Patent," or "refused [or allowed] application for leave to amend Patent," or otherwise as the case may be.

(*d*) Insert number and year.

of the Comptroller of the day of 188 , whereby he (*c*)

No. (*d*) of the year 188 (*d*).

Signature

Date

N.B.—This notice has to be sent to the Comptroller-General at the Patent Office, London, W.C. And a copy of same to the Law Officers' Clerk, at Room 549, Royal Courts of Justice, London.

21st December, 1883.

(Signed) J. CHAMBERLAIN,
President of the Board of Trade.

INDEX.

ABANDONMENT OF APPLICATION,
by omission to leave specification, 32

ABRIDGMENTS OF SPECIFICATIONS,
to be continued, 120

ACCEPTANCE,
of specification, advertised, 36
effect of, 46
refused, 33
notice of opposition, within 2 months, 36
of application, 45

ACCOUNT OF PROFITS,
Court may order, 95
by licensee to assignees of grantor, 61
may be ordered in action for infringement, 95, 102
plaintiff not entitled to damages and, 102
after patent has expired, 102
incident to right to injunction, 102
proceeding under order for, when stayed, 103

ACTION FOR INFRINGEMENT,
by exclusive licensee in patentee's name, 61
assignee of an interest in a patent, 61
co-owner, 61
for damages prior to disclaimer, 55
before registration, 65
stayed pending scire facias, 73
defences to, 69, 74
mode of trial, 79
particulars of breaches, 80, 81
objections, 80, 84
injunction may be ordered in, 95
inspection may be ordered in, 95, 100
account may be ordered in, 95, 102
certificate that validity came in question, 104

ACTION FOR INFRINGEMENT,—*continued.*
costs in subsequent actions, 104
no objection that patent is for more than one invention, 113
amendment pending, 50
by order of court, 57

ADDITION,
patents for, 130

ADDRESS,
statement of, 11, 192

ADVERTISEMENT,
of acceptance of specification, 36
of proposed amendment, 48
of amendment, 48, 59, 202
of intention to petition for extension, 68
threatening legal proceedings by, 106
in derogation of license, 63

AFFIDAVITS,
to support application for inspection, 101
of defendant on enquiry as to damages, 104
rules relating to, 195

AGENT,
applicant may be heard by, 168

ALIEN,
grant of a patent to, 8
when invention communicated to him, 9

AMENDMENT,
comptroller may require, 30
of clerical error by comptroller, 167
to be entered in Register of Patents, 63
of particulars, 81, 93
to be advertised, 48, 59, 202
general powers of, 194
of Specification,
application for, 48
opposition to, 48
leave obtained by fraud, 50
appeal respecting, 49, 56
costs of, 53
pending proceedings, 57
applicant to be heard, 168
rules relating to, 194, 201
at Common Law,
of specification 53
of patent, 53
conditions imposed, 55

ANNUAL REPORT,
by comptroller, 172
Lord Chancellor, 53, 54

APPEAL,
from comptroller,
as to amended, 30, 49
refusal to seal on second application, 31
refusal to accept specification, 33
delay caused by, 44
proceedings on, 118
rules relating to, 208

APPLICANT,
for a patent, who may be, 7
may be heard on appeal from comptroller, 31, 33, 36
to receive notice of opposition, 36
death of, 44
position of, after acceptance of complete specification, 46
amendment of specification by, 48
to supply drawings and statement for illustrated journal, 198
when entitled to be heard, 168
comptroller may require statement from, 193

APPLICATION,
by post, 194
agent, 192
for a patent,
by "any person," 7
by person who discovers a new manufacture, 7
by importer from abroad of a new manufacture, 8
by person not true inventor jointly with true inventor, 9
by contemporaneous discoverers, 9
by legal representative of inventor, 10, 116
form of, 10, 215, 216
left at Patent Office in prescribed manner, 11
declaration contained in, 10
must be accompanied by specification, 10
to be referred to an examiner, 27
must be signed by applicant, 192
accompanied by address, 192
prescribed mode of leaving or sending, 194
amendment of, may be required by comptroller, 30
notice of acceptance of, 31
application for similar invention, 31
when deemed abandoned, 32
void, 33
open to inspection, 36
patent to bear date of, 45
earliest, to secure patent, 42

APPLICATION,—*for a patent,—continued.*
provisional protection, on acceptance of, 45
in fraud of inventor, 117
when invention exhibited, 119,
prior to Act, 125
subsequent to Act, 125
correction of clerical errors in, 167
order of recording, 195
by way of amendment, 196
for enlargement of time
to make prescribed payment, 47
form of, 223

APPLICATION TO NEW PURPOSES,
patents for, 130

ASSESSOR,
trial with, 77
in Court of Appeal, 77, 79
Judicial Committee, 77
remuneration of, 77, 80

ASSIGNEE,
right to an account from licensee of grantor, 61
may assign for particular place, 117
action by, 61

ASSIGNMENT,
to be entered in Register of Patents, 63
by deed, 118
for particular place, 117
no implied warranty, 118
when fraudulent, 118
of certain inventions to Secretary for War, 122
person entitled to make, 165

ASSISTANCE,
in carrying out invention, 7

BOARD OF TRADE,
grant of compulsory licenses by, 59
to determine cost of model, 121
power to make rules, 170
rules made by, 191

CERTIFICATE,
validity of patent came in question, 104
not a "usual certificate," 106
of exhibition, 119
of Secretary for War, 122
of comptroller, to be evidence, 168
of payment and renewal, rules as to, 200
for costs of particulars of objection, 95

CERTIFIED COPIES,
of entries in Register of Patents, 166
evidence in all courts, 166
how obtained, 170

CHANNEL ISLANDS,
excluded from patent, 46

CIRCULARS,
threatening legal proceedings, 106

CLAIM,
complete *specification* must end with, 11
formerly not essential, 26
must not be too large or vague, 18
object of, 26
may be more than one, 113

CLERKS,
appointment and removal of, 164
salaries of, 165

CLERICAL ERRORS,
amendment of, at common law, 53
in Register of Patents, correction of, 65
correction by comptroller, 167

COLONIAL ARRANGEMENTS,
for protection of inventions, 174

COLONY,
user of invention in, 134

COLOURABLE IMITATION,
infringement by, 111

COMBINATION,
patents for, 128

COMPARISON,
of specifications, 25
of complete and provisionally, examiner, 32

COMPLETE SPECIFICATION,
may accompany application for patent, 10
must describe manner of performing invention, 11, 13, 28
be accompanied by drawings, if required, 11
by drawings and statement for journal, 198
commence with a title, 11
end with a claim, 11
which must not be too large or vague, 18
be sufficient without having recourse to experiment, &c., 15
intelligible to ordinary workman, 15
be without concealment, 16
distinguish what is new from what is old, 17

COMPLETE SPECIFICATION,—*continued.*
must not be misleading or ambiguous, 16
construction of, 22, 23, 24
comparison of, 25
with provisionnl specification, 34
intelligibility of, a question for jury, 25
examiner to report upon, 27, 28, 32
and compare with provisional, 32
amendment of, comptroller may require, 30
appeal from, 30
application for amendment, 48
opposition to, 48
to be left within nine months, 32
acceptance of, advertised, 36
effect of, 46
refusal to accept, 33
when open to inspection, 36
no infringement prior to publication of, 45
to be kept on sale, 120
of inventions relating to war, 122
construction of, 22
forms of, 13, 217

COMPTROLLER,
appointment of, 164
removal of, 164
salary of, 165
has control of patent office, 164
limit to discretionary power of, 168
directions from law officers, 168
to make annual report, 172
to refer every application to an examiner, 27
comparison of specifications, 31
may require amendment, 30
appeal from, 30
will be heard on such appeal, 30
to give notice of acceptance, 31
to advertise acceptance, 36
to determine as to identity of inventions, 31
appeal from, 31
refusal to accept specification, 33
appeal from, 33
to hear oppositions to grant of patent, 36
sealing patent by, 43
enlargement of time by, for payment, 47
conditions of, 47
fee for, 212
to hear applications for amendment, 49
to give notice of opposition to amendment, 49

COMPULSORY LICENSES,
grounds for granting, 59
rules regulating the granting of, 202
when application prior to act, 125
CONCURRENT APPLICANTS,
patent granted jointly to, 9
to one in trust for both, 9
to first applicant to seal, 9
to first applicant for protection, 9
to both, 9
to adult and minor, 9
CONDITIONS,
imposed upon disclaiming, 55
CONSTRUCTION,
of specification, rule as to, 22
belongs to Court, 23
by existing state of knowledge, 23, 24
popular meaning of words adopted, 24
CONTEMPORANEOUS DISCOVERIES,
patents for, 9
COSTS,
on petition for extension of patent, 69
revocation of patent, 75
on taxation of, regard to be had to particulars, 81
of particulars of objection, where trial abandoned, 94
certificate for, 95
in actions after certificate that validity questioned, 104
order that should be made, 105
before law officer, 118
COURT,
may call in assessors, 77
direct mode of trial, 77
COURT OF APPEAL,
may call in assessors, 77
CROWN,
patent effective against, 76
terms of user, by, 76
not when application prior to act, 125
saving of prerogative, 179
DAMAGES,
for infringement after failure to make payment, 47
prior to amendment, 58
or an account, 102
how estimated, 103
from whom recoverable, 103
form of order for enquiry as to, 104

DAMAGES,—*continued.*
form of, limited to six years, 104
affidavit of defendant, on enquiry as to, 104
for groundless threats of legal proceedings, 106

DATE OF PATENT,
to be date of application, 45

DECISION OF COMPTROLLER,
to be notified to parties, 193

DECLARATION,
form of, on application for patent, 10, 215
to be made by importer of invention, 216
legal representative, 11, 116
by infant, lunatic, &c., 169

DEFINITION,
of provisional protection, 45
patent, 126
patentee, 126
invention, 126
injunction, 126
interdict, 126
applicant, 193
general, 179

DELAY,
in sealing patent, 44

DEPARTMENT OF SCIENCE AND ART,
management of Patent Museum vested in, 120
may require model, 121

DESTRUCTION OF PATENT,
grant of duplicate, 118

DISCLAIMER,
amendment by, 48
removal from the file, 54
conditions imposed upon, 55
object of, 57
pending proceedings, 57
damages prior to, 58

DOCUMENTS,
size of, 193
delivery of, by post, 194

DRAWINGS,
rules relating to, 197
must accompany provisional specification, if required, 11
complete specification, if required, 11
formerly not compulsory, 21

DRAWINGS,—*continued.*
sufficiency of, 21
prescribed form of, 197, 198
examiners to report upon, 23, 28
comptroller may require amendment of, 21, 30
appeal from, 30
inspection of, 36
amendment of, 48
addition for illustrated journal, 198

DUPLICATE PATENT,
grant of, 118
fee for, 212

ENLARGEMENT OF TIME,
for making payments, 47
conditions of, 47
fee for, 47, 212
extent of, 47
application for, 47
form of application for, 223
rules relating to, 201

ESTOPPEL,
of licensee, 61
between partners, 62
assignor and assignee, 63

EVIDENCE,
power to dispense with, 207

EXAMINATION,
of application, 27
description of *nature* of invention, 27
specification, 27, 28, 32
drawings, 27, 28
title, 28
applications bearing similar titles, 31

EXAMINERS,
appointment and removal of, 164

EXCLUDED DAYS, 169

EXISTING PATENTS,
provisions respecting, 125

EXPERT,
law officers may obtain assistance of, 37

EXTENSION,
of time for sealing, 44
of *Patent*,
to be entered in Register of Patents, 63
petition for, 68

EXTENSION,—*of patent,—continued.*
caveat against, 68
hearing of, 68
rules as to, 69

FEES,
for engaging time for payments, 47
schedule of, under the Act, 67, 187
Rules, 211
reduction of, 67

FIRST AND TRUE INVENTOR,
See TRUE AND FIRST INVENTOR.

FOREIGN INVENTOR,
grant of patent to, 8
patent held in trust for, 8

FOREIGN VESSELS,
in British waters, 121

FORMS,
to Act,
of application, 181
provisional specification, 182
complete specification, 182
patent, 183
power to amend, 117
to Rules,
application for patent, 215
on communication from abroad, 216
provisional specification, 217
complete specification, 217
opposition to grant of patent, 218
application for hearing by comptroller, 219
for amendment, 219
opposition to amendment, 220
application for compulsory grant of license, 220
petition for same, 221
opposition thereto, 222
application for certificate of payment or renewal, 222
certificate, 222
for enlargement of time, 223
to enter name on Register, 224
request to enter license, 225
notice of intended exhibition of unpatented invention, 226
application for duplicate patent, 225
request for correction of clerical error, 226
certificate of comptroller, 227
notice for alteration of an address in Register, 227
application for entry of order of Privy Council, 228
appeal to law officer, 228

FRAUD,
leave to amend obtained by, 50
on true inventor, 117
on assignment, 118

FRAUD UPON THE CROWN,
patents void for, 28

IMPORTER,
of foreign invention, grant of patent to, 8
declaration to be made by, 8
form of application, 216

IMPROVEMENTS,
patents for, 130

ILLUSTRATED JOURNAL,
issued by comptroller, 119
additional drawings and statement for, 198

INDEXES,
to be continued, 120

INDIA,
provisions for, 174

INDUSTRIAL EXHIBITIONS,
publication of invention at, 119
rule as to, 194

INFANT,
declarations by, 169

INFRINGEMENT,
definition of, 107
intent immaterial, 108
mere experiment is not, 108
a mixed question of law and fact, 108
none on British ship on High Seas, 108
by directly or indirectly putting in practice, 109
a new and material part, 109
offering for sale a patented article, 110
colourable imitation, 111
use of equivalents, 111
prior to publication of complete specification, 45
prior to grant of patent, 46
after failure to make payment, 47

INJUNCTION,
may be ordered in an action for infringement, 95
or where no action commenced, 96
in what cases granted, 97
in what cases not granted, 98, 99
after patent has expired, 100
to restrain groundless threats, 107

INSPECTION,
of application, specifications and drawings, 36
Register of Patents, 67
may be ordered in action for infringement, 95, 100
in what cases granted, 100
in action by patentee against licensee, 101
of plaintiff's machinery, 101
reports of examiners, 33

INTERNATIONAL ARRANGEMENTS,
for protection of inventions, 172

INTERNATIONAL EXHIBITIONS,
publication of invention at, 119

INVENTION,
definition of, 126
use and publication during provisional protection, 45
exhibition of, 119
patentable, 127
novelty of, 143
utility of, 134

INVENTOR,
patent granted, after death of, 116
not prejudiced by user during exhibition, 119

IRELAND,
saving for courts in, 176
reservation of remedies in, 176

ISLE OF MAN,
saving for courts in, 173
application of provisions to, 173

JOINT APPLICATION,
for a patent, 7, 9

JUDICIAL COMMITTEE OF PRIVY COUNCIL,
extension of patent by, 68

JURY,
trial of infringement and revocation without, 77
right to, 79

LAW OFFICERS,
to hear appeals from comptroller,
as to amendment, 31, 47
as to identity of invention, 30
as to decision on opposition to grant, 36
rules of practice made by, 208
proceedings before, 118
costs before, 118
may direct time for sealing, 44
directions to comptroller, 168

LEGAL REPRESENTATIVE OF INVENTOR,
may obtain patent, 10, 116
application within six months, 116
and accompanied by copy or extract from will, 10, 196
grant to, on death of applicant, 44

LICENSE,
need not be under deed, 60
nor stamped as a deed, 60
effect of, 60
none necessary from joint patentee, 61
exclusive, gives right to use patentee's name, 61
to be entered in Register of Patents, 63
persons empowered to grant, 165
default to grant, 59

LICENSEE,
accounting to assignee of grantor, 61
estoppel of, 61

LORD CHANCELLOR,
power of amendment, 53, 54

LOSS OF PATENT,
duplicate granted, 118

LUNATIC,
declarations by, 169

MASTER OF THE ROLLS,
power of amendment, 53

MINOR,
joiut patent granted to, 9
model may be acquired, 121

NON-USER,
evidence of inutility, 144

NOTICE OF OBJECTIONS,
see particulars of objection

NOTICE,
of intention to exhibit, 119
fee on giving, 119, 212

NOTICE OF OPPOSITION,
given by comptroller, 36
of hearing, 199

NOVELTY,
of invention, 134
a question for the jury, 136
want of in part of an Invention, 141

OATH,
may be administered by law officers, 118
OBJECTIONS, *See* PARTICULARS
OFFENCES,
under Act, 175
OFFICERS,
appointment and removal of, 164
salaries of, 165
OPPOSITION,
to grant of patent, 36
delay caused by, 44
practice relating to, 198
rules relating to, 198
on ground that invention obtained from opposer, 38
already patented, 38
of identity of invention, 38
before comptroller, supported by statutory declarations, 41
to amendment, 48
PARTICULARS OF BREACHES,
in action for infringement of patent, 80, 81
amendment of, 80, 84, 93
certificate of judge, as to, 81
PARTICULARS OF OBJECTIONS,
on petition for revocation of patent, 70
in action for infringement of patent, 80, 84
amendment of, 81, 93
certificate of judge, as to, 81
as to first and true inventor, 86
prior user, 87
publication, 90
specification, 92
fraud and misrepresentation, 92
further and better, 93
costs of, when trial abandoned, 94
PARTNERS,
joint patentees are not, 9
estoppel between, 62
PATENT,
definition of, 126
application for, 7
by legal representative, 116
joint application for, 9
sealing, 43
date of, 45
extent of, 46

PATENT,—*continued.*
term of, 46
how reckoned, 47
ceases, on failure to make prescribed payments, 46
how revoked, 69, 71, 73
grant of, in lieu of one revoked, 71, 76
effective against Crown, 76
terms of user by, 76
form of, 183
changes in, 115
for one invention only, 113
claims in, 113
loss or destruction of, 118
use of contrary to law or morality, 165

PATENTABLE INVENTIONS, 127

PATENTEE,
definition of, 126
who may become, 7
amendment of specification by, 48
default in granting licenses, 59
assignment by, for particular place, 117
model furnished by, 121

PATENTEES,
when joint, are not partners, 9

PATENT MUSEUM,
management vested in Department of Science and Art, 120

PATENT OFFICE,
proceedings at, 160
under control of comptroller-general, 164
seal of, 44

PAYMENTS,
enlargement of time for, 47
calculation of time for, 47
patent ceases, if not made, 47

PENALTY,
falsely representing article patented, 175
unauthorized use of Royal Arms, 175

PETITION,
for compulsory license, 59
revocation of patent, 69

POST,
application for patent may be sent by, 11, 194
notices by, 169

PREROGATIVE OF CROWN,
saving of, 179

PRINCIPLE,
not patentable, 13
coupled with application, patentable, 131
PROTECTION,
provisional, 45
obtained by fraud, 117
not prejudiced by user during exhibition, 119
PROVISIONAL SPECIFICATION,
may accompany application for patent, 10
must describe the nature of the invention, 11, 28
begin with a title, 11
accompanied by drawing, if required, 11
intended for protection of inventor, 12
and to identify invention, 12
vagueness or generality of, 12
cannot supply defect in complete specification, 12
part may be omitted from complete specification, 13
examiner to report whether it describes nature of invention, 27, 28
amendment of, comptroller may require, 30
appeal from, 30, 49
when open to inspection, 36
compared with complete specification, 34
PUBLICATION,
of invention, 139
during provisional protection, 45
at exhibition, 119
PUBLIC USE,
of invention, 136
during provisional protection, 45
at exhibition, 119
PURCHASE MONEY,
for patent, recovering back, 118
REGISTER OF PATENTS,
to be kept at Patent Office, 63
primâ facie evidence, 63
trust not to be entered, 63, 165
former, regulations as to, 64
rectification of, 166
expunging entry in, 166
inspection of, 67, 166
correction of errors in, 65
making false entry in, 67, 168
writing purporting to be a copy from, 67, 168
assignments, entry in, 165
transmissions, entry in, 165
certified copies of entries in, 166
former, deemed continued, 178
rules relating to, 204
revocation of patent, entered in, 63

REGISTRATION,
relates back to date of assignment, 64
of probate, assignment prior to, 118

REPEAL,
of enactments, 178, 188
of rules, 207

REPORT OF EXAMINER,
inspection of, 33

REPORTS,
in illustrated journal, 198

REVOCATION OF PATENT,
when Secretary of State has certified, 124
amendment pending, 57
to be entered in Register of Patents, 63.
grounds of, 69, 74
who can petition for, 69, 75
particulars of objections, 70
right to begin on hearing of petition for, 71
after, grant in lien thereof, 71, 76
mode of trial of petition for, 77

RIVAL APPLICANTS,
earliest to obtain patent, 45

ROYAL ARMS,
unauthorized use of, 175

ROYALTIES,
recovering back, 61

RULES,
regulating the practice as to extension of patents, 69
power of Board of Trade to make, 170
saving for existing rules, 179
repeal of, 207
made by Board of Trade, 191
law officers, 208

SALE,
of patented invention, 110, 141

SAVING,
of existing rules, 179
of prerogative of crown, 179
for past operation of repealed enactments, 178
courts in Scotland and Ireland, 176
Isle of Man, 177

SCIENCE AND ART DEPARTMENT,
management of Patent Museum vested in, 120
may require model, 121

SCIRE FACIAS,
proceeding by, repealed, 69
practice under, 71

SCOTLAND,
saving for Courts in, 176
summary proceedings in, 176
for revocation in, 176

SEAL OF PATENT OFFICE,
same effect as Great Seal of United Kingdom, 44
to be judicially noticed, 165

SEALING A PATENT,
where there is no opposition, 43
where determination in favour of grant, 43
after death of applicant, 44
when more than one application, 45

SECRET USER,
of invention, 136

SIMULTANEOUS DISCOVERERS
which the legal inventor, 7

STATUTE OF MONOPOLIES,
sect. 6, 126

STATUTORY DECLARATIONS,
evidence before comptroller taken by, 41
rules relating to, 198, 199

SUBJECT MATTER,
new process, 127
combination, 128
addition or improvement, 130
application to a new purpose, 130
new principle with application, 131

THREATS OF LEGAL PROCEEDINGS,
action when groundless, 106

TITLE OF INVENTION,
all specifications must commence with, 11
examiner to report on sufficiency of, 7, 28
requirements of, 28, 29
variance from specification, 28, 34, 35.

TRANSMISSIONS OF PATENTS,
to be entered in Register of Patents, 63, 165

TRIAL,
mode of, 77

TRUE AND FIRST INVENTOR,
the person who discovers a new manufacture, 7
the importer from abroad of a new manufacture, 8

TRUE AND FIRST INVENTOR,—*continued.*
a person who makes joint application with inventor, 9
legal representative of inventor, 10
member of an official commission, 10
declaration as to, 7, 10
patent to, not invalidated by fraudulent application, 117

TRUST,
patent for foreigner, held in, 8
concurrent applicant, held in, 19
not to be entered on Register, 63, 165

UNPATENTABLE INVENTIONS, 131

UTILITY OF INVENTION,
essential to validity of patent, 143
meaning of, 143
a question for the jury, 144
presumption against, from nonuser, 144

VARIANCE,
between title and specification, 28, 34, 35
provisional and complete specifications, 34

VENDING,
infringement by, 110

WILL OF DECEASED INVENTOR,
copy or extract from, to accompany application by representative, 10, 196

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