A

TREATISE

ON

THE LAW OF LETTERS-PATENT,

FOR

THE SOLE USE OF INVENTIONS

IN

THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND;

INCLUDING

THE PRACTICE CONNECTED WITH THE GRANT:

TO WHICH IS ADDED

A SUMMARY OF THE PATENT LAWS IN FORCE IN THE PRINCIPAL FOREIGN STATES;

With an Appendix

OF

STATUTES, RULES, PRACTICAL FORMS, &c.

BY

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Humani generis progressus, ex communi omnium labore ortus, uniuscujusque industriæ debet esse finis.

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PREFACE.

THE present will be found to differ in some material respects from other Treatises on Patent Law. Were it not so, I should feel even greater diffidence than I have in venturing on a field, which, so far as learned research and elaborate attention to detail can give a title, Mr. Hindmarch and Mr. Webster may be said to have made peculiarly their own.

Hitherto (and by the authors above mentioned, among others) this subject has been treated as a branch of Royal Franchises conferred through the instrumentality of Letters-patent at the mere motion of the Crown, the grant in this instance flowing from it in its character of Patron of industry, ingenuity and skill.

An entirely different hypothesis has been here assumed to underlie the structure of Patent Law—one which admits of its leading questions being discussed on broad general principles, instead of by reference to rules framed for purposes alien to inventions, and but imperfectly applicable to the contingencies of modern trade. It places the grant on the footing of a privilege, resulting from a contract in restraint of trade, between the Crown (as representative of the public) and the Patentee, and considers its *de facto* character as a Royal grant to influence the question (as will be seen by the decided cases) to a very inconsiderable extent.

If simplicity of arrangement be any criterion of the true

solution, the supposition here proceeded on would appear to be of solid foundation. Referred to it, the "subject matter" (or "invention," the terms being interchangeable), elsewhere so minutely yet variously described, admits of a definition at once comprehensive and concise—as "the material result of an unpublished improvement in the manufacture of articles for public use." It is this which forms the leading feature in the scheme. The person of the Patentee becomes in comparison with it a subordinate idea,[a] as "the first publisher by means of a Specification of the invention." It furnishes, moreover, the key to the questions which have arisen on the sufficiency of the Specification and other points, and which, as hitherto discussed, can hardly be said to have been satisfactorily disposed of.

The theory is no new one. As the compromise of a great contest between Sovereign and people, the Law was settled, on the issue of that contest, with regard to the great principles it involved—principles which, with scarcely any exceptions,[b] have regulated the administration of the grant from the passing of the Statute of Monopolies to the present day.

[a] This was the view entertained of our Law by the late Mr. Justice Story, who, in a case (*Earle* v. *Sawyer*, shingle-mill, 4 Mas. 8), so long since as 1825, thus expressed himself: "How indeed can it be possible that an English Court should deem some intellectual labour beyond the novelty of the combination necessary for a Patent, when it is the acknowledged Law of England (different in that respect from our own), that the first importer of an invention known and used in foreign parts may be entitled to a Patent as the *inventor* in England? What of intellect is employed in the mere importation of a known machine? An *inventor* in the sense of the English Law is the first maker or constructor or introducer in England."

[b] Contrast, for instance, the language used in the early trials of monopoly cases and that of the present day with such as the following words of a Lord Chancellor—"If the King refused the Patent, it would be upon reasons very unfit for me or any one to dispute, because it rests entirely in his Royal breast, and it cannot be in one more honourable." Per Lord Thurlow, L. C., *Ex parte O'Reily* (1790), 1 Ves. jun. 112.

On the general policy of State guarantees for the exclusive use of new inventions, some remarks will be found in the Introductory Chapter, selected from the leading writers on Political Economy, and the evidence adduced before the Select Committee of the House of Lords in 1851.[c] With reference to the latter and the tone assumed in the discussions of Parliament on this head, public opinion appeared to be equally balanced, assertions the most contrary being very confidently put forward by authorities equally entitled to the highest respect. On all sides the question was felt to be one of considerable importance to the manufacturing interests of the country, and one in which a false step in legislation might be attended with consequences seriously affecting the relative position it occupied

[c] "My general opinion is, that Patents should be granted free of all expense, and that in place of being considered as monopolies which are injurious to the public, they should be regarded as benefits conferred upon it, and therefore encouraged by every possible means. I think that Patents should be readily granted for every new idea, whatever that idea may be, that every encouragement should be given to persons to bring forward such ideas. The history of science shows that such ideas have often led to very great and important results, and hence I am of opinion that to every idea connected with science and art the protection of a Patent should be freely extended." (Evid. 2426, Sir D. Brewster.)

"All just inventions are arrived at by a long series of steps, and those persons who have made the discovery of the great principle upon which they are founded are not the persons who really benefit by them. I think the system defective in principle." (Evid. 2828, Sir J. Romilly, M. R.)

Q. Did not reading the evidence taken before the Committee of the House of Commons in 1829, strongly impress your mind with the multiplicity, the extent and the unavoidable character of the various difficulties and inconveniences which attend the existing Patent Laws.

A. There is no doubt of that.

Q. Did it not also impress you with the conviction of the impossibility of making any effectual struggle towards overcoming those difficulties.

A. I think so.

—(Evid. 2298, Colonel Reid.)

Lord Granville (President of the Select Committee of the House of Lords in 1851) was of opinion "that the whole system was unadvisable for the public, disadvantageous to inventors, and wrong in principle." (118 Hansard, 14, 1 July, 1851.)

among other States. With a single exception,[d] every State of any consequence in modern times had followed our example by adopting the institution, and attributed to its agency a large share of the improvements that had been effected in their manufactures. In this position of affairs, Parliament was unwilling to commit itself to the expression of an opinion to the contrary, or hazard the experiment of a change. The measures it enacted show how much attention had been occupied with the details and effect of the grant in other States, for they consist more in the removal of acknowledged abuses and the remodelling of our Law to meet the objections urged against it from political considerations, than in a general rearrangement of the system upon principle.

Be the difference of opinion, however, on the larger question what it may, there is little room for controversy as to the practical points connected with the grant. To maintain its character as a legitimate interference of the State with trade, there are few who will not allow that it should be far more cautiously conceded and more efficiently protected than is the case under the present system. Patent Agents,[e] as the recognised representatives of inventors, should be made Officers of the Court. A Commission, comprising persons conversant with the various branches of manufacturing art,[f] should decide upon the *novelty* of the

[d] The flourishing state of trade and the very considerable importance of the inventions which had originated in Switzerland (Loosey, 425 (1851), Evid. 2137), which is entirely without a Patent Law, were quoted in support of the argument that the stimulus of exclusive privileges was superfluous, either for the encouragement of manufactures, or as an inducement to invention.

[e] A case was referred to before the Committee of 1851 (Evid. 1437), as within the knowledge of one of the witnesses, in which the same Patent Agent had taken out three Patents for different parties for the same thing within a very short period.

[f] "According to the Report of the Commissioner of Patents (United

invention submitted to them, and suggest the conditions to be imposed upon the Patentee. Such a Commission might also act in the case of Amendment and Disclaimer, the practice with respect to these being open to all the objections urged against that connected with the original grant.

We must not, however, under-rate the importance of the vast improvements introduced by the recent Acts. The movement which effected them was less reformatory than destructive, consisting not so much in the erection of any new theory or system with reference to Patent right, as in the abolition of conditions which had long since ceased to be either necessary, useful, or significant, and which served only to derogate from the strictly commercial character the privilege naturally possessed. Much that is useful in detail has been adopted from the practice of foreign states; not the least important features being the reduction of the duty payable, the provision of a Public Library, and the institution of an authoritative Register[g] of past patented inventions.

The mere substitution of filing for enrolment, and establishment of the Commissioners' Office, has reduced the proceedings to obtain the grant from a wearisome, and oftentimes dangerous formality, to the dimensions of an ordinary business-like transaction. Under the old law, a Patent for an invention passed through nine stages, in

States) the arrearages of business in that office have been well pushed forward *by increasing the number of Examiners.* Since the 1st of January 1,600 Patents have been issued, and the whole number for the year will reach 1,900, or double that in 1853. The principal recommendations of Mr. Mason are that the examining force be permanently augmented; that better provision be made for taking testimony in cases of appeal, and a new rate of fees established." Summary of Statistical Report presented to Congress in 1854.

g For the valuable Official Indexes now published, the public is indebted to the exertions of Mr. Bennett Woodcroft, the present Superintendent of Specifications.

seven separate offices, situate in parts of the town distant from each other. The new Act recognized three separate offices, the Great Seal Patent Office, being the ancient Office of Chancery for the passing of Patents; a new Office, the Office of the Commissioners; and the Office of the Law Officer making out the Warrant. With a view to consolidate these several Offices, the Lord Chancellor,[h] by an Order dated 1st October, 1852, appointed the Great Seal Patent Office to be the Office in Chancery for the filing of Specifications, and the Commissioners, by an Order of the same date, directed the Great Seal Patent Office and the Office of the Commissioners to be combined, and the Clerk of the Patents for the time being to be the Clerk of the Commissioners; while by subsequent Orders of the late Attorney and Solicitor-General, the Warrants of the Law Officer, theretofore made in the Office of the Patent Clerk of the Attorney-General, was directed to be made in the Office of the Commissioners.

In consequence of these Orders matters have been very materially simplified, the whole of the duties of the Commissioners, from the reception of the Petition for Provisional Protection to the publication and sale of the Specifications, being discharged in one Office. This Office will be rendered still more complete by the establishment of the Public Library now collecting under the superintendence of Mr. Bennett Woodcroft, to consist of scientific and practical works of all nations on the subject of manufacturing art.

Each Specification filed under the New Act is, together with a lithographed outline copy of the drawings accompanying the same, printed and published by the Commissioners within three weeks of its deposit in the Office. It is sold to the public at the cost price of the printing and

[h] Stat. 15 & 16 Vict. c. 83, s. 28.

paper. The price of a print of the average length, of letterpress and drawings, is 8*d*.

A Journal of a somewhat indefinite character, entitled "The Commissioners of Patents Journal," has, since January, 1854, been published twice a week by the authority of the Commissioners. It contains the various notices appearing in the *Gazette* on the subject of Patents, and a variety of other notices, and useful information and instruction, for the guidance of applicants in proceeding for their Patents. It is proposed to publish in it the names of Patentees, and the titles of Patents granted in other countries: also a notification from time to time of the date of the expiration of each Patent, as it may become void either by non-payment of the stamp duties of 50*l*. and 100*l*., at the expiration of the third and seventh years respectively, pursuant to the Act, or at the full term of fourteen years: and also, from time to time, a list of the inventions provisionally protected, lapsed or forfeited by reason of the applicants having neglected to proceed for their Patents within the six months of provisional protection.

For the Forms of Assignment, Mortgage and Licence, in the Appendix, embracing the experience of long actual practice, I am indebted to the kindness of the able and learned Editor of Jarman and Bythewood's Conveyancing.

To Mr. Charles Cowper, Patent Agent, I am obliged for much of detail as to the practice connected with the grant in Continental States.

I take this opportunity of expressing my sense of the great courtesy of the Officers connected with the Privy Council and Great Seal Patent Office. The information furnished by Mr. Ruscoe of the latter as to the routine of the Office, will, I trust, render the work useful as a manual to inventors.

J. C.

89, Chancery Lane,
February 1*st*, 1855.

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A

TREATISE

ON

THE LAW OF PATENTS.

INTRODUCTORY CHAPTER.

Definition.

LETTERS PATENT[a] for inventions are grants of record under the Great Seal,[b] whereby, in consideration of the improvement effected by such inventions in trade, the exclusive enjoyment of such improved trade for a limited period is assured to the parties first communicating the inventions to the public.

Vicissitudes of the subject.

Few of our existing institutions have passed through so extraordinary a career, and none perhaps have reverted so nearly to their original position. Conceived in the very essence of paternal government, and maintained, notwithstanding its manifest abuses, by arguments now abandoned as fallacious,[c] this species of monopoly is still

[a] So called from the form of the grant, which is in open letters (literæ patentes), addressed by the sovereign to the subjects at large. 2 Bl. Com. 346; Collier on Patents, 64.

[b] Although not common among the Saxons, seals were used as early as the time of Edgar. Impressions on wax were first used by William the Conqueror, and coats of arms as a seal owed their origin to the time of Richard I. (Com. Dig. Pat. C. 2.) For specimens and descriptions of some of the seals in ancient grants, see (1702) Madox, Formulare Anglicanum, A Dissertation on Ancient Charters and Instruments.

[c] "Manufactures of moderate expense and quick growth may, in general, safely be left to private adventurers, and run the common

looked upon as politic and just, and compatible with a régime which abandons a protective policy as false in principle, and holds all authoritative interference with trade to be an evil.

Importance of the history of exclusive privileges in trade.

The history of exclusive privileges in trade is interesting from its intimate connection with the progress of our commerce,[d] manufactures and art, and the illustration it affords of the development of our constitutional liberty. In its progress we recognize the action of our national characteristics, the conservative temper that shields obnoxious institutions through times of popular excitement, and the spirit of reform ever busy in moulding them into conformity with, and rendering them subservient to, the requirements of the times. To the former we owe a theory unchanged since the days of the Tudors and Stuarts, to the latter the removal of the abuses that disfigured it, and its appropriation to a purpose almost peculiar to the present day. "By the wisdom of the nation," says a learned writer,[e] "this poison of the state has been deprived of all its pernicious ingredients, and converted into a nutricious aliment applicable to the support of commercial prosperity."

"Inventions" an incident of modern times.

The exclusive use of new inventions, although the origin and the supporting principle of the whole, plays but an insignificant part in the great system of monopolies, which at one time embraced the greater portion of the mechanical arts, and many branches of foreign

chance of success: the finer arts will never flourish but under public protection and noble patronage; no encouragement in the hands of private persons is adequate reward to the man of genius who studies the universal promotion of these more useful arts which give daily bread to millions of the human species, support the dignity of crowns and the magnificence of the great and wealthy. A noble profusion of honours and bounty raised the Gobelines to its present height: the united influence of these two being generally sufficient to call forth whatever human industry can attain to." (Savary (1741), Dictionnaire Universel de Commerce.)

[d] 1851, Evid. 2345.

[e] Collier on Patents, 12.

trade. Inventions, indeed, in the sense of the word at the present day, are essentially[f] an incident of a period of great refinement, when the ingenuity of man is directed to the increase of the necessaries and luxuries of life, by rendering science and philosophy subservient to the purposes of commerce.[g]

Freedom of trade at the common law.

Freedom of trade, in so far as regards the employment of industry and skill, was a jealously guarded maxim of Common Law, for by it no man was restrained from working at any lawful trade,[h] or using as many arts or mysteries as he pleased.[i]

So entirely, indeed, was this liberty considered the birthright[k] of Englishmen, that it was considered that by no act of his own could he totally debar himself of it, much less be deprived of it by the king's letters patent.[l] "The liberties of Englishmen," says Blackstone,[m] "are not mere infringements of the king's prerogative extorted from our princes by taking advantage of their weakness, but a restoration of that ancient constitution of which our ancestors had been defrauded by the art of Norman lawyers, rather than deprived by the force of Norman arms."

[f] "When the manufactures are in their infancy," observes Mr. Webster (Law and Practice (1851), p. 23), "products which never before existed, results never before obtained, and effects never before produced, will be the subject-matter of letters-patent: this will constitute, as it were, the first era of invention, but ingenuity will then be directed to improvements in the art of producing, to the obtaining the same products or results, and to the producing the same effects in a more economical and beneficial manner: this will constitute the next or more advanced era of invention." See 2 H. Bl. 489, per Buller, J.

[g] Phillips on Patents, 3.

[h] 11 Co. 536; Hob. 211; Com. Dig. "Trade."

[i] Vin. Abr. "Trade"; *Tailors of Ipswich case*, Show. 266.

[k] H. of Com. Jour. 1614—469; 1 W. & M. st. 2, c. 2.

[l] Noy, 182; 3 Mod. 128; Bac. Abr. "Prerog."; per Sir J. Leach, *Bryson* v. *Whitehead*, 1 S. & St. 74; *S. C.* 1 L. J. Ch. 42 (1821).

[m] 2 Bl. Com. pt. 1, c. 1.

Crown empowered to grant privileges in trade.

By the Common Law, however, the Crown, as the patron of science and art and guardian of the common weal, had power to grant many privileges[n] in trade, "although primâ facie," as it was said,[o] "they appear to be against common right." The consideration was the invention of a new manufacture, or the introduction of a new trade. The grant could be only by Charter or Letters-patent,[p] and the term of privilege was to be "reasonable."[q]

Limits of the power.

The sole selling of articles in common use,[r] or the sole exercise of a known occupation,[s] were held to be improper exercise of the prerogative. The King's Charter to any particular corporation of the sole importation of any merchandize was also held to be of no effect, whether the merchandize was prohibited by Statute or not.[t]

A similar Charter, empowering individuals or companies to trade to and from a particular place, and in

[n] The earliest instance of the exercise of this authority has never been accurately ascertained. (Hindm. 4.) We find, however, in the reign of Edward III. (Sir F. Moore's Rep. 675), that on the representation to him of the feasibility of making a "philosopher's stone," that monarch issued a commission of two friars and two aldermen to inquire into the matter, and on their reporting in its favour, granted to them and their assigns the sole privilege of making the philosopher's stone. See Collier, App. (H.), for authorities On the King's Charter regulating Trade.

[o] Y. B. 4 Edw. III. fol. 17.

[p] For a collection of such grants, see Madox, Formulare Anglicanum.

[q] Com. Dig. Pat. R. 2; Co. 16 b; 2 Roll. 182, l. 5; Noy, 182; 1 Hawk. P. C. c. 29, § 20; Chitty, P. C. ch. x. § 2; Godson, p. 10.

[r] *Peachies case* (Edw. III.), 3 Inst. 181; (sweet wines), Noy, 173; 11 Co. 84; H. of Com. Jour. (1614), i. 470; *D'Arcy* v. *Allen*, 11 Co. 86; Noy, 178; Web. P. R. 1—5 (playing cards).

[s] 2 Roll. Abr. 212; Jon. 231; 3 Mod. 75; Vern. 120, 130; 10 Mod. 107, 131, 133.

[t] 2 Inst. 61; Style, 214. By stat. 19 Hen. IV. the ordinances of trading guilds were made subject to the approbation of the Chancellor, Treasurer, Chief Justice or Judges of Assize (Merewether and Stephens (1835); Grant on the Law of Corp. (1850); Com. Dig. "Bye Law.")

particular articles, is void, so far as it gives such persons an exclusive right of trading.[u]

Early form of privileges.

The earliest form of these privileges was that of conducting exclusively new trades, or dealing exclusively in objects of commerce hitherto unknown, as a reward and encouragement to the parties introducing them. By degrees, however, the powers confided to the executive were perverted[x] from their proper purpose; and, under the pretence of the better government of trade,[y] the prerogative of the Crown was employed in sanctioning, *in return for pecuniary aid, individuals and corporations*[z] in very oppressive monopolies.[a]

State of privileges in the time of Elizabeth.

In the reign of Elizabeth this evil had assumed a very formidable appearance.[b] "It is astonishing," says Hume, "to consider the number and importance of those commodities which were thus assigned over to patentees. Currants, salt, iron, powder, cards, calf skins, fells, pouldavies, ox shin bones, train oil, lists of cloth, potashes, aniseseeds, vinegar, sea coals, steel, aqua vitæ, brushes, pots, bottles, saltpetre, lead, accidences, oil, calamine stone, oil of blubber, glasses, paper, starch, tin,

[u] *Sandys* v. *E. I. Company*, Raym. 489; 2 Chan. Cas. 165; Skin. 165, 226, 234, and *Co. of Merch. Adventurers* v. *Lebow*, 3 Mod. 126.

[x] Collier, ch. II. On the Hist. of Monopoly in England, from the Time of John to that of the Interregnum.

[y] Adam Smith, 138, 142, 150; 3 Hume, 404; (1812) Chitty, App. 7.

[z] (1835) Merewether and Stephens, Hist. of Corp.

[a] Com. Dig., "Trade. Bye-Law;" Hob. 210; 1 Tann. 412, n. 3; 1 Salk. 203; 2 Raym. 1129; 7 T. R. 543; Bac. Abr., "Monopoly;" Bull. N. P. 76; Lingard's Hist., Dolman's ed. ix. 182. In relating the abuse of a similar prerogative (that of knighting), Clarendon uses language very applicable to the case. "The King received a vast sum of money from all persons of quality, or indeed of any reasonable condition; which, although it had its foundation in right, yet in the circumstances of proceeding was very grievous." (Hist. Reb. i. p. 67.)

[b] Ed. Rev. xxv. 43* (1837); Lord J. Russell on the Eng. Const. 47; Hall. Const. Hist. 3 ed. i. 355.

sulphur, new drapery, dried pilchards, transportation of iron ordnance, of beer, of horn, of leather; importation of Spanish wool, of Irish yarn. These are but a part of the commodities which had been appropriated to monopolists. When this list was read in the House, a member cried, 'Is not bread in the number?' 'Bread,' said every one with astonishment; 'yes, I assure you,' replied he, 'if affairs go on at this rate, we shall have bread reduced to a monopoly before next parliament.' These monopolists were so exorbitant in their demands, that in some places they raised the price of salt from sixteen pence a bushel to fourteen or fifteen shillings. Such high profits naturally begat intruders upon their commerce; and in order to secure themselves against encroachments, the patentees were armed with high and arbitrary powers by the council, by which they were enabled to oppress the people at pleasure, and to exact money from such as they thought proper to accuse of interfering with their patent. The patentees of saltpetre having the power of entering every house, and of committing what havoc they pleased in stables, cellars or wheresoever they suspected saltpetre might be gathered, commonly extorted money from those who desired to free themselves from this damage or trouble; and while all domestic intercourse was thus restrained, lest any scope should remain for industry, almost every species of foreign commerce was confined to exclusive companies, who bought and sold at any price they themselves thought proper to offer or exact."

Lawrence Hyde's motion.

Even Elizabeth's House of Commons rang with angry complaints. On the 20th November, 1601, a great debate upon the subject took place on an attempt by Lawrence Hyde to introduce "A Bill for the Explanation of the Common Law in certain Cases of Letters Patent." After much discussion as to whether the proceedings should be by bill or by petition to Her Majesty, but before anything was concluded upon, the Queen sent a message

to the House importing that the monopolies should be revoked. The speech of her Secretary, Cecil, was highly characteristic of the times.[c] "There are no patents now of force," said he, "which shall not presently be revoked, for what patent soever is granted there shall be left to the overthrow of that patent a liberty agreeable to law. There is no patent if it be *malum in se;* but the Queen was ill apprized in her grant. But all to the generality be unacceptable I take it there is no patent whereof the execution hath not been injurious. Would that they had never been granted. I hope there shall never be more. (All the House said, 'Amen!') In particular, most of these patents have been supported by letters of assistance from Her Majesty's Privy Council. I dare assure you from henceforth there shall be no more granted, they shall all be revoked. And because you may eat your meat more savoury than you have done, every man shall have salt as good and cheap as he can buy it, or make it without danger of that patent which shall presently be revoked. The like benefit shall they have who have cold stomachs, both for aqua vitæ and aqua composita, and the like; and they that have weak stomachs, for their satisfaction, shall have vinegar and alegar, and the like, set at liberty. Train oil shall go the same way; oil of blubber shall march in equal rank; brushes and bottles endure the like judgment. The patent for pouldavy (sail cloth), if it be not called in, it shall be. Woade, which, as I take it, is not restrained either by law or statute, but only by proclamation (I mean from the former sowing); though for the saving thereof it might receive good disputation, yet for your satisfaction the Queen's pleasure is to revoke that proclamation; only she prayeth thus much, that when she cometh on progress to see you in your counties, she be not driven out of your towns by suffering it to infect the air too near them. They that desire to go sprucely in their ruffs

Speech of Cecil.

[c] Lord John Russell, Hist. Eng. Gov. 477.

Revocation of some of the monopolies.

may at less charge than accustomed obtain their wish. The patent for starch, which hath been so much prosecuted, shall now be repealed."[d]

Address of the Commons.

This victory filled the Commons with joy, perhaps the more from being rather unexpected. An address was voted full of rapturous and hyperbolical acknowledgments.[e] The Queen answered in an affectionate strain, glancing only with an oblique irony at some of those movers in the debate whom, in her earlier and more vigorous years, she would have keenly reprimanded.[f]

The Queen's answer.

The following is an extract from her answer: "Since I was Queen, yet never did I put my pen to any grant but upon pretence and semblance made unto me that it was both good and beneficial to the subjects in general, though a private profit to some of my ancient servants who have deserved well: but the contrary being found by experience, I am exceedingly beholden to such subjects as would move the same at first." . . . "That my grants should be grievous to my people, and oppressions to be privileged under colour of our patents, our kingly dignity shall not suffer it, yea, when I heard it, I could give no rest to my thoughts till I had reformed it."[g]

Their joy and gratitude were, however, somewhat premature, as it appears that her majesty did not revoke them all.[h] A list of them, dated May, 1603, seems to imply that they were still existing.[i]

Continuance of the abuses.

In 1610 we find the people again "extremely uneasy and loud" against these pernicious grants.[j] James consented to revoke them, and in a book which he pub-

[d] New Parl. Hist. (A. D. 1601), i. 934.

[e] Hall. Const. Hist. i. 357, 3rd ed.

[f] "The Queen was so dissatisfied with these proceedings, that she spoke of them peevishly in her concluding speech." (D'Ewes, i. 619.)

[g] Cobbett's Parl. Hist. of Eng. i. 923.

[h] Rymer, xvi. 540; Carte, iii. 702.

[i] Lodge, iii. 159; Hall. Const. Hist. i. 357, n.

[j] Anderson's Deduction of the Origin of Commerce, i. 479.

lished,[k] declared that monopolies were things against the laws of this realm, and expressly commanded that *no* suitor should *presume to move him to any grant* thereof. The abuses, however, still continued.

Statute of Monopolies.

In the 21st year of his reign his necessities compelled *him to summon a Parliament, wherein much louder com*plaints were made than ever before.[l] The famous Statute of Monopolies[m] was passed, the constitutional *exercise of this Royal prerogative at the Common Law*[n] was declared and defined, and trade monopolies settled on their present footing. The arena on which patent rights were afterwards discussed was that of the courts of law. Public vigilance, no longer watchful of undue assumption on the part of the crown, directed itself to prevent encroachment on the part of the patentee.

Provisions of the statute.

By the Statute,[o] it is expressly declared that no declaration therein shall extend to any Letters-patent and Grants of privilege for the term of fourteen years or under, thereafter to be made of the sole working or making of any manner of new manufacture within the realm to the true and first inventor or inventors, which others, at the time of making such Letters-patent 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 to the hurt of trade, or generally inconvenient, the said fourteen years to be accounted from the date of the first Letters-patent or Grants of such privileges thereafter to be made, but that the same shall be of such force as they should be if that act had never been made, and no other. An exception was also made of the several Patents enumerated in the act.

[k] *11 Co. Rep. 88 b.*

[l] (1837) Ed. Rev. xxv. 43*; Anderson's Origin of Commerce, ii. 16.

[m] 21 Jac. I. c. 3.

[n] Chitty's P. C. 178, ch. x. § 2.

[o] "A statute," says Coke, "forcibly and vehemently framed for the suppression of all monopolies—for monopolies in times past were ever without law, but never without friends." (3 Inst. 182.)

Policy of patent dependent on two principles.

In discussing the policy of patents as a limited monopoly created by public authority, it is important to start with a clear apprehension on two points: the general effect of artificial[p] monopoly, and the proper office of government with respect to trade. On both a very remarkable change has passed during the last few years over the public mind,[q] and received expression in recent legislation. The improvements in fact of modern law may be said generally to be owing not more to the extensive reform that has taken place in its administration, than in the change of conviction alluded to as to the principles on which legislation should proceed. That changes far greater than any that have yet occurred will result from the permanent establishment of these principles, no one who carefully considers the question can doubt; and notwithstanding considerable oscillations,[r] the general tendency of popular feeling seems to be to a recognition of the doctrine of *laisser faire* in its integrity.

Tendency of public opinion.

Restraints on trade generally.

Considered in its broadest view, the natural right of every person to enjoy his property and exercise his labour at his pleasure is limited only by its interference with similar rights in others.[s] In practice, however, owing to the complicated relations of society, and the indirect methods by which it is compelled to attain its ends, the imposition of numerous restraints upon this right, are found absolutely necessary for the public good.[t] In this country we can happily say of them with Blackstone,[u] they are "so gentle and moderate that no man of sense

[p] Adam Smith, bk. i. ch. 7, p. 536; Ricardo, Pol. Ec. (1821), 465; Mill, Pol. Ec. (1853), bk. iii. ch. 2, § 5.

[q] Mill, Pol. Ec. (1853), pref. v. bk. v. ch. x. § 1.

[r] See the debates on the Payment of Wages in Coin Bill (March, 1854), Hansard, and Payment of Wages (Hosiery) Bill (March 22, 1854).

[s] "Sic utere tuo ut alienum non lædas." (Steph. Com. (1853), ii. 493.

[t] Steph. Com. (1853), iii. 234.

[u] Vol. i. 145.

and probity would wish to see them slackened." The recent changes, however, in the political world have tended greatly to their diminution.[v] Some, as opposed in principle to public conscience, are in course of gradual extinction, while others are retained merely for purposes of revenue or as matters of police.[x]

With regard to Monopoly in general,[y] it is the opinion of Mill and other writers on the subject, that its effect as an agency influencing the price of produce has been, especially in this country, considerably overrated; and that it is only at a comparatively modern period that Competition has in any degree become the governing principle of contracts.[z] Another and more powerful element is Custom. To the industrious population in a turbulent military community, freedom of competition is a vain phrase; they are never in a condi- Effect of monopoly.

[v] Mill, Pol. Ec. vol. II. pp. 525—569.

[x] Burn's Just. tit. Alehouses, Hawkers, Pedlars; Chitty's Law of Com. ii. 163; Merewether and Stephens, Hist. Corp. 1115.

[y] "A *monopoly*," says Coke (3 Inst. 181), "*is* an institution or allowance by the king by his grant, commission or otherwise, to any person or persons, bodies politic or corporate, of or for the sole buying, selling, making, working or using of any thing whereby any person or persons, bodies politic or corporate, are sought to be restrained of any freedom or liberty that they had before, or hindered in their lawful trade. (Com. Dig. "Bye Law," c. 3.)

"For the word monopoly, dicitur ἀπὸ τοῦ μόνου, i.e. solo, καὶ πωλεῖμαι vendere, quid est cum unus solus aliquid genus mercaturæ universum emit ut solus vendet pretium ad suum libitum statuens. And the law of the realm in this point is grounded on the law of God, which saith, *Non accipies loco pignoris inferiorem et superiorem molam, quia animam suam apposuit tibi.* Thou shalt not take the nether or upper millstone to pledge, for he taketh a man's life to pledge; whereby it appeareth that a man's trade is accounted his life because it maintaineth his life, and therefore the monopolist that taketh away a man's trade taketh away his life, and therefore is so much the more odious, because he is vir sanguinis. Against these inventors and propounders of evil things the Holy Ghost hath spoken, inventores malorum, &c., digni sunt morte." (2 Hawk. P. C. bk. i. c. 79, § 1; 4 Blk. Com. 159.)

[z] (1853) John S. Mill, Pol. Ec. bk. ii. c. iv. § 1.

tion to make terms for themselves by it; there is always a master who throws his sword into the scale, and the terms are such as he imposes. But though the law of the strongest decides, it is not the interest nor, in general, the practice of the strongest to strain that law to the utmost, and every relaxation of it has a tendency to become a custom, and every custom to become a law. In theory, the price of articles produced under a monopoly is arbitrarily dependent from the will of the[a] monopolist, and limited only by the buyer's extreme estimate of its worth.[b] In practice, however (although the market is seldom or never fully supplied), two reasons incline to lower prices under the strictest artificial monopoly; namely, that reduction in price invariably leads to an increased demand, and that fixing it unreasonably high attracts the attention of piracy or leads the public to find some other substitute for its wants.[c]

Practical influences on price of monopolized articles.

The monopolist can fix the value as high as he pleases short of what the consumer could not or would not pay; but he can only do so by limiting the supply. The Dutch East India Company obtained a monopoly price for the produce of the Spice Islands, but to do so they were obliged in good seasons to destroy a portion of the crop.[d]

A very able French writer (le Marquis Garnier[e]) thus explains the action of these causes:—"Les producteurs tendent continuellement à regler la quantité des productions sur la somme des demandes; ils ne resteront pas au dessous de ce point sans être tentés d'accroître la masse de leurs produits, et ils ne peuvent le dépasser sans s'exposer à perdre. Ces deux quantités, celle des produits

[a] (1825) M'Culloch, Pol. Ec. 256.

[b] (1825) Encyc. Met. vi. 171; (1853) Mill, Pol. Ec. bk. iii. c. 2, § 5.

[c] (1851) Evid. 2759.

[d] Mill, Pol. Ec. bk. ii. c. iv. § 1.

[e] Hist. de la Monnaie, i. Introd. p. 62.

et celle des demandes, s'efforcent donc à se mettre en équilibre l'une avec l'autre." "On peut dire," says another writer,[f] "des monopoleurs ce qu'on a dit du Fisc: scavoir, qu'il est à l'égard du corps politique ce que la rate est à l'égard humain: elle ne peut grossir que du déchet des autres parties qui le composent."[f]

Monopoly among the ancients.

Attempts at monopoly[g] are coeval with trade itself, and its repression formed one of the earliest objects of legislative enactment. In Athens, the exporting of corn and even the hoarding it up was punishable with death;[h] and among the Romans, the attempt to raise the price of provisions was placed in the rank of heinous crimes.[i]

In early English history.

In this country public opinion in early times was strongly fixed upon the clandestine bargains of the fore-

[f] Le Geyt, Const. de Jersey (Monopoles), (1846) vol. i. 384. John Peter Willebrand, member of the Supreme Tribunal of Appeals to the King of Denmark, expresses himself thus strongly on the subject: "Les monopoleurs ne sont guères accueillis là où l'on préfere le bien général à l'intéret particulier, et ce serait très mal connaitre le cœur humain de s'imaginer qu'un monopoleur se comporterait mieux qu'un loup auquel on confieroit l'administration de la justice entre les troupeaux." He then adds, rather wickedly, "La police de l'empire agit vis à vis les monopoleurs à peu près comme les papes contre les hérétiques, le Jeudi Saint, mais à mon avis plus utilement."

[g] Cod. lib. iv. tit. 59; Lysias, Or. 21, c. 5; Diod. Sic. lib. 4, c. 3.

[h] Suet. Tib. c. 71; Pliny, 8, 37, 56; Eden, El. Jur. Civ. 296.

[i] For an interesting account of the measures adopted among the ancients for the suppression of Monopoly, see Collier on Patents, ch. i. On the origin and progress of Monopoly in the early history of Europe, Illingworth's Inquiry into the Laws respecting Forestalling, &c. The word μονοπωλία occurs in Arist. Pol. (i. 11), where it is used simply in the sense of a man buying up the whole of a commodity so as to be the sole holder of it, and to have the power of selling it at his own price. (See Livy, lib. iv. c. 13.)

The term is used in a constitution of Zeno (Cod. iv. 59) in the sense of what our law understands by forestalling, regrating and engrossing. Zeno declares that no person shall exercise a monopoly of clothing, fish or any other thing adapted for food or use.

staller,[k] the regrator,[l] and the ingrosser,[m] as the cause of

[k] Forestall, or, as it is written in Domesday Book, foristel, is, according to Spelman, derived from two Saxon words signifying præ and statio. Hence, says he, forstallator is one who bargains for or purchases corn in its way to the market, thereby hindering it from being publicly exposed for sale. (Illing. 9.)

The signification of the word was, however, more probably owing to the following circumstance. In ancient times, the Crown granted to many corporate bodies the right of holding fairs and markets at particular places for the purpose of promoting traffic and preserving order, and for the prevention of frauds and oppression. Some of these markets were free, others were granted with toll, that is, a reasonable payment upon the commodities sold in such market. The grantee, also, if owner of the soil, was entitled to the payment of what was termed *stallage* from every person erecting a stall upon his land. By the obstruction, therefore, of goods or persons coming to such markets, the owners of the market were prejudiced in the profits of their stallage. This kind of obstruction was very early deemed an offence, and termed *forestalling*.

The word has, however, received a statutable interpretation. By 5 & 6 Edw. VI. c. 14 (repealed by 12 Geo. III. c. 71), it is declared "that whoever shall buy or contract for any merchandize, victual or other thing coming in the way to market, to the intent to sell the same again, or persuade any person by any means whatsoever to enhance the price when there, or dissuade any person from bringing their goods or provisions to market, shall be deemed a *forestaller*."

[l] The terms regrator and ingrosser were not known before the reign of Henry III. (3 Inst. 195, 196; 1 Hawk. P. C. c. 80; Brown, Indict. 40; Cromp. 80 b.)

Regrator, according to Minshew, is derived from the French re *iterum* and grater *scalpere*, and "did anciently signify such as bought by the great and sold by retaile."

By the stat. 5 & 6 Edw. VI. c. 14, above alluded to, it is declared that "whoever shall obtain or get into his hands any corn, &c., or other dead victual in any market, and sell the same again in the same market or within four miles thereof, shall be deemed a *regrator*."

[m] "Ingrosser," says Minshew, "is also of French origin, *a* grosseur *crassitudo*, or grossier *solidarius vendor*; it signifyeth one that buyeth corne growing or dead victuall; howbeit," he adds, "this definition rather doth belong to unlawful engrossing than to the word in generall." Spelman defines the term thus: "Is in genere dicitur qui integram rei alicujus copiam emendo satagit comparare ut distrahendo postea carius vendat a Gall. le gros pro *integro* vel *plenitudine*." The

dearth,[n] and summary and severe laws were enacted, with a view of promoting publicity[o] in all transactions, the odium almost universally attaching in infant communities to those who supply the public with the necessaries of life, imparting a peculiar severity to this species of legislation.

Severity of the repressive measures.

Fine,[p] imprisonment,[q] the stretch-neck,[r] and even statute declares that whoever shall ingross or get into his hands by buying, contracting for, or otherwise, "any corn growing or any corn, grain, &c. (otherwise than in the act specified), or other dead victual, with the intent to sell the same again, shall be deemed an *ingrosser*."

[n] Forestallers, ingrossers and regrators," says Pulton, in his Treatise de Pace Regis et Regni" (tit. "Oppression," 1623), "deserve to be numbered amongst the number of oppressors of the common good and public weal of this realm, for they do endeavour to enrich themselves by the impoverishment of others, and respect not how many do lose so they may gain. They have been exclaimed upon and condemned in parliament from one generation to another, as appeareth by the statute; but especially by the statute 34 Edw. I. it was ordained that no forestaller should be suffered to dwell in any town, for he is a manifest oppressor of the poor and a decayer of the rich, a public enemy of the country, a canker, a moth, and a gnawing worm, that daily wasteth the commonwealth; and the act and name of a forestaller was so odious in that time, that it was moved in parliament to have had it established by law that a forestaller should be baited out of the town where he dwelt by dogs and whipped forth with whips."

[o] In Lombardy, under Pepin, the sale of horses, oxen, &c., was forbidden, except in the presence of witnesses. (Ll. Longobard. tit. 18.) Among the Anglo-Saxons, numerous laws were made restraining sales, "except in the public markets and within the gates of cities and towns, in the presence of the port reeve, town reeve, king's reeve or shire reeve, in the folcmote, or before a priest or an ordeeler." By the laws of Athelstan, all sales above the value of twenty, and by those of Canute all as low as four pence, were required to be made openly. (2 Inst. 713; Bac. Abr. Fairs.) For similar laws among the ancient Swedes and Goths, see Stiern. de Jure Suec. et Goth. Vet. c. 5.

[p] Fleta, lib. ii. ch. 12, § 19. [q] 34 Edw. I.; Illing. 27.

[r] Callistrigium is the reward of such as buy any flesh of Jews and then sell it to Christians, and also forestallers who buy anything before the due time, or that press out of town to meet such things as come to the market, to the intent that they may sell the same in the town unto regrators." (51 Hen. III. st. 6 (A. D. 1266); 34 Edw. I. (A. D. 1306); 5 & 6 Edw. VI. c. 14, repealed by 12 Geo. 3, c. 71.)

death,[s] among a people not naturally cruel, attest the earnestness of their endeavours to extinguish this crime, productive, however, of no more practical result than that it diverted public attention from the real source of evil influences on trade, the exclusive privileges granted by the Crown.

Prevalence of the new theory.

In April, 1767, an effectual stand was made by reason against prejudice.[t] Petitions had been presented to the House of Commons complaining of the high price of provisions, which they alleged was due to the practices of jobbers, forestallers and ingrossers. A committee was appointed for inquiry into the matter, and came to the following memorable resolution:—"That it is the opinion of this committee *that the several laws relating to badgers, ingrossers, forestallers and regrators,* by preventing the circulation of and free trade in corn and other provisions, *have been the means of raising the price thereof* in many parts of this kingdom.[u]"

Argument applicable to patents.

The extension of the condemnation of Monopolies of trades and articles in common use to that of Patents, is based on the restraint upon the public during the continuance of the privileges.[x] In some cases the mere abstinence amounts to serious self-denial. The tide of manufacturing industry and inventive skill, notwithstanding its apparent irregularities, rolls onward in a settled direction,[y] indicated by the expressed wants of society,[z]

[s] 27 Edw. III. c. 11, repealed by 38 Edw. 3, st. 1, c. 6, as to the penalty of death. See Laws and Customs of the Turks, 1768.

[t] Illing. 89.

[u] Com. Jour. 8 Apr. 1767.

[x] As an exemplification of the influence of patent rights in repressing the adoption of recognized improvements, it was mentioned before the Committee (1851), that during the existence of Howard's Patent the invention was not used by above one-fourth of the trade. As soon as the Patent expired it was almost universally adopted. (Evid. 967.)

[y] Evidence of Sir J. Romilly, M.R., Com. H. of Lords (1851), 2828.

[z] Society of Arts, First Report on the Rights of Inventors, 1851.

and within an almost calculable time is certain to achieve some means of satisfying those wants. Some discoveries are made by the pioneers of science, men like Watt, far before their age; to them a monopoly of their invention is but an inadequate reward; while of others the whole body of society is in earnest search; the appropriation therefore by individuals may be looked on almost as an invasion of a right.

Effect of government interference.

The next point to be established is the effect produced by Government interference with trade. In this respect public opinion has of late years been materially changed.[a]

Effect of Political Economy as a science.

During the period alluded to, Political Economy has become a science, and established, as a deduction from experience, the laws that regulate the distribution of wealth and the principles which should influence legislation. In the commercial as in the material world, these laws are not capable of being speculatively laid down, but are the result only of intelligent deduction from large and accurate observation.[b] Like them, too, when discovered, they are found simpler than those suggested by hasty generalization to account for the phenomena.[c]

Contrast of measures under the two systems for the furtherance of trade.

The effects of this science are perhaps hardly realized except by a contrast of the measures taken formerly and those advocated at the present day for securing the prosperity of trade. For centuries in this country authoritative intervention was looked for by the people and insisted on by kings in points on which private enterprize[d]

[a] For a statement of the theory of the so-called mercantile system, see Dic. Univ. Savary. (1751) Commerce; A New Discourse of Trade, Sir Josiah Child (1694). A Discourse on the Protection and Care of Trade. D'Avenant's Political Works, i. 98, v. 452.

[b] Savary, 1751. Translation by Postlethwayt, p. 547.

[c] Byles on the Usury Laws (1845), p. 2, App. 164; (1835) Kelly on Usury Laws, Com. Dig. "Usury."

[d] The most signal instance, perhaps, of this, is the present condition of salmon fisheries. From the reign of John down to the present day, Legislation was busily occupied with their direction. Their regulation

and public opinion are now considered not only more proper, but the only efficient agents for the public good. The early portion of our Law is indeed little else than a record of the efforts of the State[e] to regulate the price of labour[f] and provisions,[g] the employment of capital,[h] the education of skill,[i] and the conditions generally of foreign and internal trade.[k] It even pretended to enforce mo-

forms a prominent clause in Magna Charta (c. 16). The subject of laws by Edward I. of England and Robert the Bruce, in Scotland, it has never long been allowed to rest (for an abridgment of these acts, see Jacob's Law Dict. 1809, Art. "Fish," "Fisheries;" Burn's Justice, "Fisheries"), and has, during the last forty years, been stirred up almost every session by Bills, Committees and Commissions. (Sessional Papers, 1824, 1836; Ed. Rev. 1851, xciii. 341; Qu. Rev. 1852, cxi. 361.) Yet recent experience (Times, 15 Apr. 1854) has shown, in the experiments in Galway and on the Tweed and Tay, that even so precarious an interest as this may safely be left to find its welfare in mere commercial speculation. "Sumptuary laws," says D'Avenant (v. 379), "are the best course of putting a stop *to losing trades.*"

e "Violent and ineffectual" are the terms applied to them by Hume. (Hist. 403); Paley's remark (p. 400), is—"More is expected of them than laws can do."

f For Statutes as to combination of workmen, see (1852) Smith's Law of Masters and Servants, 331; (1854) M'Culloch on the Rate of Wages and Influence of Combinations.

g For a list of Statutes and Royal Proclamations, fixing the price of food and imposing some singular restrictions on general dealing (25 Hen. VIII. c. 13; 3 & 4 Edw. VI. c. 19), see Illingworth (1800) on Forestalling.

h For a list of Statutes on this head, see Byles on Usury (1845), App. 164, and Kelly (1835) on Usury; Com. Dig. "Usury."

i 5 Eliz. 4, stat. "Apprentices," of which Adam Smith (ii. 222) remarks, "it was an encroachment upon natural liberty, without producing any beneficial result to the community." Entick's Hist. of London, i. 207, 212; ii. 8, 9; Rymer, xvii. 526; Tyrwhit and Tyndale's Digest of Statutes (1822), p. 27; Chitty's (1812) Law of Apprentices; Smith's Master and Servant (1852), Introd. xxxi.; (1854) Report, Manning the Navy; Hume, iii. 403; (1854) Mr. Wallis, Special Rep. Ind. Exhib. New York, 3.

k Illing. 64; 5 & 6 Edw. VI. c. 14.

rality, industry[l] and honesty,[m] to dictate popular opinion and to repress luxury and eccentricies[n] in domestic life.

The new policy is distinctly opposed to interference of Government with Capital or Labour. In every department of productive industry which has as yet had a fair trial, direct interference by the Legislature has proved detrimental to its interests,[o] and our national prosperity has increased in exact proportion as we have learnt to leave Commerce, where possible, to its own control, and to base what legislation is requisite on principle instead of impulse.[p]

The *laisser faire* doctrine with regard to trade.

In a rude and turbulent condition of Society, when the pursuit of Commerce was considered ignoble[q] and Capital could hardly be said to exist, it was natural, and perhaps[r]

Possible good of state protection.

[l] 5 Eliz. 4, § 31, "to banish idleness."

[m] 7 Geo. II. c. 8.

[n] 3 Edw. IV. c. 4.

[o] Encyc. Met. "Commerce;" Encyc. Brit. "Commerce;" M'Culloch, "Commerce;" Say, i. 201.

[p] Mill. Pol. Ec. bk. v. c. xi. § 7; Ric. Pol. Ec. 3 ed. 355.

[q] Verstegan, in his Titles of Honour (p. 367), mentions that in old times if a merchant so thrived that he was able to cross the seas thrice, he was ever after reputed a right worthy Thein, and capable of higher advancement.

For an enthusiastic advocacy of the dignity of trade, see the remarks in M. Savary's Dictionnaire Universel, art. "Commerce" (1741).

In the commencement of the fourteenth century, the French Government, to encourage the manufacture of glass, ordered that gentlemen or the sons of noblemen might exercise the trade without derogating from their rank. (Encyc. Met. "Manufacturing Processes," vi.)

[r] The inference from the increase of manufactures during the reign of Elizabeth has been warmly contested by those who assert the doctrines of *laisser aller* in their extreme. They attribute it to the accidental circumstance of an influx of foreign merchants and skilled workmen, refugees from the persecutions of the Duke of Alva. It is the observation of Hume, v. 177, that "as her monopolies tended to extinguish all domestic industry, which is more valuable than foreign trade, as it is the foundation of it, so the general train of her conduct was ill calculated to serve the purpose at which she aimed, much less to promote the riches of her people." During the last few years of

necessary, for the governing power, comprising by far the largest share of the intelligence of the nation, to induce the adoption of trade by special encouragement and take active measures for promoting its prosperity.

No longer requisite.

With the general diffusion of education and the firm establishment of trade, such necessity is at an end. So soon as the arts of peace become popular pursuits, inducements are unneeded; and, at a period like the present, in which capital is abundant and men of Commerce the most intelligent in the State, so far from aiding, they actually hinder the progress of trade. The exotic[s] reared under forced conditions has long been acclimated to our soil. It is at once sensitive[t] enough to shrink from legislative interference, hardy enough to flourish under the free action of natural laws, and vigorous enough to force its way over all the obstacles that oppose its growth.

Principle of patents.

It being then the general feeling that authoritative interference with trade is unadvisable—that Monopoly created by such means is a general grievance—and that the practical effect of Letters-patent is to impose a considerable restraint upon the public[u]—nothing but principles of justice or public policy can justify the Crown, as the steward of public rights, in sanctioning such privileges as those awarded to Patentees.[v] The reward of the inventor for the benefit he has conferred on trade, and the obtaining from him for public use the full benefit of the improvement he has effected, are objects which the Executive, as representative of the community, should endeavour to effect with the least possible disturbance of public rights.

her reign it is stated that the shipping of this country diminished to the extent of one-third.

[s] Ure's Dict. "Silk," 1100; "Glass," 572; "Calico printing," &c.

[t] Introd. 2nd ed. Suppl. to Ure's Dict. "Arts and Manufactures."

[u] M'Culloch, "Ships;" Com. Dic. p. 1119.

[v] Adam Smith, W. N. bk. iv. c. 8.

Assuming the policy[w] of rewarding inventors by the State, and this is the side on which the question receives its general support, a judiciously limited monopoly in the advantages of a discovery is not only the most appropriate and economical, but by far the most effectual encouragement in the great majority of improvements.[x] Without such protection it is clearly the interest of every one who has made a discovery available in trade to conceal it from the public, and, notwithstanding the difficulties attending such concealment, they are not insuperable,[y] when the ingenuity of invention is diverted to devise methods of concealment.[z]

Patents most economical form of rewards.

In the words of Bentham[a]—"It is an instance of a reward peculiarly adapted to the nature of the service, and adapts itself with the utmost nicety to those rules of proportion to which it is most difficult for reward, artificially instituted by the Legislature, to confer. If confined, as it ought to be, to the precise point in which the originality of the invention consists, it is conferred with the least possible waste of expense. It causes a service to be rendered, which, without it, a man would not have a motive for rendering; and that only by for-

Bentham's opinion.

[w] Renouard, c. 2, § 2, p. 42; Westm. Rev. xliii. 1835.

[x] "The reasons for recognizing the rights of inventors rest on much higher grounds than the encouragement of invention itself. They are precisely those which induce men to adopt civilized rather than savage life." Society of Arts First Report on the Rights of Inventors, 1851. "Not to regard a discovery in industry as the property of the discoverer would be to attack the rights of man in their essence." (Decree of the French National Assembly, 1791; Renouard, 423.)

[y] See Lord Brougham's speech, Hansard, xxviii. 476, and Qu. Rev. xliii.

[z] Turner on Pat. 2 (1851). The lamentable apathy on the part of our Government and want of confidence on the part of inventors, could haraly be more signally illustrated than in the case of the late Captain Warner. However exaggerated his own estimate of its value, there can be no doubt that he possessed the secret of a terribly destructive instrument. Ann. Register, lxxxvi. p. 77, A.D. 1844.

[a] Rationale of Rewards, 92.

bidding others from doing that which, were it not for that service, it would not have been possible for them to have done. Even with regard to such inventions, for such there will be, where others besides him who possesses the reward have scent of the invention, it is still of use by stimulating all parties and setting them to strive which shall first bring the discovery to bear. With all this it unites every property that can be wished for in a reward. It is variable, equable, commensurable, characteristic, exemplary, frugal, promotive of perseverance, subservient to compensation, popular and reasonable."[b]

Inventors,[c] as a class, are singularly deficient in the qualifications for prosecuting a new trade with a probability of success, if exposed to unlimited competition.[d] Without the encouragement of a Patent, how[e] is any man to engage in a novel and expensive process,[f] if the moment he succeeds, at the cost of all this outlay, he must be sure that his neighbours, who were cautious enough to shun all chances of loss, will come into competition with him and make his remuneration impossible? Notwithstanding the strong opinion expressed to the

[b] Godbolt, 252.

[c] The Marquis of Worcester, in a petition to Parliament in the reign of Charles II., offered to publish the hundred processes and machines enumerated in his very curious "Centenary of Inventions," on condition that the money should be granted to extricate him from *the difficulties in which he had involved himself by the prosecution of useful discoveries.* The petition does not appear to have been attended to! Many of these admirable inventions were lost. The steam engine and telegraph may be traced among them. (Dis. Cur. Lit. i. 52.) "I consider the inventive mania," says Professor Woodcroft, in his evidence (1625) before the Committee, "a disease always injurious to the patient, but very often beneficial to the public."

[d] Sir D. Brewster's Evid. (1851.)

[e] West. Rev. xliii.

[f] As to the disproportionate cost of the *first* machine in many instances, see Select Committee (1831) of H. of Commons on Machinery, 243. Bobbinet machines after ten years' practice made at one-third of the expense. Mr. Babbage's Economy of Manufactures says one-fifth is a fair average. (Turner on Patents, p. 5.)

opposite effect by the noble Chairman (Lord Granville),[g] Parliament has considered that it "is reason," as Lord Coke says,[h] "that he should have a privilege for his reward (and the encouragement of others in the like) for a convenient time."[i]

Other modes of rewarding discoveries.

Although the most appropriate, in the great majority of cases, Letters-patent are not the only means of rewarding persons from whose exertions the public derive benefits, and Parliament has frequently awarded sums of money as the reward or inducement of ingenuity[k] and adventure.[l]

Sketch of privileges for inventions in the glass trade.

An outline of the special privileges created in one branch of manufactures may show the various forms in which such grants have been created.

The first glass houses in this country were those at Crutched Friars and in the Strand, about the middle of the sixteenth century. The art was afterwards encouraged by James I. and Charles I., both of whom prohibited the importation of all foreign glass, except that of the most inferior kinds. The former of these monarchs, as an expedient to raise money, granted to Sir Robert Mansel an exclusive Patent,[m] which was afforded him in consideration of his having established the use of pit coal

[g] 118 Hansard, 14 (1 July, 1851), "that the whole system was unadvisable for the public, disadvantageous to inventors, and wrong in principle."

[h] Inst. 154.

[i] Foster, *Sci. Fa.* 239.

[k] Sir M. I. Brunel received a large sum of money for the invention of his very ingenious block machinery. (Web. (1853) Policy and Principles, p. 22; Evid. Mr. Hill, 2761.)

[l] In 1714, an Act (11 & 12 Anne, § 2, c. 16) passed establishing a Board of Longitude, and giving it authority to offer prizes, the largest 20,000*l.*, for a mode of finding the Longitude within certain given limits.

See a list of the Acts thus passed, Webster, Law of Pat. p. 37 and p. 35; 15 Car. II. c. 12, Priv.; Marquis of Worcester, Waterwork, A. D. 1663; 11 & 12 Will. III. c. 31, Pri.; Savery, First Practical Steam Engine, A. D. 1699.

[m] Expressly excepted in the Statute of Monopolies. (Web. P. R. 17; Encyc. Met. viii. 471.)

for wood in its manufacture. He was also allowed, on the same ground, the exclusive privilege of importing drinking vessels and every other article of glass from Italy, which could be made of a finer quality than had at that time been produced in England.

The second Duke of Buckingham has the merit of improving the manufacture of British glass by bringing over several workmen from Venice. He established a considerable manufactory for making plate glass at Lambeth, about the year 1670.

In the year 1773 a body of gentlemen obtained a Royal Charter of incorporation, the privileges of which were confirmed to them by Act of Parliament, under the title of "The Governor and Company of British Cast-Plate Glass Manufacturers." The capital consisted of eighty shares, each of 500*l.*, and the works established at Ravenhead, near Prescot, in Lancashire, which still rank among the most important glass works in this country.

Source of the privileges.

The power creating these privileges is one of the few surviving branches of the Prerogative of the Crown formerly occupied in regulating the conditions of trade. With the development of the Constitution and the growth of the interest involved, province after province of the Executive has been transferred to the domain of Parliament, and Letters-patent for inventions forms one of the few remaining instances in which it has been deemed desirable to retain in practice the theory on which the right was originally based.

Principles regulating its exercise.

The general principles guiding the exercise of this right were early insisted on and never wholly given up.[n] The King, it was said,[o] might charge the subject, but only where the subject was to have *quid pro quo;* thus

[n] (1849) Bowyer on the Constitution, 240; De Lolme, bk. i. c. 6, p. 65; Bl. Com. i. c. 7, 249; 13 Eliz. c. 1, § 1. Treason to question power of Parliament to alter the succession. Burnet, iii. 382.

[o] 12 Hen. IV. 146; Bro. Pat. 12; Bac. Abr. Pat.; Vin. Abr. Prerog. Ed.: Bl. Com. bk. i. pt. 3, c. i.

the grant of a toll for a ferry was held good, but that of a new office for measuring cloths, with the imposition of a new fee, was declared void by the Parliament,[p] as an undue exaction from the subject.

"The King," says Sir H. Finch,[q] "hath a Prerogative in all things that are not injurious to the subject; for in them all, it must be remembered, that the King's Prerogative stretcheth not to the doing of any wrong." The assertion of irresponsible power and divine right, although early broached,[r] had no practical effect on Legislation. "Eadem præsumitur," says Coke,[s] "mens regis quæ est juris." "Nihil enim aliud," says Bracton, "potest rex nisi id quod de jure potest;" and Fleta, when speaking of the great power of the king, "Verumtamen in populo regendo superiorem habet."[t]

Sir H. Finch.

Coke.

Bracton.

Fleta.

The following is an extract from the speech, on the 20th Nov. 1601, of Mr. Francis Bacon, the attorney-general, afterwards Lord Chancellor Verulam:—"The Queen, as she is our sovereign, hath both an enlarging and restraining power; for, first, she may by her Prerogative set at liberty things restrained by Statute Law or otherwise; and, secondly, by her Prerogative she may restrain things which be at liberty; and for the first she may grant *non obstante*, contrary to the penal law, which truly, according to my own conscience," and so struck himself upon the breast, "are as hateful to the subject as Monopolies; for the second, if any man out of his own wit, industry or endeavour find out anything beneficial to the commonwealth, or bring any new invention

[p] 13 Hen. IV.; 2 Inst. 533.

[q] L. 84, 85; Prerog. Mirror; 2 Inst. 37.

[r] For a very learned summary of the authorities on the early state of the Prerogative, see Professor Amos's Notes on Fortescue; Staunforde's Exposition of the King's Prerogative, c. 15, f. 42; Case of Alton Woods, 1 Co. 44 b; Allen (1830), On the Rise and Growth of the Royal Prerogative in England; Hob. 155; Liv. des Assises, Edw. III. 40, pl. 36; Bro. Pat. sci. fa.; Bod. de Rep. 4, c. 6, l. 452; Rastr. Ent. 452; Bowyer (1840) on the Constitution.

[s] Bract. lib. iii. tr. i. c. 9.

[t] Fleta, lib. i. c. 17, § 9.

which every subject of this kingdom may use, yet in regard of his pains and travel therein Her Majesty perhaps is pleased to grant him a privilege to use the same only by himself or his deputies for a certain time: this is one kind of Monopoly. Sometimes there is a glut of things, when they be in excessive quantity, as perhaps of corn, or sometimes there is a scarcity or a small quantity, and accordingly Her Majesty gives licence of transportation or of importation: this is another kind of Monopoly. These and divers of this nature have been in trial at the Common Pleas upon actions of trespass, where, if the judges find the privilege good and beneficial to the commonwealth, they will allow it, otherwise disallow it. And also I know Her Majesty herself hath given commandment to her Attorney-General to bring divers of them, since the last Parliament, to trial in the Exchequer, and at least fifteen or sixteen have been repealed, some by Her Majesty's own express commandment, upon complaint made to her by petition, and some by *quo warranto* in the Exchequer."[u]

Present condition of the Prerogative.

The real complaints against the Prerogative have happily long been matters of history,[x] and no one who forms a due estimate of the present division of the powers of the State can for a moment entertain apprehensions of danger from its encroachments.[y] Its limits have been so strictly defined by Law,[z] and since the Revolution there has been fortunately a succession of princes so little disposed to contend for an illegal extension of it,[a] that the Prerogative at the present day, exercised on the responsibility of the legal advisers of the Crown, may be said to be "the discretionary power of acting for the

[u] Parl. Hist. of Eng. iv. 452.

[x] (1835) Merewether and Stephens, Hist. of Boroughs and Mun. Corp. Introd. lvii.

[y] Montesq. Esp. ii. 51; iii. 10; vi. 5; viii. 6; xxvi. 15; Mill, Pol. Ec. bk. v. c. xi. § 2.

[z] Bl. Com. i. 137.

[a] (1830) Allen, 158.

public good, where the positive laws are silent."[b] "It is not therefore to the Crown that the continuance of abuses which commenced with the Tudors is to be attributed. It may with more propriety be laid to the account of the House of Commons—the decisions of the courts of law—and the people."[c]

"In truth," said the Solicitor-general, Sir J. Mitford, on the trial of Thomas Hardy, A.D. 1794, the person of the King in name is the State itself.[d] All the powers of the State, Legislative and Executive, are nominally in him. Not really, because the King can make no law, but by the advice and with the assent of the Lords and Commons in Parliament. He can execute no law but by his judges and other ministers of justice, according to a formed and regular establishment. He really does nothing, but nominally does everything. The consequence is, that he is to all intents and purposes the sole representative of the State, and in his name every act is done."[e]

Legal view of other methods to secure exclusive advantages in trade.

It may be well before entering more fully upon the subject of Patents, to consider for a moment the light in which the Law regards the efforts of individuals to assure themselves by others means than that of Letters-patent, exclusive advantages in manufactures and trade.[f] They are either by secret[g] manufacture of the improved article, or contract with other parties not to engage in the same trade or manufacture.

Secrets of compounding medicines.

The chief subjects of the former are medicines, a class

[b] Locke on Government, ii. § 166; De Lolme, i. c. 6, § 65; Blk. i. c. vii. 149; 2 Co. 296; Show. 75; Hard. 106; Vin. Abr. Prerog. T. 2.

[c] Merewether and Stephens, Introd. lvii.

[d] How. St. Tr. xxiv. 1183.

[e] Blk. i. 137.

[f] Godson, 2nd ed., p. 228.

[g] For an instance of this at the present day in the United States, see the account of the Waterbury establishment in Mr. Whitworth's Special Report, p. 23.

of subjects expressly excepted in other countries from the operation of patents.[g]

In the great majority of instances, as we have seen, Letters-patent, guaranteeing to the inventor a limited monopoly, form the best and most appropriate reward of the inventor. There are however others in which remuneration by exclusive sale is either impossible or unadvisable. Medicinal remedies are essentially of this class, and form a proper subject of direct governmental interference.[h]

It seems somewhat difficult to apprehend clearly the principles by which judges have been influenced in their decisions as to secrets of trade. By the Patent Law, the discoverer of any important improvement in manufactures may secure to himself, without secrecy, the entire advantages arising from it. The policy of the State is to encourage the promulgation of such improvements; the active interference therefore of public authority to prevent the disclosure of trade secrets is a step opposed to the direction of general policy.

[g] By a French Decree dated 18 Aug. 1818, the sale of medicines compounded secretly is forbidden. The Government appoints a Commission of five to investigate the merits of, and settle the sum to be awarded to, the inventor, and publishes the secret without delay.

[h] Duvergier, vol. xvii. 142, 18 Aug. 1810, amended 26 Dec. 1810. The motives for such intervention are thus expressed in the 'Decree concerning secret remedies':—"If these remedies are useful for the alleviation of suffering, our constant care for the good of our subjects should lead us to spread their discovery and use, by purchasing from the inventor the receipt of their composition. It is the duty of the possessors of such secrets to lend themselves to their publication, and their readiness to do so should be in proportion to the confidence they have in their discovery. Wishing therefore on the one hand to diffuse the knowledge and augment the means useful for the purposes of healing, and on the other to hinder charlatanism from imposing a tribute on credulity, or occasion fatal accidents by the sale of drugs without virtue or unknown substances, of which use may be made hurtful to the health and dangerous to the lives of our subjects, we have decreed, &c."

The course there prescribed is the submission of the recipe to a

The grounds on which Lord Eldon refused[i] the use of the powers of the Court seem of very solid foundation. "So far as the injunction goes," said his lordship, "to restrain the defendant from communicating the secret on general principles, I do not think the court ought to struggle to protect this sort of secrets in medicine. The court is bound, indeed, to protect them in the case of Patents, to the full extent of what was intended by the grant of the Patent, because the Patentee is a purchaser from the public, and bound to communicate the secret to the public at the expiration of his patent."

Interference refused by Lord Eldon.

The difficulty was felt strongly in a recent case[k] by Vice-Chancellor Turner, and disposed of on the opposite principle, by the adoption of what has been called the objective view, in its extreme. It was there argued, that the effect of granting an injunction would be to place the plaintiff in a position superior to that of a Patentee, and *Canham* v. *Jones*[l] was cited in that behalf. "What we have to deal with," said the learned judge, "is, not the right of the plaintiffs against the world, but their right against the defendant. It may well be that the plaintiffs have no title against the world, and yet have a good title against the defendant."

In practice the Court has frequently interfered,[l] but

commission of five persons, three of whom were professors of the schools of medicine—1. To examine the composition of the remedy, and determine whether its application in certain cases be dangerous or hurtful; 2. Whether the remedy be in itself good; if it has been and still is productive of good to humanity; 3. To apportion the reward of the discoverer with reference (1) to the merit of the discovery, (2) to the advantages attained or which may be looked for from it for the relief of humanity, (3) to the personal advantages that the inventor has drawn and may draw from it. (Titre 1, § 3.)

[i] *Williams* v. *Williams*, 3 Mer. 157 (1817).

[k] *Morison* v. *Moat*, V. C. T. 1851; 15 Jur. 792; upheld on appeal, C. of App. 1851; 18 L. T. 164.

[l] (1813) V. C., 2 V. & B. 221; *Yovatt* v. *Winyard*, 1 Jac. & Wal. 394; *Green* v. *Folgham*, 1 S. & St. 398; *S. C.* nom. *Green* v. *Church*, 1 L. J. Ch. 203.

mainly on the ground that the knowledge of the secret had been obtained by fraud, or that its communication would involve a breach of trust. In *Bryson* v. *Whitehead*[m] it was held that, "although the policy of the law would not allow a general restraint on trade, yet a trader might sell a secret of business and restrain himself generally from using that secret. The use of the secret was restrained by the consent of the parties for twenty years, and within fifty miles of S.

The present law with regard to secrets of trade is most elaborately laid down in the judgment of Vice-Chancellor Turner before alluded to:—"That the court has exercised jurisdiction in cases of this nature does not I think admit of any question. Different grounds have indeed been assigned for the exercise of that jurisdiction. In some cases it has been referred to property, in others to contract; in others again it has been treated as founded upon trust or confidence, meaning as I conceive that the Court fastens the obligation on the conscience of the party and enforces it against him in the same manner as it enforces against a party to whom a benefit is given the obligation of performing a promise, on the faith of which the benefit has been conferred. But upon whatever ground the jurisdiction is founded, the authorities leave no doubt as to the exercise of it. The case of *Green* v. *Folgham*,[n] where the court decreed an account against a party to whom a secret of this nature had been entrusted, might perhaps be accounted for upon the ground that the defendant in the case had expressly admitted himself to be a trustee of the secret. But there are other cases in which the Court has interfered without any such admission. In *Williams* v. *Williams*,[o] Lord Eldon, dealing with a case in which a father had divulged a secret to his son and had delivered to him a stock of

[m] (1821, dyers) 1 S. & St. 74: *S. C.* 1 L. J. Ch. 42, Sir J. Leach.
[n] 1 S. & St. 398 (1823), Sir J. Leach.
[o] 3 Mer. 159 (1817).

medicines upon the faith of a future partnership being formed between them when the son should come of age, puts the case as to confidence in these terms:—'If on a treaty with the son while an infant for his becoming a partner when of age, the plaintiff had, in the confidence of a trust reposed in him, communicated to him this secret, and at the same time given him the possession of the articles mentioned in the bill, and instead of acting according to his trust the son had taken to himself the exclusive dominion over these articles and began to vend them without permission, it must be said that he had no right so to act, and that he was bound either to abide by or waive the agreement. If then he had intended to abide by the agreement, the injunction (granted by the Vice-Chancellor) was so far right; and if to waive it, he was bound to return the articles, and so far the injunction was also right.' Here Lord Eldon lays down the doctrine—it does not go very far—that articles delivered over upon the confidence of a future arrangement cannot be used for a purpose different from that for which they were delivered over. The cases however do not stop here. In *Yovatt* v. *Winyard*,[p] Lord Eldon, upon the express ground of breach of trust and confidence, granted an injunction to restrain the defendant, who had been the plaintiff's assistant in his business, from using or communicating recipes which he had *surreptitiously* copied whilst in the plaintiff's service. Referring to *Newberry* v. *James*[q] and *Williams* v. *Williams*, his lordship granted the injunction, but confined it so as not to prevent the defendant from administering the medicine to any animals then under a course, it being stated in the paper of directions that a sudden discontinuance would be prejudicial. The question again came before Lord Eldon in *Abernethy* v. *Hutchinson*,[r] who granted an injunction (to restrain the publication of lectures), on

[p] 1 Jac. & W. 395 (1819). [q] 2 Mer. 417 (1816).
[r] 3 L. J. Ch. 209 (1824).

the ground of breach of confidence. We have also Lord Eldon's opinion, referred to by Lord Cottenham in *Prince Albert* v. *Strange*, upon motion to dissolve an injunction granted to restrain the publication of a catalogue of etchings. His lordship, after dealing with the question as a subject of property, says:—'But this case by no means depends solely upon the question of property, for a breach of trust, confidence or contract would of itself entitle the plaintiff to an injunction.' The observations of Vice-Chancellor Wigram in *Tipping* v. *Clarke*[s] are applicable to this part of the case. He says:—'Every clerk employed in a merchant's countinghouse is under an implied contract that he will not make public that which he learns in the execution of his duty as clerk; and if he availed himself surreptitiously of the information which he could not have had except from a person guilty of a breach of contract in communicating it, I think he could not be permitted to avail himself of that breach of contract.'"

Contracts in restraint of trade.

The Law with respect to contracts between subjects in restraint of trade[t] is to some extent analogous to that which regulates the supposed contract between the Crown and the subject in the case of Patent grants, and the same tendency is observable towards a minimum of interference with the arrangements of individuals. The theory of a certain amount of indefeasible right[u] in every member of the community to employ his capital and labour as he will, imparted a peculiarity to the construction in law of all such contracts.

Discouraged by the general policy of law.

It is a very ancient part of the policy of the Law to discourage restraints on trade, as being injurious to the public. But no judge has yet carried his abhorrence so

[s] 2 Hare, 393.

[t] Hawk. P. C. i. 624; Chitty, P. C. ch. x. § 2; Bac. Abr. Monopoly; Bull. N. P. 76, Brigm. ed.

[u] C. B. (1831), *Horner* v. *Graves*, 7 Bing. 741, Tindal, C. J.

far as is reported of Hull, J. (Year Book, 2 Hen. V.) A dyer was there bound in a penalty of 100*l.* not to use his craft for a year. Mr. Justice Hull held[x] that the bond was void, for that the condition ran counter to the Common Law; "and by God," cried he in an outburst of indignation, "if the plaintiff were here he should go to prison till he had paid a fine to the King." In *Mitchell* v. *Reynolds*,[y] Parker, C. J., in his admirable exposition of the Law on this subject, excuses this transport of the learned judge on the ground that it was excited by a case of most gross fraud and villany.

Effect of recent decisions.

"The Law as to restraints on trade," says Lord Campbell in delivering the judgment of the court in a recent case,[z] "has been altered by late decisions. For many years the contract was void unless the consideration was adequate to the restriction. According to Parker, C. J., in *Mitchell* v. *Reynolds*,[a] the Court was bound to see that it was made upon a good and adequate consideration, so as to be a proper and useful contract. But in *Hitchcock* v. *Coker*[b] it was held that the court had no judicial perception of the ratio of the consideration to the restriction, and that if there was a legal consideration of value, the contract ought to be enforced without reference to the quantum of that value. Also in *Mitchell* v. *Reynolds*, 'Wherever such contract *stat indifferenter* and for aught appears may be either good or bad, the law presumes it *primâ facie* to be bad.' But according to the tenor of the later decisions the contract is valid, unless some restriction is imported beyond what the interest of the plaintiff requires, and his interest has been considered to extend very widely. In respect to time,

[x] 2 Hen. V. 5. See also *Bryson* v. *Whitehead*, 1 S. & S. 77 (1821), V. C. Sir J. Leach. H. of Com. Jour. A.D. 1614, 473.

[y] 1 P. Wms. 181.

[z] *Tallis* v. *Tallis* (1853), 21 L. T. 43.

[a] 1 P. Wms. 181.

[b] 1 N. & P. 796, 6 A. & E. 430, Q. B. (1836), chemist.

the restriction may be unlimited, according to *Hitchcock* v. *Coker*; and though in respect of space there must be some limit, yet contracts have been supported where the area of exclusion was apparently greater than the area of the plaintiff's practice."

The distinction here introduced between time and space is another instance of an arbitrary rule established on isolated cases which, when applied to matters in their nature so variable as the conditions of trade, creates nothing but complexity, inconvenience and confusion. There seems no reason why artificial rules or non-natural interpretation should be adopted for application to this class of contracts more than to any other. The competency of the parties as to the rights involved, and the validity of the consideration being established, there seems no reason to remove this class of cases from the operation of the law established in all other cases of contract.

Contracts to be construed as other contracts.

In construing such contracts much necessarily depends from the instrument creating it and the position of the parties.[c] No contract, however, can be enforced where the consideration involves an offence against public policy.[d]

In *Horner* v. *Graves*[e] an area of 100 miles round York was considered an unreasonable limit for the exclusive practice of a dentist, and the penalty of 1,000*l.* for its trangression excessive. In *Mallan* v. *May*,[f] on the other hand, a contract by a surgeon-dentist not to practise in London was held valid, the limit of London not being too large for the profession in question; the annexation of an unreasonable stipulation to the contract was held not to vitiate the entire contract.

[c] (1768) K. B. *Lowe* v. *Penn*, 4 Burr. 2225; Shep. Touch. 164; *Steel* v. *Brown*, 1 Taun. 381.

[d] (1808) Q. B. *Hartley* v. *Price*, 10 East, 22, restraint on marriage; (1727) H. of Lords, *Chesman* v. *Nainby*, Strange, 739, linendraper.

[e] (1831) 7 Bing. 744, Tindal, C. J.

[f] (1843) 11 M. & W. 653, Exch.

In *Davis* v. *Mason*,[g] Thetford and ten miles round, in *Hayward* v. *Young*,[h] Aylesbury and twenty miles around were deemed reasonable limits for a surgeon. In that of an attorney, London and 150 miles round,[i] and in *Proctor* v. *Sargent*,[k] five miles from Northampton Square, in the county of Middlesex, were held reasonable limits of exclusion for a cowkeeper and milkman.

"It may often happen," was the observation of Lord Wynford in giving the judgment of the court in *Homer* v. *Ashford*,[l] "that individual interest and general convenience render engagements not to carry on trade or act in a profession in a particular place proper; that engagements of this sort between masters and servants are not injurious restraints of trade, but securities necessary for those who are engaged in it; and that the effect of such contracts is to encourage rather than cramp the employment of capital in trade and the promotion of industry."

Hitchcock v. Coker.

By the decision in *Hitchcock* v. *Coker*[m] before alluded to, in the Exchequer Chamber (reversing the judgment of the Court of Queen's Bench), it was established, that a restriction reasonably limited as to space, but enduring for the life of the party restrained, was valid, as the only effectual means of securing to the covenantee the full benefit of the goodwill of his trade. This case was followed by those of *Mallan* v. *May*,[n] *Rannie* v. *Irvine*,[o] *Pemberton* v. *Vaughan*,[p] *Hastings* v. *Whitley*[q] and *Atkyns* v. *Kinnier*,[r] in which the principle there established was recognized as beyond controversy. In

[g] 5 T. R. 118 (1793).
[h] 2 Chitty, 407 (1818).
[i] *Bunn* v. *Guy*, 4 East, 190 (1803).
[k] 2 Man. & Gr. 20; 2 Scott, N. R. 289.
[l] 3 Bing. 326, C. B. (1825), commercial traveller.
[m] 6 Ad. & E. 438; 1 N. & P. 796, 1836.
[n] 11 M. & W. 653, Exch. (1843).
[o] 7 M. & G. 969; 8 Scott, N. R. 674 (1844), C. B., baker.
[p] 10 Q. B. 87 (1847), sale of ginger beer.
[q] 2 Exch. 611 (1848), surgeon.
[r] 19 L. J. Exch. 132 (1850), surgeon.

the case above alluded to, *Tallis* v. *Tallis*,[s] a covenant restricting the defendant from carrying on the business of a canvassing publisher within 150 miles of the General Post Office, or in any town in which the plaintiff carried on that business, was held not to be an unreasonable restraint on trade. In *Elves* v. *Crofts*,[t] the covenant of a butcher that he would not at any time thereafter, either by himself or as agent or journeyman for another, exercise the trade of a butcher within five miles of certain premises, was upheld as not unreasonable restraint, either as to time or distance. In *Sainter* v. *Ferguson*,[u] a restraint as to Macclesfield and within seven miles thereof for the practice of an apothecary was held good, and the 500*l.* named in the covenant to be a penalty, and not as liquidated damages. In *Turner* v. *Evans*,[x] A. covenanted not to set up or carry on the business of a wine merchant at C.: held, that A. was prohibited from soliciting for or executing orders at C., although he had no stores or place of business at C.

Condition of English law generally.

From the total absence of elemental[y] system from our Jurisprudence, the present[z] condition of our law is

[s] 21 L. T. 43, Q. B. (1853).

[t] 10 C. B. 241 (1850).

[u] 7 C. B. 717 (1840); Steph. Com. bk. ii. pt. 2, c. 5.

[x] 21 L. T. 153, Q. B. (1853).

[y] Hub. Eng. Univ. pref. Some of our most valuable institutions appear, indeed, rather to be the result of happy accident than deliberate design. Patent Law affords a singular illustration of this. The practice of affixing terms on the extension of patents was a bold step taken in the right direction; yet in *Ledsam* v. *Russell* (1818, 1 H. of Lords Ca.), opinions were expressed that the Judicial Committee had exceeded their statutable powers.

[z] "The evils are to be traced in text books, in the arguments at the bar, and even in the judgments of the Bench, producing an undue and increasing preference of memory to reason—of technicality to science, and of mere citation of cases to the development of legal principle." (Report Dub. Univ. Com. 1854, p. 36.)

not so much a cause of wonder as regret. The limits between optional and necessary, between the Legislative and Executive functions[a] of government, have never been authoritatively laid down,[b] and in practice are almost altogether disregarded.[c] Patent law, to a certain extent, may be said to illustrate the working of a branch of jurisprudence settled rather on general principles than resting on the prescription of detail, where, as Grotius says,[d] lex non exactè definit, sed arbitrio boni viri permittit. Previously to the exertions of Lord Brougham,[e] but one Statute,[f] and that framed for a political rather than commercial purpose, existed on the subject, and with reference to this the whole superstructure has been built. Taking the few words of the Statute for their text, and addressing themselves to the merits of the cases as they arose, our judges have, by a series of decisions, elaborated the law as it at present stands.

Patent law example of peculiar system of law.

The predominance of this judicial element has impressed a strong peculiarity upon this branch of the law, partly from the somewhat partisan spirit in which the

Effect of its constitution.

[a] As an instance of the confusion between the subjects of imperial and municipal regulation, see the recent act, 16 & 17 Vict. c. 33.

[b] Mill, Pol. Ec. bk. v. c. 10, § 1.

[c] "I think," says an eminent conveyancer, speaking of the Joint Stock Companies Winding-up Act (11 & 12 Vict. c. 45), "that a very cursory consideration will show that nine-tenths of the act are unnecessary. I believe that most of the things specially enacted might have been done by the Court of Chancery under its existing powers; and certainly all the details as to orders, &c. might have been better done by the court by orders issued from time to time." (Letter by H. Bellenden Kerr to Mr. Ludlow (1849), containing suggestions for remodelling of our jurisprudence.)

Yet this, Mr. Kerr declares, may be taken as a "fair specimen" of a bill well prepared, and which "had received far more attention from persons skilled in the subject than is usual in like cases." (Joint Stock Companies Winding-up Acts, by Ludlow, Introd. lviii.)

[d] Grotius de Æquitate, c. 1, § 2.

[e] 5 & 6 Will. IV. c. 83. [f] 21 Jac. I. c. 3.

privileges created by the Executive were viewed,[g] and partly from the objective view, if we may so say, which was early adopted with reference to Patent grants. Previously to the time of Lord Eldon, the Patentee was as purely a creature of Royal bounty as the monopolist of the Elizabethan age, and language was employed by judges in the application of the doctrine which would at the present day be considered highly unconstitutional.[h] In addition to all this, a narrow and jealous spirit, characteristic of the Common Law,[i] was suffered to prevail in dealing with the results of commercial enterprize and manufacturing skill, and the conclusions they arrived at may be described as "not so much those of common sense as of professional men."[j]

Disadvantages to the patentee.

The nature of the Patentee's privileges drove him frequently into courts of Law, and during this early period almost constantly to his disadvantage. To him alone no margin was conceded for possible error. An unapt title to his invention, an illjudged word in its description, an incautious experiment, the least disclosure[k] of his secret before Letters sealed, and his privileges were at an end. Technical rules, framed with other objects and unsuited to the case, were rigorously applied by those who saw in it only the relation between the Sovereign and the subject, and adjudicated on the maxims of the Common Law as applicable to Royal franchises and grants, while

[g] 4 Inst. 88; *Brunton* v. *Hawkes*, per Bailey, J., 4 B. & Ald. 552; *Reg.* v. *E. A. Co.*, 21 L. T. 35, per Campbell, C. J.

[h] *Ex parte O'Reily*, 1 Ves. jun. 119; Lord Thurlow, (1790.)

[i] Allen on the Prerog. 124; Blk. Com. i. 171, 216; iii. 245; Mabillon de Re Diplom. l. 2, c. 3; Com. Dig. "Usury," "Trade," "Impressment."

[j] Lord Cranworth expressing his opinion of the probable result of transferring the functions of a jury to the judge, H. of Lords, Times, Mon. Feb. 27, 1854.

[k] "We cannot work at all openly," said a witness who had experienced the working under the late system, "even among our own en unless we are protected." (Evid. 1249 (1851).)

the merits of the invention, or its effect on public policy, rarely engaged attention. Judges either covertly evaded or openly overruled such portions of the statute as opposed their opinions, and Patent trials by degrees degenerated into dialectic discussions and verbal criticism. Such, however, have been the innate vigour and progressive tendency of our manufactures, that Patent privileges have lived through all the disadvantages of misconception, to find themselves at length recognized on conditions from which alone they should depend in a highly civilized, free and commercial community. Judges no longer look unfavourably on the Patentee, and recent decisions have been distinguished, not more for the able application of principles of law than for kindly sympathy with genius and intelligent appreciations of the state of our manufactures.

Amelioration in position of the patentee.

"We ought not to be astute," said Alderson, B.,[m] "to deprive persons of the benefit to be derived from ingenious and new inventions;" and Parke, B., in the same case remarked, "In the construction of a Patent, the court is bound to read the specification, so as to support it if it can fairly be done."[n] "Whenever it appears that the Patentee has made a fair disclosure," says Mr. Justice Buller,[o] "I have always had a strong bias in his favour." "The defendant's counsel," said Mr. Baron Rolfe, in *Newton* v. *Grand Junction Railway Company*,[p] "have discussed and scanned the language of the Specification in the same sort of spirit as if it were a plea or replication specially demurred to. This is not the spirit in which a specification should be inspected. The proper mode is to construe it, and see what is the good sense of it, and whether that which the Patentee claims as his invention is there distinctly and clearly explained."

Good feeling on the part of the Bench.

[m] *Russell* v. *Cowley* (1835), 1 Cr. M. & R. 864, Exch.

[n] Page 876. See also *Haworth* v. *Hardcastle*, per Tindal, C. J. (1834); 1 Bing. N. C. 182; Web. P. R. 484.

[o] *Turner* v. *Winter* (1787), 1 T. R. 602. [p] 5 Exch. 335 (1845).

Comparison with kindred branches of law.

In treating the Law of Patents as a part of English Jurisprudence, we are naturally led to the consideration of other branches occupied with subjects of property of a kindred class. As the creation of Royal grant,[r] the subject of transfer, subdivision, mortgage and Registration,[q] and as the result of a varied combination of enterprize, intellect and skill,[r] analogy at once enables us to adapt many general principles established in the case of matters exclusively confined to each of these classes. The evil lies in the abuse of this assistance, in insisting on the subject conforming to rules framed expressly with other objects, and in neglecting the combination of causes which have concurred in giving to it a distinctive character of its own.[s] In *Protheroe* v. *May*,[t] the nature of the property underwent very considerable discussion, but the arguments started from the assumption that the property must have an absolute similarity either to a term or a power, and that a derivative interest, such as a licence, must be either subject to the laws of the former as a subdivision of the estate, or to the latter as a mere franchise. If, says a learned writer, commenting on this case, Letters-patent confer a power and not a legal estate, then an assignment of such Letters-patent is nothing but an assignment of a power.

[p] (1823) Cruise on Dignities, ch. v. § 85; 2 Bl. Com. 316. Privilegia, says Heineccius (Elem. lib. i. tit. 4, p. i. cxvi.), vel rei vel personæ inhærent, a distinction useful in explaining the failure of the analogy.

[q] (1817) Platt on Leases, i. 164; (1853) Maude and Pollock, Law of Merchant Shipping; (1831) Cooper, Registration of Conveyances; (1850) Coote, bk. ii. c. 16, on Mortgage of Chattels Personal; (1826) Powell on Mortgages; (1810) Rigge on the Statutes for registering Deeds.

[r] See Treatises on Powers, Joint Stock Companies, Registered Designs and Copyright.

[s] Leading Articles in 7 Jur. 242 (1843), and 14 Jur. 462 (1850).

[t] (1839) Exch. 5 M. & W. 675.

Its character determined by practice.

In point of fact, practice, we might almost say accident, has had more to do with the matter than abstract reasoning, and practical dealings have impressed upon this species of property the character of incorporeal personalty,[u] subject to several peculiarities. The right created by the grant is that of the exclusive enjoyment of a trade, secured by the indirect operation of Letters-patent restraining all others from doing what, but for such restriction, they would be entitled to do equally with the Patentee.

Considered as the result of a contract.

The clearest insight, however, into the peculiarities of this property, is from considering it as the result of a contract[x] entered into by the Executive, as representative of the public, with the Patentee.[y] The parties meet on the understanding that the one has a secret to communicate, the other a favour to confer in return. The conditions required from the Patentee are, that he really possesses a secret and honestly communicates it.[z] The grant, *e mero motu* in form, is *ex debito justitiæ* in fact.[a] "Lord Eldon," says Mr. Baron Alderson in a recent case,[b] "has laid down the principle as long since as 1800 that Patents are to be considered as bargains between the inventor and the public, to be judged of on the principles of good faith, *and to be construed as other bargains*." "You know the object of the Specification," says Tindal, C. J.;[c] "*it is the price* which the party who obtains the Patent pays for it.

[u] (1853) Steph. Com. iii. 523; Toller's Ex. 142.

[x] Qu. Rev. xliii. 337.

[y] *Harmar* v. *Playne*, 14 Ves. 130; 11 East, 141.

[z] *Turner* v. *Winter*, per Ashurst, J.; 1 T. R. 602.

[a] "There is little doubt," says Mr. Hindmarch (1846), 151, "that a patent without a recital of the specification is absolutely void *for want of consideration*."

[b] "The Patentee is a purchaser from the public." Lord Eldon, *Williams* v. *Williams*, 3 Mer. 157.

[c] *Neilson* v. *Harford* (1841), Web. P. R. 341.

Connexion with other restraints on trade.

To estimate fully the real nature of Patent privileges, we should view them in connexion with the class of interests to which they belong, viz. those created for the self-remuneration of public benefactors.[d] The kindred privileges[e] are those of the capitalist and the author, Incorporated Companies, on the score of large capital or extreme risk on the one hand, and Copyright,[f] including the protection of the Designs Acts, for purely intellectual skill, upon the other. Each, from its mode of creation and the subjects it comprises, possesses distinctive features of its own, yet thus far they have a similarity, as originating in principles of natural justice and public policy, and as being the means of rewarding with the first fruits of their own efforts those by whose industry, enterprize and skill the commerce, manufactures and art of a country originate and improve. In each case the field of adventure must be new: public rights, therefore, can be hardly said to exist,[g] while the prospective advantages to the public from the discovery are such as to reconcile them to the temporary abstinence imposed.

The connexion between the results of purely intellectual labour and that of manufacturing art, is preserved

[d] The term "invention," in the sense in which it is used by Beckman, as comprehending under it police establishments, &c., is applicable in many respects to the consideration afforded by them for the privileges they receive. See Translator's Preface, xiii. Bohn's ed.

[e] Mill, Pol. Ec. bk. i. c. ix. § 2; Steph. Com. iii. 133. By a late Statute (7 Will. IV. & 1 Viet. c. 73), Her Majesty is empowered by her Letters-patent to grant to any Company or body of persons associated for any trading purposes or any purposes whatever, and to the heirs, executors, administrators and assigns of any such persons, although not incorporated by such Letters-patent, any privilege or privileges, which, according to the Common Law, it would be competent to the Crown to grant to any such Company by Charter of incorporation. As to Charters under this act, see *Rutter* v. *Chapman*, 8 M. & W. 1; *Phillipson* v. *Egremont*, 6 Q. B. 587.

[f] See opinions of V. C. Wood and Sir J. Romilly, M. R., Evid. 1851; and Webster, Principles and Policy of Patents (1853), p. 9.

[g] Vin. Abr. "Prerog." E a.

through the region of the formative arts. The Statutes creating and protecting this intermediate state are those known as the Registered Designs Acts, 5 & 6 Vict. c. 100 (Ornamental), and 6 & 7 Vict. c. 65 (Non-ornamental). The degrees by which the one blends into the other are so imperceptible, that "inventors oppressed under the late Patent Laws took refuge under the Utility Designs Act, and we have seen many inventions registered as forms or configurations, whereas it was notorious that the object of the claim was a new mechanical action or contrivance."[h] Patent right owes, indeed, no little of the safety it enjoys in theory at the present moment from its connexion with Copyright, the abolition of the latter never having been seriously mooted by the extremest advocates of *laisser faire*.[i]

Joint Stock Companies, with special privileges of trade, are classed by Adam Smith[k] and other writers in the same category with the monopoly of a new machine, and Patent right, previously to the time of Lord Eldon, was distinguished from Copyright only by being less favourably regarded. Lord Hardwicke generally mentions them together.[l] He calls the Statute of Anne "a stand-

[h] *Soc. Arts, First Rep. on the Rights of Inventors, 1851.* An extreme instance of the disregard of the proper division of this subject is mentioned by Mr. Turner, p. 11, where an American Patent was taken out for a method of making skeins of cotton look larger. The patent was disallowed, and the device subsequently found its appropriate protection under the Designs Act. *Rogers* v. *Driver* (1850), Q. B.; 20 L. J. 31 (hollow brick); *Reg.* v. *Bessell* (1850), Q. B.; 20 L. J. Mag. Ca. 177 (ventilator).

[i] The question of Patents, as verging upon licences from their identity of origin, the executive, wears a curious appearance in *Ex parte O'Reily* (1 Ves. jun. 112). Lord Thurlow, L. C., was there applied to, and refused to seal a Patent for thirty-five years exclusive representation of Italian operas. The old Patents of the theatres granted to Killigrew and Davenant in the time of Charles II. were, it appears, in fee.

[k] Ed. Playf. iii. 141; (1847) M'Culloch, 3rd ed. 969. *Duvergier* v. *Fellowes* (1828), C. B.; 2 M. & P. 413.

[l] (1823) Ed. Rev. xxxviii. 289.

ing Patent for authors," and both he and Sir Thomas Clarke treat them as exceptional cases, where, the plaintiff's right appearing upon record or Act of Parliament, he might apply to the Court at once for an injunction, without first establishing his right at law.

"I think," says Lord Campbell,[m] "Letters-patent giving a monopoly for an invention, and Letters-patent creating a trading company, if framed in the same manner, must be construed on the same principle. In the latter class of cases much more caution is likely to be exercised, and the attorney-general will not grant his fiat for the issuing a writ of scire facias without consulting the Board of Trade, by whose advice the Charter is granted."

The condition of a Patent in fine is well expressed by the language used on a recent occasion[n] by Lord Cranworth, when commenting on Lord Eldon's opinion as to the legality of Joint Stock Companies. "It is one of those transactions so consonant to the wants of a growing and wealthy community, which would have forced its way into existence, whether fostered by Law or opposed to it."

Source of misunderstanding with respect to patent rights.

The very general misunderstanding with reference to the rights of Patentees is mainly referable to two causes, —the undue importance attached to the form in which they are created and the insufficient attention paid to the relation in which the patentee really stands to the community at large. Attempts to determine its nature by a reference to the origin of property in the abstract have as yet led to no practical result. The question contains in itself so many variable elements, and is so intimately involved with others, as to render any exact definition of it impossible. The general principles, however, on which it stands may be accepted as sound, since they have been

[m] *Reg.* v. *Eastern Archipelago Company*, 21 L. T. 35. 1852.
[n] *In re Sea, Fire and Life Association*, Lords Justices. 1854.

adopted by almost every state[o] of modern times of any considerable advancement in civilization and manufacturing art.

The law under this head must be regarded as a compromise. So far as natural right is concerned, the application of a law of nature, a philosophical or abstract principle, is capable of exclusive appropriation only so long as the secret of such application is within the inventor's breast. Once passed, it becomes the property of all mankind, and nothing but principles of justice and public policy can be permitted to restrain the instinctive desire of all men to adopt manifest improvements. Whatever therefore the abstract right[p] of the inventor, in order that such property may be of value, society must interfere by imposing penalties and affixing prohibitions on its infringement. In most countries[q] the duration of such property has been reduced to a term of years, as the course most beneficial to public interests. The remarks of a very able writer on the kindred subject of Copyright[r] apply equally to the case of Patents:—"Society may fairly require as the price of its active protection by stringent enactments that the author should surrender a part of his full right, regarded as a right, according to the principles of natural justice. The great problem of legislation is to determine the point where this surrender

The law to be regarded as a compromise.

[o] Phillips, p. 20; Encyc. Met. viii. 70; Renouard, c. 2, § 3, p. 42. The following European States grant Patents—Austria, Bavaria, Belgium, Bosnia, Denmark, France, Greece, Hanover, Holland, Holstein, Ionian Isles, Lucca, Modena, Moldavia, Norway, Parma, Poland, Portugal, Prussia, Rome, Russia, Saxony, Sardinia, Sweden, Spain, Servia, Sicily, Tuscany, Turkey, Wallachia and Wurtemburg. (Loosey, Recueil des Lois, 1849; Urling on Foreign Pats.)

[p] Wollaston's Religion of Nature, 7th ed. (1750), p. 235.

[q] By the Spanish law, the duration of the privilege is graduated with reference to the merit of the grantee, in connexion with the discovery, as the inventor, improver or importer of the subject-matter of the Patent.

[r] Curtis on Copyright (1847), p. 23.

ought to be made. It is a mixed question of policy and justice with regard to which no positive rule can be laid down."

Patent law essentially based on principle.

The nature of this subject indeed with which Patent Law is connected renders its construction on general principles indispensable. The great object of the Law is the encouragement of trade by rewarding improvements in the useful arts. The merits therefore of the invention itself forms the prominent feature in the inquiry; and rules, having for their end the prescription of conditions on which such rewards are to be conceded, can only be applicable to matters scattered throughout the whole province of manufacturing art, by being based on broad principles and interpreted in conformity with the spirit rather than the letter of Legislation. The Statute Law must contain, as it were, formulæ of verification to which we may recur for the elimination of errors accumulated in the course of successive decisions. Finality in detail is impossible.[r] Revolutions occur in the manufacturing world to all appearance so arbitrarily and lead to conclusions so unforeseen as to remove its subjects from the operation of laws framed on other than immutable principles.

Injustice of a fixed term for all inventions.

The imposition of a fixed term for all inventions is a cause of great injustice to the public or the Patentee. Those who have had experience in the working of Patents are aware that fourteen years is too short a time for the remuneration of the outlay and exertions requisite for the establishment of some of the most important inventions; while in others, where the invention becomes immediately remunerative, it is far too long, operating merely as a clog to further improvement.[s]

[r] Qu. Rev. (1824), Patents.

[s] The privilege conceded to Livingston by act of the Legislature of New York (1798), was that of "constructing, making, using, employing and navigating all and every species and kind of boat or watercraft which might be urged or impelled through the water by the

Deficient remedy for infringement.

Another point on which a reform is much needed is the remedy of the Patentee in cases of infringement. The evidence before the Committee showed that in practice his only protection, in a large majority of cases, lay in the honour of those who were interested in infringing it, from the passive nature of the support given by the law to the Patentee. The case of Sir D. Brewster, with reference to the Kaleidoscope, exhibited this very vividly, as one of the rare instances in which a man of science has taken out a Patent for the applications to practical purposes. The Patent ought to have been a source of very considerable wealth. Millions of them were sold in London[t] and cartloads shipped for foreign countries. Had the patent been protected, the patentee's estimate is that he should have received somewhere about 200,000*l*. In reality he hardly made anything. The reason was thus given:—"And the very fact of the number of manufacturers infringing it made it impossible for you to protect yourself? Ans. The men who infringed the patent were Jews generally. It would have been vain to have gone into a court of law. At that time respectable opticians all paid me for the finer class of instruments which they made. Thus, when I resolved not to protect it at all against this class of pirates, of course I made no application to those regular opticians for the payment of the dues which they had paid previously. *Where the infringement is made by a person who has not the means of paying the law expenses which are incurred, no man will think of going into a court of law.*"

Suggested improvements.

The remedy applied for infringement in the case of Copyright,[u] might with very great advantage be extended

force of fire or steam, in all creeks, rivers, bays and waters whatsoever, within the jurisdiction of this State, for the term of twenty years." (Phillips, 1837, p. 45.)

[t] Howard's Patent (sugar), one of the most lucrative ever granted, never even reached Nisi Prius. See Web. on Pat. (1851), Introd. vi.

[u] 5 & 6 Vict. c. 45, s. 23.

to that of Patents, viz. that all objects for sale made in contravention of the patentee's rights should be deemed the property of the Patentee, and, after demand in writing, he should be entitled to recover the articles themselves in an action of detinue, or damages for their conversion in trover. If palpable infringement be not placed on the footing of a felony, at least some more summary remedy should be supplied. Mr. Duncan[x] relates his experience with regard to the invention of Hansom's cabs. "The question of infringement was tried three different times in the courts of law, and in each case a verdict obtained against the owners of the pirate cabs. The result of the verdict was practically this—I got a verdict against the proprietor of the cab for the infringement, and obtained a judgment and execution against him. *I found him without any property;* the evening before I could sue out execution against him he would sell the cab, and when I take out my execution he would be driven to prison on his own infringement, and I would have next day to attack the fresh owner and go through the same process of obtaining verdict, judgment and execution, and that infringement would continue still in existence and at work in spite of the verdicts. I do not see how the case can be met except by establishing the French process of breaking up the infringer's machinery or delivering it up to the Patentee under a magistrate's warrant."[y]

The late Act an improvement.

That the late Act has effected a vast improvement in the condition of the Patentee can be doubted by no one acquainted with the practice as it was before.[z] The great reduction in cost,[a] the protection from the date of

[x] (1851) Evid. 333.

[y] (1851) Evid. 834.

[z] (1851) Evid. 677, 885, 1239.

[a] Professor Wheatstone, the undoubted inventor of the Electric Telegraph (see Evid. Sir D. Brewster, 2488), paid for his Patent between 500*l.* and 600*l.*, and 50*l.* for the registration of the Specification

application, the consolidation of offices, the grant of one Patent for the whole realm, the abolition of caveats, and the printing of Specifications, constitute a very material boon to the inventor; yet it cannot be said Patent Law is at present in a satisfactory condition. The alterations it requires may appear trifling, but they would place it upon a sure, because equitable footing. Its evils are attributable, not so much to defective Legislation as to a deficiency in administrative machinery. The great source of them is the practical ignorance of the Crown. Nominally the patron of industry and skill, it administers a department exclusively occupied by its products, by means of officers[b] charged with numerous and important other functions, and not necessarily conversant[c] with the condition of manufactures—a subject, be it observed,

Present evils of the Law.

in Scotland alone. He had not the means of paying for the Patent, had he not been supported by others.

The opinions of the witnesses examined before the Committee of the House of Commons, in 1829, were almost unanimous to the effect, *that Patents should not be too cheap, lest the country should be inundated with them.* One individual only was in favour of the reduction of cost. "I would propose Patents," says Mr. John Isaac Hawkins, "to be put upon the same footing as Copyright, or rather statuary . . . . . If Patents were given free of cost, the public would be benefited by the inventions of the sober minded, and thus a source of permanent wealth to the country would be opened. I am well acquainted with many cases in which a poor inventor has remained poor, while the capitalist has realized a great fortune by the invention . . . . . I firmly believe I am at the present moment the confidential depositary of important inventions, which if they could be patented free of cost, and thus become marketable commodities, would immediately occasion employment to thousands of people."

[b] The Commissioners appointed by the Act (§ 1) are the Lord Chancellor, the Master of the Rolls, the six Law officers of the Crown, with "such other person or persons as may be from time to time appointed by Her Majesty."

[c] (1853) *Re Simpson* v. *Isaac's Patent*, 21 L. T. 81, Cranworth, L. C.; (1853) *Re Stoll's Patent*, 21 L. T. 23—reference to Assistant Commissioner.

which, being in itself progressive, requires constant attention to keep pace with its advances. In theory, the Crown grants Letters-patent to the publisher of a secret important to the community, and apportions its restraints with reference to the value of his services; in practice, nothing of the kind occurs. The Patentee dictates his own terms, and on payment of a small fee receives authoritative sanction to enforce them.[d] The Act, indeed, provides[e] for the efficiency of the Executive, but it is at the expense of the Patentee. Such an arrangement is contrary to all sound principle. Constitutional government is bound to settle and adjudicate upon rights without reference, so far as cost is concerned, to whether such adjustment requires attainments of a scientific or the most ordinary kind. The creation of a monopoly in a country like this is so important a matter, that any question of cost on the part of Government should be treated as one of very secondary consideration.

Evil of Patentees dictating their own terms.

This evil was strongly insisted on before the Committee of the Lords. "The American India rubber shoes," said one witness, "and many other of their articles, are superior to ours. It is in consequence of the Patent held by a wealthy company in Manchester, claiming the *use of India rubber generally* for braces, coats, gloves, shoes and other articles. . . . . In America they compel you to be very specific in stating what your proposed improvement is: *if it is in making shoes you must state it to be so.*" With the existence of an illegal and oppressive Patent such as this, who can say that the remedy of *scire facias* is practically available for the defence of public rights? On the trial of Messrs. Cooke and Wheatstone's patent it was contended that the patent conferred an exclusive *right to the reciprocal transmission* of messages between distant places!

[d] Hodge, 596. 1851.
[e] 15 & 16 Vict. c. 83, § 8.

The rapidly increasing number of applications,[r] and the accumulation of conflicting claims consequent on the unhesitating readiness with which they are granted, call urgently for reform.

Number of patents.

A strict examination of the invention and the claim by persons competent to estimate their effects upon Society, and empowered in special cases to purchase the invention at once for public use, would be the first step towards putting Patent privileges on a sound and equitable basis,

Preliminary examination the great requisite.

[r] The following is a list of Patents granted since 1675:—

From 1676 to 1685 inclusive			Charles II. . . .	46
„	1686 „ 1689	„	James II. . . .	13
„	1689 „ 1701	„	William and Mary	102
„	1701 „ 1714	„	Anne	30
„	1714 „ 1727	„	Geo. I.	95
„	1727 „ 1760	„	Geo. II. . . .	258
„	1761 „ 1770	„	Geo. III. . . .	215
„	1770 „ 1780	„	„ . . .	299
„	1780 „ 1790	„	„ . . .	556
„	1790 „ 1800	„	„ . . .	692
„	1800 „ 1810	„	„ . . .	913
„	1810 „ 1815	„	„ . . .	551

(Rep. of Arts, xxix. 319 (1816).)

In 1829 it was stated that the number of Patents in actual existence was 1855, and the average annual Patents 150. (Qu. Rev. xliii. 335 (1830).) The number granted from 1838—1847 were in—

	England.	Ireland.	Scotland.
1838 . . .	407 . . .	64 . . .	133
1839 . . .	412 . . .	87 . . .	160
1840 . . .	441 . . .	69 . . .	163
1841 . . .	440 . . .	52 . . .	152
1842 . . .	372 . . .	69 . . .	135
1843 . . .	420 . . .	64 . . .	125
1844 . . .	449 . . .	60 . . .	151
1845 . . .	572 . . .	95 . . .	205
1846 . . .	494 . . .	90 . . .	178
1847 . . .	498 . . .	76 . . .	168

(Parl. Papers, 1849, No. 45.)

The number of Patents sealed during the first year of the operation of the Patent Law Amendment Act, Oct. 1852—1853, was 2120.

by securing their arrangement with reference to the state of manufactures, the position of the Patentee, and the benefits likely to accrue to the public from his exertions. By far, however, the more valuable service to be expected from a permanent embodiment of such persons in the Commission would be that an end would be put to the great mass of Patent litigation.[g] It is not improbable that such a change, trifling as it may appear, would draw after it consequences of considerable political importance.

Policy of Patents a commercial rather than legal question.

The policy of Patents in short is a commercial rather than a legal question, and the propriety of any particular grant a subject better suited for the consideration of a Board of Trade than that of the purely legal advisers of the Crown.

Value of Patent rights.

The value of property of this kind in a country where capital is abundant and flows freely into new channels,[h] can hardly be overrated. The protection conferred upon it is of course in direct proportion to the probability of its infringement. In some cases a trade could not be established but by its means; others are but partially affected by it; while in those cases in which there is a

[g] "I can refer to a case which was tried before a special jury. Upon their decision being given, the Patentee went out of court saying that he was a ruined man. If Government had appointed a Board of Examiners to examine his Patent, and show him that it was not quite original, and that there was a little infringement upon another Patent, he would not have had occasion to go to this great cost." (1851) (Evid. 565 and 2522, Rendel, C. E.)

[h] *Pinkus* v. *Ratcliffe Gas Company* (1846), 1 H. Lds. Cas. 309; Reports, Juries, Exhib. 1851, p. 409; Encyc. Met. viii. 71. The most lucrative Patents have been those of Neilson and Howard. The sum paid by manufacturers for the use of the latter was enormous, being 'rom one shilling to two shillings per hundredweight on all sugar manufactured by the Patent, amounting during the last years of the patent to nearly £50,000 a year. ((1851) Evid. Fairrie, 967; Macfie, 980.)

limited market for consumption or a limited area of supply, it hardly enters as an element at all.

The capitalist and patentee.

The great difficulty of an inventor is in securing the co-operation of the capitalist. Much of this arises from the present condition of the Law of Partnership; and witnesses examined as to the probable effects of an alteration in that Law, recommended generally the application of the principle of limited liability to the promotion of Patent inventions.[i] The very nature of the transaction would indeed avoid most of the objections brought against the adoption of the principle in general.[j]

The question is merely another phase of the relation between Capital and Labour, and all that Government can *do* is to afford *every facility* for their co-operation in a well assorted union of capitalists and inventors.[k]

Reasons for patentee requiring protection.

The results of all discoveries are not equally realizable: as a rule, the least important in principle are frequently the most profitable in result;[l] and it is for this reason, as well as from the great increase of applications for Patents, that the subject is one requiring the most careful consideration.

Effect of the employment of machinery.

The effect of the extensive employment of machinery in manufactures[m] is another important point, especially in the position matters have at present assumed, in judging of the policy of Patents. The strides of a colossus, only the first in all probability of a giant race, have brought within the compass of a life the most extraordinary con-

[i] See Ev. Sel. Com. H. of Com. on the Law of Partnership, 1851; Duncan, 968—977; Fane, 526—529.

[j] Ib. Cotton, 574; Hawes, 633.

[k] Boulton and Watt. Pinkus and Paynter, (*Pinkus* v. *Ratcliffe Gas Company*, 1 *H. of Lords*, 311 (1846).)

[l] Encyc. Met. xxv. 170. Buttons are, it is said, the best Patents—steam engines the worst. (H. of Com. Rep. 1849.)

[m] As to its effect upon the artizan, by increasing wages and shortening the hours of labour, see Mr. Whitworth's Special Rep. Ind. Exhib. New York, § 64, p. 23.

trasts. Not fifty years ago an incredulous crowd assembled on the quays of New York to witness the first efforts of a power that was to propel a vessel against wind and tide. To-day from those same quays men witness as a mere ordinary occurrence the triumphs of that power, which has stripped ocean travel of its terrors and reduced it to almost mechanical regularity.

Repugnance to its use unfounded.

Repugnance to the adoption of labour-saving machines in general, as detrimental to the interests of industry, was one of the peculiarities of early prejudice, which found its firmest stronghold on the Bench,[m] but which we may hope at the present day is shown to be utterly unfounded.

Its beneficial effects on the community.

One of the most striking qualities of machinery is its susceptibility of indefinite improvement,[n] by which the powers of labour and other instruments which produce wealth may be indefinitely increased by using their products as the means of further production. The various bad consequences attributed to the adoption of such improvements apply with equal force to any improvement of the skill or industry of the labourer.[o] If it be advantageous that the labourer, with the same or a less quantity of labour, should produce a vastly greater quantity of commodities, it must also be advantageous that he should avail himself of the assistance of such machines as may most effectually assist him in bringing about such results.

Now generally recognized.

The fact, however, is now generally recognized, that the introduction of machinery for the purpose of simplifying manufacturing processes has had the effect not only of increasing the comforts of the great body[p]—the consumers,—but also of multiplying manifold the demand for labour, even in the particular branches to which the

[m] Com. Journ. 469, A. D. 1614; 3 Inst. 184.

[n] Encyc. Met. (1815), Pol. Ec. 139—188.

[o] (1825) M'Culloch, Pol. Ec. 165, On the Cause of Gluts, Employment of Machinery.

[p] Porter's Prog. of the Nat. § vii c. 1.

machinery is applied.[q] The inconveniences which accompany its introduction are those to which a great mercantile nation, especially an improving one, is constantly exposed in the removal of capital from one employment to another, and bear an insignificant proportion to the benefits resulting on the whole.[r] A remarkable instance of this is furnished by the report of the Select Committee on Machinery (1831) with reference to the bobbin net trade.[s] It there appears, that in the operations of this trade, which twenty years before had no existence, raw material, of the original cost of 120,000*l.*, was annually manufactured to the value of 3,242,700*l.* Probably one of the most valuable inventions ever made (Kay's for flax spinning) was considered insufficient to support a Patent, on the ground of want of novelty. In 1825 (the date of the Patent) the quantity of yarn spun was 40,261 lbs. In 1835 it had increased to 2,613,795, and in 1838, 14,923,332 lbs. in consequence of it.

Coke's conditions of Patent privilege.

In conclusion, we may remark, that the circumstances determining the legality of such grants have never been expressed in a form more accurately applicable to the subject at the present day than in the words of Coke in the case of monopolies, *Darcy* v. *Allen*:[t]—"Now therefore I will show you how the judges have heretofore allowed of monopoly Patents, which is, that where any man by his own charge and industry,[u] or by his own wit

[q] Ric. (1821), Pol. Ec. On Mach ch. xxxi. p. 467.

[r] Ric. Pol. Ec. xix. 307.

[s] Select Com. on Mach. 1831.

[t] Noy, 178; Web. P. R. 7.

[u] In the case of George Manby's Patent the preamble stated as the consideration, that he had "in long continuance of time, and by his great cost, charges and labour, found out a new invention to prevent the great consumption of cole and wood, and also of iron, lead and copper used for the boiling of all sort of liquors in brew houses, salt works and other works of that kinde, whereby sufficient quantities of

and invention, *doth bring any new trade into the realm*, or any engine tending to the furtherance of a trade that never was used before; and that for the good of the realm, that in such cases the King may grant to him a monopoly Patent for some reasonable time until the subjects may learn the same, in consideration of the good that he doth bring by his invention to the commonwealth, otherwise not."

salt will be made within a short time to serve this nation without the help of foreiners at much cheaper rates." (Ordinance, 27 Nov. 1650, Scobell, ii. 169.)

CHAPTER II.

THE SUBJECT MATTER OF A PATENT.

NOTWITHSTANDING the ingenuity expended by successive writers in classifying and defining the subject matter of Letters-patent, the arrangement is far from satisfactory when regarded from a legal point of view, and altogether inconsistent with the general theory from which Patent rights are considered to depend.

Mr. Godson[a] adopts the following classification—I. A substance or thing made; II. A machine or instrument; III. *An improvement or addition;* IV. *A combination or arrangement of things already known;* V. *A principle, method or process carried into practice by tangible means;* VI. *A chemical discovery.* Mr. Rankin—I. A thing manufactured; II. *A manufacturing process.* Mr. Holroyd[b] —I. Things made; II. *Practice of making*;[c] the former being again divided into—(1) A thing made which is useful for its own sake and vendible as such or some part of such a thing; (2) A piece of mechanism, engine or instrument for producing either old or new effects by being employed to facilitate or expedite the labour of the making of some previously known article, or in effecting some useful purpose, or a new part of such machine, engine or instrument, whereby it is rendered more efficacious. The "practice of making" he likewise subdivides under two heads—(1) *An artificial manner of operating with the hand or with instruments in common use, or*

Godson. Rankin. Holroyd.

[a] 2nd ed. (1840), p. 36.
[b] (1830), p. 33.
[c] See also Jarman's Conveyancing, vii. 486.

a mode of employing practically art and skill, producing an effect useful to the public; or an improvement on any known manner of so operating or employing practically art and skill; (2) A *process or combination of processes* in any art producing an effect useful to the public.

Hindmarch. Mr. Hindmarch[e] defines it as "a new ART for making or manufacturing vendible articles or articles of commerce;" the word ART being used in the sense of a

Carpmael. trade.[f] Mr. Carpmael—1. A new combination of mechanical parts or instruments whereby a new machine is produced, though each of the parts be separately old and well known; 2. *An improvement* on any known machine whereby such machine is rendered capable of performing more beneficially; 3. Where the vendible substance is the thing produced, whether by chemical or mechanical process, such as a new description of fabric; 4. Where an old substance is improved by some new working, the means of producing the improvement in most instances is patentable, whether chemical or mechanical; 5. *The application of a known substance or material to a new purpose*, when there requires art to adapt it, is the subject

Webster. of a patent. This latter classification, says Mr. Webster,[g] seems unobjectionable, and expresses in a practical manner the various kinds of inventions and the means by which they are to be carried into practice.

Subject in foreign States. The subject of the grants of privilege in foreign countries, although substantially agreeing with our definition a 'new manufacture,' differs somewhat in point of form.

America. In the United States of America it is,[h] "Any new and useful art, machine, manufacture or composition of

France. matter." In France it is defined[i] as, "Any discovery or

[e] On Patents (1846), p. 79.

[f] Bac. Abr. tit. "Monopoly," "Prerogative," F. 4.

[g] Law and Practice (1841), Supp. 1.

[h] Act of Congress, 1836, § 6. [i] Law of 5th July, 1844.

invention in any branch of industry." In Bavaria[k] it is, "A new or unapplied discovery, invention or improvement in the province of trade." In Sardinia,[l] "Inventions which have advanced or improved any branch of industry." In Saxony and the Customs-Union,[m] "Truly and properly (eigenthümliche) new objects." In Prussia,[n] "A new discovery, real improvement, or first introduction of foreign inventions." In Austria,[o] "All new discoveries, inventions and improvements in the whole range of industrial pursuits." In the Netherlands,[p] "An invention or essential improvement in any branch of art or industry, or the introduction of a foreign invention or improvement." In Parma,[q] "Every discovery or new invention in any branch of industry." In Portugal,[r] "new productions and new discoveries." And in the States of the Church,[s] "A new natural product or a new art."

Bavaria. Sardinia. Zollverein. Prussia. Austria. Netherlands. Parma. Portugal.

The conditions of the subject matter are not affected by the new Act.[t] It simply states,[u] that "the expression 'invention' shall mean any manner of new manufacture the subject of Letters-patent and grant of privilege within the meaning of the Act of the 21st year of the reign of King James I. chap. 3."

Lord Coke, who was chairman to the Committee on the Bill passed in 21 Jac. I., says,[x] that Letters-patent, to come within the proviso of the sixth section of that Statute, must have seven properties.

Coke.

[k] Law of 11th Sept. 1825, Art. 9.
[l] Law of 28th Feb. 1826, Art. 1.
[m] Proclamation of 31st July, 1843, Art. 1.
[n] Proclamation of 14th Oct. 1815, § 2.
[o] Law of 31st March, 1832, § 1, Art. 1.
[p] Law of 25th Jan. 1817.
[q] Decree of 7th Jan. 1791, Art. 1.
[r] Decree of 16th Jan. 1837, Tit. 1, Art. 1.
[s] Law of 3rd Sept. 1833, § 2.
[t] See, however, sect. 25.
[u] 15 & 16 Vict. c. 83, s. 55.
[x] 3 Inst. 184.

1. They must be "for the term of fourteen years or under."

2. They must be "granted to the first and true inventor."

3. They must be "of such manufactures which any other at the time of making such Letters-patent did not use: for albeit it were newly invented, yet if any other did use it at the making of the Letters-patent or grant of the privilege, it is declared and enacted to be void by this Act."

4. "The privilege must not be contrary to law; such a privilege as is consonant to law must be substantially and essentially newly invented, but if the substance was *in esse* before, and a new addition thereunto, though that addition make the former more profitable, yet it is not a new manufacture in law; and so was it resolved in the Exchequer Chamber, Pasch. 15 Eliz. in *Bircot's case*, for a privilege concerning the preparing and melting, &c. of lead ore, for there it was said that it was but to put a new button to an old coat, and it is much easier to add than to invent;[y] and it was there also resolved, that if the new manufacture be substantially invented according to law, yet no old manufacture in use before can be prohibited."

5. "Nor mischievous to the State, by raising the price of commodities at home. In every such new manufac-

[y] The comments of Mr. Justice Buller on this case in *Boulton* v. *Bull* (1795), 2 H. Bl. 489, dispose very happily of the argument adduced by Coke—"What were the particular facts of that case," he says, "we are not informed, but there appears to me to be more quaintness than solidity in the reason assigned. If the button were new, I do not feel the weight of the objection that the coat on which the button was to be put was old. But, in truth, arts and sciences at that period were at so low an ebb in comparison with that point to which they have since been advanced, and the effect and utility of improvements so little known, that I do not think that case ought to preclude the question."

ture that deserves a privilege there must be *urgens necessitas* and *evidens utilitas*."

6. "Nor to the hurt of trade. This is very material and evident."

7. "Nor generally inconvenient." Of this he gives the following example:—"There was a new invention found out heretofore, that bonnets and caps might be thickened in a fulling mill, by which means more might be thickened and fulled in one day than by the labours of fourscore men who got their livings by it. It was ordained" [by Stats. 22 Edw. IV. c. 5; 7 Edw. VI. c. 8; both repealed by 1 Jac. I. c. 25], "that bonnets and caps should be thickened and fulled by the strength of men, and not in a fulling mill, for it was holden inconvenient to turn so many labouring men to idleness."

And the reason he further states why such a privilege as comes within the proviso is good in Law is, "because the inventor bringeth to and for the commonwealth a new manufacture by his invention, cost and charges, and therefore it is reason he should have a privilege for his reward[z] (and for the encouragement of others in the like) for a convenient time."

The means of improvement.

A distinguishing feature, in all the earlier decisions on the validity of Patents, was the importance attached to the means by which the improvements were effected, and the degree of merit exhibited by the Patentee, points which, as we shall hereafter see, are entirely independent of the question, when considered on the general principles of Patent privileges.

Walker v. *Congreve*, objective view.

The judgment of Sir John Leach, Vice-Chancellor, in *Walker* v. *Congreve*,[a] when contrasted with recent decisions, shows the extreme of what has been called the objective view in which the matter has been regarded. The invention was an improved gunpowder barrel. The Court there held, that "the invention, though new, was

[z] 3 Inst. 184.

[a] (1816), cited in Godson, 2nd ed. 56; 29 Rep. Arts.

not of such a nature as to come within the Statute of Monopolies." "*It does not*," his Honor observed, "*exhibit such proofs of skill and invention as to entitle it to the protection* of that law which encourages the exertions of genius, by enabling its possessors to reap exclusively its rewards. Every novelty is not an invention entitled to the protection of the Statute. *A new principle must be discovered—skill and ingenuity must be exerted to entitle the inventor to a Patent.*" * * "Next it is said that the form is new; but is the invention of making *a barrel like a cylinder worthy of being protected by the Statute of Monopolies?* Well, says the Patentee, but my barrel is strengthened with hoops. And is it a new thing, *displaying great ingenuity*, to strengthen a barrel with hoops? Is the *circular aperture in the barrel a great invention?* No; but the method of shutting is new. What is the novelty of placing upon a circular aperture *a common pottid.* What is new is unimportant."[b] That a very important improvement was effected in powder barrels by the invention was a point fully established.

R. v. Arkwright. The case of *The King* v. *Arkwright*[c] was somewhat similar. On a *scire facias* to repeal the Patent granted (1775) to Arkwright "for an invention of certain instruments or machines for preparing silk, cotton, flax and wool for spinning," one of the issues was, that the invention, at the time of granting the Letters-patent, was not new as to the public use and exercise thereof in England. One part of the machine (the beater) was admitted not to be new, and a book was produced of two years earlier date which contained its description. Other parts of the machine were proved to have been in use before. "The only difference between the spinning machine and the present roving machine," said one of the witnesses, "is that the latter has a can." On that

[b] (1816), cited in Godson, 2nd ed. 56.

[c] Dav. Pat. Ca. 61; Buller, J. (1785).

Buller, J., observed, " If it be so, it brings the case to a short point indeed; for if nothing else is new the question is whether it is material or useful. The witnesses on the part of the prosecution say that it is of no use at all." A verdict was given for the Crown, a rule for a new trial was refused, and on the 14th November, 1785, the Court of King's Bench gave judgment to cancel the Letters-patent. Such was the fate of an invention inferior to none perhaps in its claims upon society for the benefits it had conferred. As a mere question of words it dwindled down into an old machine with an additional can. The real fault of Arkwright's Patent lay in the selection of his subject matter; what he wanted was, not the monopoly of the machines he constructed, but that of the products of those machines. His title should have been for the fabrics prepared by the instruments he had invented.

Sanders v. *Aston*[d] is another instance of a like kind. That a very material improvement in buttons had been effected by the Patentee was beyond dispute; " but," said Littledale, J., " neither the button nor the flexible shank is new, and they do not by *merely being put together* constitute such an invention as can support the Patent"—an objection which might with equal force be adduced to deprive a poem of originality, on the ground of the previous use of the language in which it is couched. *Sanders* v. *Aston.*

As a pendant to these, and exemplification of the subjective view, we have the decision of Sir N. C. Tindal, C. J., in *Crane* v. *Price.*[e] " In point of law," it was there laid down, " *the labour of thought or experiments, and the expenditure of money, are not the essential grounds of consideration* on which the question whether the invention is or is not the subject matter of a Patent ought to depend. For if the invention be new and useful to *Crane* v. *Price,* subjective view.

[d] (1832), K. B.; 3 B. & Ad. 886 (flexible button shanks.)

[e] (1842), Web. P. R. 411.

the public it is not material whether it be the result of long experiment and profound research, or whether of some sudden and lucky thought or mere[f] accidental discovery." The case of water tabbies presents a curious instance of purely accidental discovery.[g] The invention owed its rise to a man's spitting on a floorcloth, and placing a hot iron upon it. He observed that it spread out into a kind of flower. He afterwards tried the same experiment on linen, and found it produced the same effect. This led him to reason on the effect of intermixing water with oil or colours, and led to his taking out a Patent for water tabbies, from which he lived to make a very considerable fortune.[h]

Water tabbies.

A similar case[i] was that of the steam engine, where a boy (Humphry Potter), in order to shorten his own labour, tied a string, with a knot in it, from one part of the machine to the other, which led to the most important improvement (self-acting valves) that had ever been known.

Objects of Patent Law.

Of the objects proposed to itself by Patent Law, that of procuring the satisfaction of public wants takes precedence of its desire to reward ingenuity and skill. The solution of an equation may involve the exercise of far higher qualifications than the construction of the most elaborate mechanical contrivance, but Society looks at all employments from a material point of view, and has established it as a rule to bestow its favours only in return for material results.[k]

What is a "new manufacture" a question of fact.

The amount of difference from existing things, requisite to constitute the result of the improvement or discovery a "new manufacture," is in every case a question of fact to be referred to the particular branch of industry

[f] *Liardet* v. *Johnson*, Bull. N. P. 76.

[g] *Boulton* v. *Bull* (1795), Buller, J., Dav. P. C. 200.

[h] *Walker* v. *Congreve* (1816), L. C., 29 London Journ. 317.

[i] Encyc. Met. viii. 160, and cited in *Walker* v. *Congreve*.

[k] Ogilvie's Imp. Dic. (1850), Patentable.

to which it is applied, and requiring an accurate acquaintance with the state of manufactures rather than a knowledge of general Jurisprudence for its determination.

An important point to ascertain.

A clear understanding on this head is the first requisite in the discussion of Patent rights, and demands considerable attention from the fact, that the idea of the "invention" in Law is somewhat metaphysical, being a conventional arrangement to preserve the harmony of the Law and having in some few instances no corresponding expression in fact.

Source of the difficulties of Patent Law.

To the absence of this clear understanding may be referred almost all the difficulties which occur in Patent Law.[1] In assuming that the privilege of the Patentee is a monopoly, these difficulties become very materially reduced, and questions which have from the highest authority received contradictory solutions become explicable on at least intelligible grounds. It has for instance been mooted whether a principle, method or process can be the subject of a Patent? whether a Patent can be maintained for an old thing put to a new use? and to what extent a Patentee's right is affected by an after-discovered property of his invention?

Privilege a monopoly; subject therefore must be material.

On the assumption that a Patent confers a monopoly, it follows directly that the subject matter of the Patent must be *a material thing capable of sale*, and cannot be either "an improvement," "principle," "method," "process" or "system;" in other words the subject matter must be, as it was originally defined, a "new manufacture." A thousand evils have arisen from affixing another than the literal interpretation to the terms and from employing indiscriminately the words "discovery" and "invention." The "new manufacture" is the invention in Law, the discovery of principles or matter simply ancillary to it.

[1] "*Patent rights*," says Eyre, C. J., in *Boulton* v. *Ball* (1795), Dav. Pat. Ca. 205, "*are no where that I can find accurately discussed in our books.*"

The second question receives a similar solution. Is the new use so different as to constitute[m] a *new article of trade?*[n] If so, it forms a fit subject of itself for protection by Letters-patent, but cannot be included under those of any alien subject matter. The third may be put to the same test. The Patentee has a monopoly and certain ancillary rights (the sole making, using, &c.) with respect to certain goods. These, once in the possession of the world, cannot be restricted in their use on any principles of justice. The Patentee is of course bound by the statement of his claim in the Specification; subject to that limitation, however, he is fairly entitled to any profits arising from the unforeseen applicability of his invention, as an equivalent for the risk he incurs of ill success aud corresponding losses.[o]

Boulton v. *Bull.*

In the case of *Boulton and Watt* v. *Bull*,[p] the nature of the "invention" or subject matter of a Patent was very fully discussed. The Patent was expressed to be "for a new invented method of lessening the consumption of steam and fuel in fire-engines." The following was part[q] of the judgment of Rooke, J.:—"With regard to the objection that the Patent is not for a fire-engine of a particular construction, but for a new invented method, it presupposes the existence of the fire-engine and gives a *monopoly* to the Patentee of *his new invented*

[m] *Losh* v. *Hague*, railway wheel, Web. P.R. 207; *E. I. Co.* v. *Brett*, 10 C. B. 878; 20 L. J. (N. S.) 123, C. B. The question is entirely independent of the principles involved. The principles of a screw propeller (Shorter's Patent, 1800, and Millington's, 1816), a smoke-jack, and a windmill, are identical. Precisely similar machines (on the principle of centrifugal action) have been considered good subjects of Patent, the one for sugar refining, the other for dyeing cloth, although the second Patentee had instituted no experiments, and merely been struck with the idea. (1851), Evid. 934, Fairrie.

[n] *Reg.* v. *Cutler* (1847), 3 C. & K. 215, hydraulic machines; 6 W., H. & G. 859; *Newton* v. *Vaucher* (1851), Exch.

[o] *Hancock* v. *Somervell* (1851), 39 Law Journal, 158.

[p] (1795) Dav. Pat. Ca. 170; 2 H. Bl. 465.

[q] Dav. Pat. Ca. 184.

method of lessening the consumption of steam and fuel in fire-engines. The obvious meaning of these words is that he has made an improvement in the construction of fire-engines; for what does method mean but mode or manner of effecting? A new invented method, therefore, conveys to my understanding the idea of a new mode of construction. I think those words are tantamount to fire-engines of a newly invented construction." . . . "Patents for a *method or art of doing* particular things have been *so numerous*, according to the lists left with us, that method *may be considered* as a common expression in instruments of this kind. It would therefore be extremely injurious to the interests of Patentees to allow this verbal objection to prevail." . . . "If this mechanical improvement is intelligibly specified, of which a jury must be the judges, whether *the Patentee calls it a principle, invention or method, or by whatever* other appellation, *we are not bound to consider his terms*, but the real nature of his improvement and the description he has given of it; and we may, I think, protect him without violating any rule of law." *Boulton v. Bull.*

Again, in the same case, Mr. Justice Heath uses very similar language:—"It appears that the invention of the Patentee is original and may be the subject of a Patent; but the question is, inasmuch as the *invention* is to be put in practice by means of machinery, whether the Patent ought not to have been for one or more machines, and whether this is such a Specification as entitles him to the *monopoly* of *a method*." The use of the word "monopoly" in its secondary instead of its original sense introduces another element of confusion. Throughout, the Bench conceived itself bound by the language *ordinarily used by Patentees*, although fully aware of and clearly pointing out its inaccuracy. "I approve," said Mr. Justice Heath, "of the term 'manufacture' in the Statute, because it precludes all nice refinements; it gives us to understand *the reason of the proviso, that it was in-* Heath, J.

Boulton v. *Bull.*

troduced for the benefit of trade. That which is the subject of a Patent ought to be vendible, otherwise it cannot be a manufacture. This is a species of new manufacture, and the novelty of the language is sufficient to excite alarm. It has been urged that other Patents have been litigated and established; for instance, Dollond's, which was for a refracting telescope. I consider that as substantially an improved machine. A Patent for an improvement of a refracting telescope and a Patent for an improved refracting telescope are in substance the same. I asked in the argument for an instance of a Patent for a method, and none such could be produced. I was then pressed with Patents for chemical processes, many of which are for a method, but that is from an inaccuracy of expression, because the Patent in truth is for a vendible substance." . . . "The Marquis of Worcester discovered in the last century the expansive force of steam and first applied it to machinery as the original inventor; he was clearly entitled to a Patent. Would the Patent have been good applied to all machinery or to the machines which he had discovered? The Patent decides the question. It must be for the vendible matter and not for the principle."

Buller, J.

The spirit in which the judgment of Mr. Justice Buller was delivered was rather that of an admirer than a judge; and it is in a regretful tone we should find it difficult to censure, that he proceeded to address himself to "the dry question of Law, whether upon the case disclosed to us the Patent can or cannot be sustained." "Few men," said he, "possess more ingenuity or have greater merit with the public than the plaintiffs on this record; and if their Patent can be sustained in point of Law, no man ought to envy them the profits and advantages arising from it. Even if it cannot be supported, no man ought to envy them the profits which they have received, because the world has undoubtedly derived great advantages from their ingenuity." That a grand

improvement had been effected in a manufacture, viz. a steam-engine, seems to have been but little dwelt on. "The fact of there being *nothing new in the engine*" (in Watt's engine!) "drove the counsel to argue on very wide grounds and to touch on the possibility of maintaining a Patent for an idea or a principle, though I think it was admitted that a Patent could not be sustained for an idea or a principle alone. The very statement of what a principle is, proves it not to be a ground for a Patent; it is the first ground and rule for arts and sciences, or, in other words, the elements and rudiments of them. A Patent must be for some new production from those elements and not for the elements themselves." The improvement itself is thus passed over,—"All machines which are worked by steam are worked by the same principle." *Boulton v. Bull.*

"It would be extremely injurious to the interests of Patentees," remarked the same eminent judge, "to allow this *verbal objection* to prevail." The "verbal objection" was that a method was not a 'new manufacture' within the terms of the Statute. The reason for proceeding in a course acknowledged to be erroneous was there plainly stated to be simply the fear of disturbing existing interests; yet it is to this misplaced lenity of the Court as to mere "verbal objections" that Patentees of a succeeding age may attribute the great majority of their misfortunes. The admission of evidence *ab extra* to control or explain a document from which considerable accuracy may and ought to be insisted on from the Patentee, is directly contrary[r] to other branches of established Law, and has proved productive of very serious inconvenience.

An unfounded fear of consequences and cautious adherence to precedent, independent of its origin, in pre- *Principle and precedent.*

[r] (1844) 2 Jarman on Wills, 351—358; *Boulton* v. *Bull*, Dav. Pat. Ca. 184.

Boulton v. *Bull.*

ference to principle in disposing of this case,[q] gave a judicial authority to the various random collection of assertions put forward by Patentees. "We should consider well," said the Chief Justice, "what we do in this case *that we may not shake the foundation upon which these Patents stand.* Probably I do not overrate it, when I state that two-thirds, I believe I might say three-fourths, of all Patents granted since the Statute passed are for methods of operating and of manufacturing, producing no new substances and employing no new machinery. I think these methods may be said to be *new manufactures* in the common acceptation of the word, as we speak of the manufactory of glass or any other thing of that kind."

The evil was conceived by the learned judge to be entirely beyond control. He acquiesces in it as a *fait accompli*, and endeavours to give a colouring of liberality to his acquiescence. "Shall it now be said," he asks, "after we have *been in the habit of seeing Patents granted* in the immense number in which they have been *for methods* of using old machinery to produce substances that were old but in a more beneficial manner, and also for producing negative qualities by which benefits result to the public by a narrow construction of the word 'manufacture' in this Statute, that there

Method.

can be no Patent for *methods producing this new and salutary effect*, connected, and intimately connected, as it is with the trade and manufactures of this country? This, I confess, I am not prepared to say. Undoubtedly

Principle.

there can be no Patent for a mere principle; but for a principle, so far embodied and connected with corporeal substances as to be in a condition to act and to produce effects in any art, trade, mystery or manual occupation, I think there may be a Patent."

The letter of the Law.

The non-natural interpretation of the terms employed by the Statute, in order to suit the circumstances of par-

[q] Dav. Pat. Ca. 211.

ticular cases, has, as we have seen, produced great confusion. Patentees in their Specifications had employed language inconsistent with that of the Statute: the general object of the Court seems to have been to strain the latter into conformity with the former. "I observe," said Eyre, C. J., in the same case, "that *according to the letter of the Statute* the words 'any manner of new manufacture in the saving fall very short of the words 'any thing' in the first section; but most certainly *the exposition of the Statute, so far as usage will expound it,* has gone very much beyond the letter"—a deliberate surrender of judicial power in favour of an accumulation of popular errors. *Boulton v. Bull.*

Practice of making.

"*It was admitted,*" continued the same learned judge, "in the argument *at the bar*, that the word 'manufacture' in the Statute was of extensive signification; *that it applied not only to things made but to the practice of making, to principles carried into practice in a new manner, to new results of principles carried into practice.*" The admission at the bar seems to have been assumed to establish the fact with the Bench. "Let us pursue this admission. Under things made we may class, in the first place, new compositions of things, *such as manufactures in the most ordinary sense of the word*; secondly, all mechanical inventions, whether made to produce new or old effects, for a new piece of mechanism is certainly a thing made. *Under the practice of making* we may class all new *artificial manners of operating* with the hand or with instruments in common use, and *new processes* in any art producing effects useful to the public." The plain and inevitable conclusion from departing from the letter of the Statute.

Dollond's Patent.

The error, although underrated in importance, was perfectly clear to the learned judge. "Dollond's Patent," he says, "was perhaps exceptionable, for that was for a method of producing a new object-glass instead of being in the object-glass produced. If Dr. James's

Boulton v. *Bull.*

Patent had been for the method of preparing his powders, instead of the powders themselves, the Patent would have been exceptionable on the same ground." Such Patents are clearly exceptionable in form, and had they been disallowed would have served to avert the general laxity that succeeded their admission.

The following premiss contains within itself the confutation of the theory it endeavours to establish: "*When the effect produced is no substance or composition of things*, the Patent can be only for the mechanism, if new mechanism is used, or for the process, if it be a new method of operating with or without old mechanism." Now in every instance, as we shall hereafter see, the subject matter of a Patent, resulting from any improvement whatever, may be made a substance or composition of things. As an illustration of the opposite view the case of Mr. D. Hartley's invention for securing buildings from fire was adduced: "It is no substance," it was said, "or composition of things; it is a mere negative quality, the absence of fire; the effect is produced by a new method of disposing iron plates in buildings. He did not invent those means. The invention wholly consisted in the new method of using, or I would rather say of disposing, a thing in common use, and which therefore every man might make at his pleasure; and which therefore I repeat could not in my judgment be the subject of a Patent. The Patent could not be for the effect produced, because the effect, as I have already observed, is merely negative, though it was meritorious. It cannot be for the mechanism, for there is no new mechanism employed; it must then be for the method; and I would say, in the very significant words of Lord Mansfield in the great case of Copyright,[r] it must be for method detached from all *physical existence whatever*.

D. Hartley's case.

Where matters are thus authoritatively laid down by so eminent a judge, it may appear presumptuous to pre-

[r] (1769) *Millar* v. *Taylor*, 4 Burr. 2397, K. B.

sent as a solution the hypothesis he rejects. Yet David Hartley's case is explicable on general principles of Patent Law. To be consistent with the theory on which Patent protection exists the Patent should have been "for buildings constructed on fire-proof principles." This was the monopoly virtually granted to the Patentee, and necessarily involved all the rights to which he could be considered entitled. The inaccurate use of words has led to a gradual confusion of ideas, and obliterated the broad distinction between a "discovery" in point of fact and an "invention" in point of Law. In this case the "discovery" was that of principles of matter, the "invention" an object of commerce, to which those principles had been applied. And similarly with regard to all cases in which material improvements have been made.

Such language from the Bench had the effect of countenancing and consolidating the errors originating in popular inaccuracy, and later judges following in the same course have striven rather to regulate the inconsistencies they found than to address themselves to the cause and thus prevent the possibility of their recurrence.

Writers on the subject. Godson.

Writers on this subject have on this head followed up the course indicated by the Bench. Mr. Godson[t] considers it an open question, whether "*a mere method of making a thing or a process*, or a *manner of operating*, may or may not be the subject of a Patent;" and gives it as his opinion,[u] "that although neither philosophical principle nor a mere method or process can be monopolized, yet a principle, method or process, when it is connected with corporeal substances, and when it is carried into effect by tangible means,[x] may be the subject of a Patent."

[t] On Patents, 2nd ed. 72, 84. [u] Ibid. 91.

[x] 2 H. Bla. 463; 8 T. R. 101; 2 B. & Ald. 350; *Jupe* v. *Pratt* (1837) Web. P. R. 146; *Neilson* v. *Harford*, Ib. 355.

Wordsworth. Mr. Wordsworth[a] adduces *Gibson* v. *Campbell*[a] to show that "a Patent may be obtained for a mere process. So also for improvements in the mode of doing anything by a known process."

Turner. Mr. Turner,[b] in treating of the "invention," draws a distinction between the *principle* and the *form* involved in its construction. "In *Crossley* v. *Beverley*,"[c] he remarks, "it was said that there might be innumerable forms of an invention, but in fact, beyond a limit which is soon reached, variation would make the principle not worth employing. There is always one best form which supersedes its rivals in the race of competition. Deviation from this is injurious in an increasing ratio."

The case of *Lewis* v. *Davis*[d] is adduced by Mr. Godson[e] as "very important in showing 'what combination or arrangement of things already known,' may be the subject of the grant." Cloth had, previously to the Patent in question, been cut *from end to end* by rotatory cutters. The point in issue was, whether the plaintiffs could have a grant for cutting cloth from *list to list*. The Lord Chief Justice[f] said, "It appears that a rotatory cutter to shear from end to end was known, and that cutting from list to list by means of shears was also known. However, if before the plaintiff's Patent *the cutting from list to list and doing that by means of rotatory cutters were not combined*, I am of opinion that this is such an invention as will entitle them to maintain the present action."

In truth, the difficulties here were, that the subject matter of the grant was not really what the plaintiff sought to enforce. If the cloth made was improved by the alterations, it was that improved cloth of which he claimed to be the monopolist, and that should have

[a] (1853), p. 13.
[b] Turner on Patents, p. 8.
[c] Cited Web. P. R. 146.
[d] (1829) K. B., 3 C. & P. 502.
[e] On Patents, 2nd. ed. 66.
[a] 11 Law J. (N.S.), 177, C. P.
[f] Lord Tenterden.

formed the subject of the grant. If on the other hand the changes were immaterial in their result, the whole was a mere colourable variation, and unpatentable.

Losh v. Hugue.

The attempts of Lord Abinger, in *Losh* v. *Hague*,[g] to decide the question by a distinction between applying a new contrivance to an old object and an old contrivance to a new use, proceeded to the length of asking whether 'a purpose' be the thing patented. The illustrations of a surgeon improving a pair of scissors on the one hand, and a man taking out a Patent to eat peas with a common spoon, or common scissors to cut silk instead of cloth, on the other, are perfectly capable of explanation. Improved scissors or an improved spoon are both good subjects of a monopoly; but once sold, they become the property of the public, and no restraint can be put upon their use.

Neilson v. Harford.

In *Neilson* v. *Harford*,[h] the discovery consisted in the effects of the hot blast for smelting, by heating the air between the blowing apparatus red hot or nearly so, by the application of heat without the vessel, so as to prevent the loss of oxygen. It was said, *if a specific shape* of heating vessel was claimed, then the Patent was good; but if every shape was claimed, then that it was a claim of the principle, for that there was no difference between claiming every application of a principle and claiming the principle itself. Alderson, B., there said, that the difficulty which pressed upon his mind was, that Neilson had taken out his Patent, like Watts, *for a principle*, but he had not practically described any mode of carrying it into effect. To be consistent with the theory of Patents, Neilson's claim should have been for the iron improved by his discovery.

In *Boulton* v. *Bull*,[i] the nature of the subject matter was thus put to the test by Buller, J. "Suppose,"

[g] (1837) Web. P. R. 207.
[h] (1841) 8 M. & W. 806; Web. P. R. 342; *Jupe* v. *Pratt*, Ib. 144.
[i] 2 H. Bl. 436.

said he, "an ingenious physician should find out that Doctor James's fever powder was a specific cure for consumption, if taken in particular quantities,—could he have a Patent for the sole use of James's powders in consumption, or given in particular quantities." To this there are two answers; first, that, consistently with the theory of Patents here advocated, medicines are expressly declared unfit subject matter;[m] and, secondly, that this falls within the class of cases in which, after the Patent is at work, some new principle or property of matter is discovered. The "manufacture" is already in the hands of the public, the use it may be led to apply it to cannot be controlled.

R. v. Wheeler.

The remarks of C. J. Abbott, in *R.* v. *Wheeler*,[n] serve to show clearly the mode in which the refinements so fatal to the consistency of the Law were introduced. "The word 'manufacture,'" said the learned judge, "has been generally understood to denote either a thing made which is useful for its own sake and vendible as such, as a medicine, a stove, a telescope, and many others; or to mean an engine or instrument, or some part of an engine or instrument, to be employed either in the making of some previously known article, or for some other useful purpose, as a stocking-frame, or a steam engine for raising water from mines; *or it may perhaps extend also to a new process, to be carried on by known implements or elements*, acting upon known substances, and ultimately producing some other known substance, but producing it in a cheaper or more expeditions manner, or of a better and more useful kind."

The idea of a "principle," in connexion with the legal subject matter once introduced, has been a continual source of difficulty in Patent litigation, and the Court has been compelled to *approach* at last to the recogni-

[m] Supra, p. 28.

[n] 2 B. & Ald. 349, malt; *Crane* v. *Price* (1819), iron, Web. P. R. 413; 12 L. J. (N. S.) C. B. 81.

tion of the standard here attempted to be erected, by declaring[p] that "the Patent is not for the principle, but for the mode of carrying that principle into practice." The case of *Minter* v. *Wells* was remarkable for the confusion into which judges were betrayed by attempting to view Patents from any other than the public point of view. Great anxiety was there evinced to avoid the consequences of declaring the subject of a monopoly to be an idea.[q] "The claim of the plaintiff," said Parke, B., "is not to the principle, but to the *combination of the principle and the machine, the application of the self-adjusting lever* to the construction of a chair. This is not claiming a principle." The Patent was in truth for a monopoly of improved chairs.

Minter v. *Wells.*

As a general rule, wherever a discovery is made of a principle or property of matter applicable to the improvement of manufactures, there is good ground for a Patent, provided the subject matter of it be expressed in the proper form. The original discoverer cannot, however, take out a Patent for its general application.[r] Thus Mr. Justice Heath says,[s] "that a Patent could not be claimed for the use of the power of steam. It must be for the vendible matter, and not for the principle." The inconveniences, consequent on considering principle as subject matter of a Patent, were much dwelt on by the learned judge in that case. It would, he remarked, 'reverse the clearest position of law respecting Patents for machinery, by which it has been always holden that the organization of a machine may be the subject of a Patent, but principles cannot.'

No appropriation of a principle or property of matter.

[p] *Neilson* v. *Harford* (1841), Web. P. R. 343.

[q] (1834) Exch., chairs, 1 C., M. & R. 507, note (*i*). See also *Barrett* v. *Hill*, Story, J., 1 Mason; *Hornblower* v. *Boulton*, 8 T. R. 95 (1799); 5 Tyr. 163; Web. P. R. 134; Carp. i. 639; Rep. Arts, ii. (N. S.) 234.

[r] A new application of machinery already known is said by M. Renouard (pp. 175, 459) to be a patentable subject in France.

[s] (1795) *Boulton* v. *Bull*, 2 H. Bl. 482.

Confusion between machine and thing made.

The result of inattention in cases like that of Arkwright, to what was really the subject matter of the Patent in point of Law, is thus pointed out by Gibbs, C. J., in *Bovill* v. *Moore*[t]—"I think a little confusion has been made between a *new machine for making lace* and *lace made* in a new method by a machine partly old and party new. In order to try whether it be or not a new machine throughout, we must consider what the Patent purposes to give to the Patentee, and what privileges he would possess under it. Now the Patentee is entitled to the sole use of this machine, and whoever imitates it either in part or in the whole, is subject to an action at the suit of the Patentee."

Bower v. *Hodges.*

In *Bower* v. *Hodges*,[u] the Patent in the deed of licence was expressed to be for "certain *improvements in machinery or apparatus for manufacturing pipes*," and the powers conferred by the Patentee purported to be full, free and exclusive liberty, licence and authority to make—not such machinery or apparatus, but—pipes or tubes of iron, *but of no other metal.* The whole thing proceeded on false grounds. If the Patentee had discovered some means of improving iron pipes, his Patent should have been for such improved pipes.

Cochrane v. *Smethurst.*

In *Cochrane* v. *Smethurst*,[x] the subject matter was expressed to be "an improved method of lighting cities, towns and villages." The thing intended to be patented was a lamp. The Patent was declared void. In *Nickels* v. *Haslam*,[y] a Patent, with title "improvements in the manufacture of plated articles," was upheld, although it appeared that the invention comprised one improvement only. In *Campion* v. *Benyon*,[z] the title was held too extensive, and destroyed the Patent; it was "a new and improved method of making canvas and sailcloth

Campion v. *Benyon.*

[t] Dav. Pat. Cas. 360; 2 Marsh, 211 (1816).
[u] (1853) Iron tubes, 22 L. J. (N. S.) C. B. 194.
[x] 1 Stark. 205.
[y] 8 Scott, 97.
[z] 6 B. Moo. 71, C. B.

with hemp and flax, or either of them, without any starch whatever." The improvement really effected was in a new mode of preparing and twisting the hemp or flax for making the canvas and sailcloth; and the invention which should have formed the subject matter and title of the Patent was such improved canvas and sailcloth. In *Cook* v. *Pearce*,[a] the title was "improvements in carriages;" the thing invented was a carriage shutter. The Court of Queen's Bench held that the title was defective, to the extent of avoiding the Patent; a decision subsequently reversed by the Exchequer Chamber. In *Brunton* v. *Hawkes*,[b] the Patent for "improvements in the construction of ships' anchors, windlasses and chain cables" was reversed, but only from the consideration that one of the articles so claimed was not new. In *Neilson* v. *Harford*,[c] the Patent was entitled to be for "improved application of air" to furnaces for iron smelting, whereas the article beneficially produced under it, and which it was sought thereby to protect, was iron prepared by such improved application of air. In *Hullett* v. *Hague*,[d] the Patent purported to be "for certain improvements in evaporating sugar, *which improvements are also applicable to other purposes.*"

Cook v. *Pearce.*

Brunton v. *Hawkes.*

Again, in *The Queen* v. *Newton*,[e] the Letters-patent (1841) were for "*improvements* in the process of and apparatus for purifying and disinfecting greasy and oily substances or other matters, both animal and vegetable." On the principle before stated, it should have been for "greasy and oily substances or other matter, animal and vegetable, purified and disinfected by the process, &c."

R. v. *Newton.*

In *Cornish* v. *Keene*,[f] a Patent "for *an improvement* or improvements *in the making or manufacturing* of

Cornish v. *Keene.*

[a] (1843) 7 Jur. 764.
[b] (1821) 4 B. & Ald. 541.
[c] (1841) Exch. Web. P. R. 373.
[d] (1831) Sugar, 2 B. & Ad. 370.
[e] 26 London Journ. 361 (1845).
[f] (1837) C. B. 3 Bing. N. C. 570.

Nature of subject matter.

elastic goods or fabrics applicable to various useful purposes" was held good by the Court of Common Pleas. "That it is a *manufacture*," said Tindal, C. J., "can admit of no doubt; it is a vendible article, produced by the art and hand of man;" which was in effect saying that the subject matter of the grant differed materially from that expressed in the title of the Letters-patent. Numberless other instances might be adduced. A glance at the list of Patents daily granted is sufficient to show how little principle influences the selection of subject matter.[f]

Assailable points in Patents.

To proceed, however, in detail. We shall best form a notion of the requisites of good subject matter under the Law as it at present stands by observing the points to which attacks are directed in the efforts to invalidate Letters-patent in actions for infringement and of *scire facias*. The counts in the latter and pleas in the former,[g] placing the validity of the Patent in issue, reveal the rocks which beset the Patentee in the exercise of his privileges. They may be substantially collected under three heads; first, that the invention is not new; second, that it is not useful; and third, that it has not been sufficiently described. Reserving for further consideration the requisites of the specification or instrument describing

[f] Probably the extreme of such inaccuracy was touched by the American who claimed "the cutting of ice of a uniform size by means of an apparatus worked by any other power than human." (*Wyeth* v. *Stone*, 1840, 1 Story, Rep. 274; Curtis on Patents, 64.) "Nobody I have ever yet known," says the Master of the Rolls (1851, Evid. H. of Lords, Com.) "has been able to arrive at a satisfactory definition precisely to ascertain what is a new and what a useful invention."

[g] Pleas in *Beard* v. *Egerton* (1849), phototypes, 8 C. B. 172:—(1), not guilty; (2), non concessit; (3), Letters-patent obtained by fraud; (4), the Patentee was not the true inventor; (5), (6), (7) and (10), demurred to and judgment for plaintiff; (8), not a new manufacture; (9), not a new invention as to public use; (11), title inconsistent and too large; (12), Patentee did not duly specify; (13), did not assign to the plaintiff; (14), leave and licence; (15), invention of no use.

the invention, we proceed to establish the novelty and utility required from the subject matter.

Buller, J.'s definition.

The dictum of Mr. Justice Buller[g] in *R.* v. *Arkwright* presents an admirable test of the sufficiency of an invention to support a Patent. The *improvement of the particular trade* is the principle upon which the policy of such limited monopolies rested, and, in many cases, the materiality and importance of the change can be judged of only by the effect or the result, which effect is tested by the improvement in the trade in the commercial sense of the term; that is, by the production of the article as good in quality at a cheaper rate,[h] or of a better quality at the same rate,[i] or both these partially combined.[k]

Trade, the criterion.

The reference to trade as a sure criterion in determining the identity or diversity of two manufactures, would have saved the decision arrived at in *Brunton* v. *Hawkes*.[l] The Patentee had invented an improved anchor. The mode in which the improved anchor was constructed was well known, and in use in making the mushroom and adze anchors. Abbott, C. J., remarked that it was "the mode by which the different parts of the common hammer, and the pickaxe also, are united together: formerly three pieces were united together, the plaintiff only unites two; I think a man cannot be entitled to a Patent for uniting two things instead of three, where that union is effected in a mode well known and long practised for a similar purpose: and Bayley, J., "*Could there be a Patent for making in one entire piece what before had been made in two pieces? I think not.*" Here the question is put in its very plainest form; the answer, on the authority of recent cases, is this: If welding in one piece make a materially better or cheaper

[g] Web. P. R. 71 (1785).
[h] Derosne's Patent.
[i] Daniell's Patent.
[k] Crane's Patent.
[l] 4 B. & Ald. 541 (1821).

anchor than before, such improved anchor is good subject matter of a Patent.

Utility.

Manton v. *Parker*[m] was an action for an infringement of a Patent (1803) for hammers of locks for fowling pieces. The object of the Patent was to let the air pass out of the gun barrel when the wadding was rammed down, but to keep the touchhole always full of powder, in order to prevent flashing or hanging fire. The Court here determined the utility of the invention: "It seems to me," said Thomson, C. B., "that the utility of the invention and the purposes of the Patent wholly fail."

Jupe v. *Pratt.*

In *Jupe* v. *Pratt*, Alderson, B., upon this point,[n] with reference to *Crossley* v. *Beverley*[o]: "There never was a more instructive case than that. There never were two things to the eye more different than the plaintiff's invention and what the defendant had done in contravention of his patent right. The plaintiff's invention was different in form, different in construction: it agreed with it only in one thing, and that was, by moving in the water a certain point was made to open either before or after, so as to shut up another, and the gas was made to pass through this opening: passing through it, it was made to revolve it. The scientific men, all of them, said the moment a practical scientific man had got that principle in his head, he can multiply without end the forms in which that principle can be made to operate."

On the theory before proposed the solution of this difficulty is furnished at once. So far as Society is concerned, *improved gas meters* is the only patentable subject recognized, and the question of the alteration in form is wholly subordinate to that of the effect of this alteration on the result.

Improvement in the result, the test.

Improvement in the result is the only criterion the Law allows; and this, as is evident on the most cursory con-

[m] (1814) (gun locks), Dav. Pat. Ca. 327.

[n] Web. P. R. 146 (1837), Exch. (tables).

[o] *Crossley* v. *Beverley* (1829) (gas meters), Web. P. R. 106.

sideration of the matter, bears no assignable proportion to the change or improvement in the means[p] employed. It requires, indeed, a more than ordinary acquaintance with the details of manufactures to appreciate at once the result of some apparently insignificant alterations in machinery, or deviations in processes of chemistry. In an established branch of manufactures almost every improvement of importance springs from some trifling alteration in detail, and realizes the saying of an old writer, "that a little thing may make perfection, though perfection is not a little thing."

Roberts' loom for silk fabrics.

Some very singular instances of this was given in evidence before the Committee in 1851. "I have known," said one witness,[q] "many machines nearly completed and waiting for some small thing to make the whole of use. I will cite, as an instance, Mr. Roberts' loom for producing plain silk fabrics. They were for years working upon the loom, but they wanted something to give the delicate effect that the hand gives in throwing up the warp. At length the introduction of a very trifling matter, a bit of vulcanized india rubber, effected what they wanted, but they were years waiting for it. * * * Last year having to wait for my passport at Boulogne, I went on board the steamboat which leaves London with goods for Boulogne, and I found that the majority of the packages constituting the cargo was plain silks for Paris, many of them being directed to Lyons. It is

[p] In *Crane* v. *Price*, Web. P. R. 377 (1840), Tindal, C. J., the alteration in principle was scarcely perceptible, yet the iron was rendered thereby greater in yield, cheaper in cost, and better in quality than that ordinarily made. "If," said Tindal, C. J., "the result produced be either *a new article or a better article, or a cheaper article* to the public than that produced before such a combination of means, is an invention or a manufacture intended by the Statute, and may well become the subject of a Patent." (*Re Morgan's Patent* (1839), tinning, Web. P. R. 737.)

[q] Hodge, Evid. 481.

nothing but the improvements which we have made in the looms for weaving plain silks in Manchester, that gives us that advantage over the French."

American flyer.

I will give another instance.[r]—There is an invention now brought to this country from America, which hangs up in the American department of the Exhibition; it is a flyer for an ordinary throstle frame: the present flyer, being made of solid steel, having a great deal of spring with it, the law of centrifugal force, by driving it at a great velocity, expands the flyer. But this inventor has made the steel flyer a hollow tube; hence he is able to increase the velocity nearly one-third; every spindle, therefore, does nearly one-third more work. In one mill at Manchester they have 70,000 spindles, so that the invention will be seen to be of great national importance.

Improved stop.

Speaking of an invention (an improved stop) which enabled a loom to be driven from a hundred to a hundred and twenty picks per minute, instead of sixty or eighty, Mr. Webster[s] remarked, "It may appear a trifling thing in itself, but I know it made a great change in many establishments."

Failure and success.

The least thing may make the difference between failure and success; and sometimes the principle on which the improvement depends, is only apparent from the observed result of experiment. In *Huddart* v. *Grimshaw*, the strands of rope (formerly passed through a ring) were passed through a tube, which kept them in confinement for a longer period than the ring, which happened to be a source of material improvement in the manufacture.[t]

Omission may improve materially.

The mere omission of part of a machine or process may be attended by so beneficial an alteration in the result as to entitle such result to the Protection of Letters-patent.[u]

[r] Evid. 546.
[s] Ibid. 39.
[t] Dav. Pat. Ca. 265, Ellenborough, C. J.
[u] *Russell* v. *Cowley* (gas tubes), 1 Cr. M. & R. 864.

Simplicity, indeed, in machinery, is the main characteristic of perfection.

Formerly the process of making oxalic acid could only be carried on in glass and earthenware vessels, from the corrosive nature of the nitrous acid employed, and these vessels were necessarily small and inconvenient. It was discovered, that, by adding a small quantity of sulphuric acid, the corrosive character of the nitrous acid was destroyed, and the process could be carried on in large leaden vessels. This simple discovery led to an extraordinary reduction in its price. Some twenty years ago it sold for a guinea a pound—it has lately been as low as sixpence half-penny.[v] Oxalic acid.

Derosne, by the use of substances well known, but never before used for the purpose (animal charcoal and bituminous schist), cheapened sugar twenty shillings per cwt.[x] Derosne's Patent.

The immersion of cloth at a particular stage in hot water, Daniell's Patent,[y] is said to have improved its value a guinea a yard. Daniell's Patent.

The adoption of a specific distance between two parts of a machine,[z] the substitution of one mechanical contrivance for another, apparently identical with it in principle,[a] the employment of an agent almost *ejusdem generis* as that employed before,[b] the assignment of a fixed period to any stage of a chemical[c] or mechanical[d] process, or an alteration in the order of its stages,[e] or Trifling alterations.

[v] *Smith* v. *Laing*, Morning Chronicle, 1st March, 1854.
[x] *Derosne* v. *Fairrie*, 1 Gale, 109.
[y] Webster, Subject-Matter for Patents (1851), p. 26.
[z] *Kay* v. *Marshall* (2½ inches for reach of flax).
[a] *Huddart* v. *Grimshaw* (tube for ring).
[b] *Hall* v. *Boot* (gas flame for oil flame).
[c] *Beard* v. *Egerton* (1846, photography), 3 C. B. 97.
[d] *Startz* v. *Delarue* (copper plate printing, damping the paper, 1828), 5 Russell, 327.
[e] *Hulliwell* v. *Dearman*, Web. P. R. 401, n. (*t*).

even the omission simply of some part of what was in use before,[f] may introduce into manufacture improvements so material in their results, and consequently so advantageous to the public, as to render their originator more deserving of the privileges conferred by Letters-patent than the discoverer of the original improved upon.

A distance.

In *Kay* v. *Marshall*[g] it was held, that the adoption of a specific distance (two and a half inches) between the rollers of a flax-spinning machine, was not a good subject of a Patent, yet it was only in consequence of a very material improvement (that of macerating the flax in the process) that enabled them to spin at the distance. The utility and advantage of the change were unquestioned, and hundreds of pounds had been expended in experiments by the Patentee. Such was the fate of an invention, of which Sir F. Pollock[h] hardly overrated the importance, when he spoke of it as a discovery which "had actually conferred upon this country the benefit of millions, and which opened up a source of national wealth to which no limit could be placed." Its immediate effect was to put flax-spinning on the same footing with cotton-spinning, and vastly to increase the manufacture of that article.

Gas for oil.

In *Hall* v. *Boot*,[i] the substitution of gas for oil in singeing the fibres of lace, was held sufficient to constitute a "new manufacture;" while in *Daniell* v. *Fussell*,

[f] *Russell* v. *Cowley* (1834), 1 Cr. M. & R. 864 (gas tubes).

[g] H. of Lords (1841), 8 Cl. & Fin. 257.

[h] *Kay* v. *Marshall* (J. C. of P. C.), Web. P. R. 572 (1839); 5 Bing. N. C. 492; 1 Beav. 535; 8 Cl. & Fin. 245. For other great results from trifling changes, see *Edwards* v. *De Costa*, Rep. of Pat. In. No. 681; Turner, 17; Web. P. R. 734; *Hill* v. *Thompson*, *Crane* v. *Price*.

[i] (1822) lace, Web. P. R. 100. "No one," said Abbott, C. J., "in this case could tell that gas would answer the purpose of singeing the fibres of lace until he tried, and a man who *tried and succeeded in improving a manufacture is entitled to a Patent.*"

Steam for boiling water.

the use of steam in a process of cloth finishing, instead of boiling water, was considered a mere colourable variation from, and an infringement of, a former Patent. The books are full of cases of similar kinds, in which trifling modifications have been supported, and very considerable deviations been judged to be infringements on former rights. Inconsistent, however, as the decisions are, their history is necessary to lead us to a clear view of the stage at which the Law has now arrived. The impossibility of adhering to fixed laws has at length induced the reference of the subject to wider principles, and at present there should be no objection for an invention, provided it be properly described in the Specification, and come fairly within the category of "The material result of an unpublished improvement in the production of articles for public use."[k]

Hullett v. *Hague*.

In the case of *Hullett* v. *Hague*,[l] a Patent had been obtained for a method of evaporating fluids at low temperatures, by blowing air through them by means of a colander placed in the bottom of the containing vessel, or by means of a single coil of perforated pipe immersed in the fluid. A second Patent, for the use of a series of tubes for the same purpose, having all their orifices in the same horizontal plane, was held not to be bad for want of novelty. Both Patents involved the same principle as that employed in the salt manufactories, that of causing the fluid to descend in a shower through the air. The most important of all the considerations, namely, *success* of the latter and *failure* of the former Patent, *owing to the position of the orifices*, does not seem to have been adverted to.

Haworth v. *Hardcastle*.

In *Haworth* v. *Hardcastle*[m] a Patent was upheld for an improved machine, which proved, however, in prac-

[k] (1779) *Hornblower* v. *Boulton*, 2 H. Bl. 493.

[l] 2 B. & Ad. 370; and Sweet's Jarman's Conveyancing, vii. 487.

[m] 4 Moo. & Fin. 720 (1834), C. B., calico drying.

tice inapplicable *to some purposes* discharged by similar machines. The question of degree is here, as elsewhere, the criterion of the validity of the grant.

Frivolous matters within the law.

Some matters apparently frivolous are yet proper subjects of Patent grant, as conducing to public convenience. One such is mentioned by Mr. Rendel before the Committee in 1851.[n] "There was," he said, "an invention some years ago of a file, or rather two files placed at right angles to one another, for sharpening black-lead pencils instead of cutting them: that was patented, and I believe the Patentee sold the Patent for a very large sum of money. The public ran after it for a time and every man carried one of these things in his pocket."

New in this realm.

The invention must be new in this realm.[o] The fact of its publication in other countries is recognized by the Law only in the event of its forming the subject of a foreign Patent. In that case it is provided by the New Act[p] that Letters-patent for such inventions are not to continue in force after the expiration of the foreign Patent. The old rule was more extensive. In the Journals of the House of Commons in 1621 we find, "Sir E. Coke reporteth the Patent for Glasses. The consideration faileth, for no new invention is proved by certificates *from divers countries* and by three witnesses *vivâ voce*."

Difficult to determine amount of public information.

To determine what is, as regards public use, a "new manufacture," involves a very difficult consideration, viz., what amount of information the public may be said to possess upon any particular branch of trade.

On the objection of want of novelty to Zinck's Patent[q] (1812 verdigris), it being proved that an article

[n] Qu. 2532.

[o] *Beard* v. *Egerton* (1849), photographs, 8 C. B. 207; *Brown* v. *Annandale*, 8 Cl. & Fin. 437; *Lewis* v. *Marling*, Web. P. R. 495 (previous use in America).

[p] 16 & 16 Vict. c. 83, s. 25.

[q] *Wood* v. *Zimmer* (1813), 1 Holt, N. P. C. 58.

precisely similar had been sold under another name, Gibbs, C. J., remarked, "Some things are obvious as soon as they are made public; of others the scientific world may possess itself by analysis, some inventions almost baffle discovery. But to entitle a man to a Patent, the invention must be new to the world; the public sale of that which is afterwards made the subject of a Patent, though sold by the inventor, only makes the Patent void."

Publication.

There are two modes in which "publication" of an invention may occur: by description in lectures, books accessible to the public, &c.. or employment in actual practice of the invention. With regard to the former some qualifications are requisite from the peculiarity of the case. Formerly inventions originated with those engaged in manufactures, and were little known beyond the factory, or at most the trade in which they were employed. Manufacturing art, however, at the present day may be said to have a popular literature of its own. Here, as in every other department of useful knowledge, the press is in advance of the age, and periodicals devoted to chemical and mechanical science, not content with recording the results effected the Patentee, discuss the principle involved in his discovery, and speculate on the still further development of his idea. The intelligence of such writers is, therefore, no fair index of popular apprehension. If suggestions from[r] such a source were suffered to discredit *all* Patents subsequently obtained for inventions carried out upon the principles they lay down, it is evident very few could be maintained. In some instances the practice of such suggestions is so easy as to recommend itself at once to public use; in others the value of them can be ascertained only after long and expensive experiments; and, but for the enterprise of the Patentee, would probably

[r] Encyc. Met. viii. 161.

remain for some length of time without any practical results. The practical questions that arise under this head are what amounts to a description[t] of the invention, and what publicity is requisite to constitute publication.[u]

Publication in specification of former Patent.

The description of the substance of the invention in a Specification of a prior Patent was held to vitiate a Patent before that document was practically accessible to the public, *Huddart* v. *Grimshaw*;[x] and à fortiori must be held to do so under the present system, which provides for their publication.

In *Stead* v. *Williams*,[y] the description of the invention (wood paving), as practised in a foreign country, in a book publicly circulated in England and lodged in the British Museum (Transactions of the Society of Arts, for 1833), was held to have deprived the subject of its qualification for Patent sealed 1838.

In *The Queen* v. *Walton*,[z] it was attempted to repeal a Patent granted in 1834 (improved cards for wool-carding), by producing a passage from the Journal of the Royal Institution, of 1826, but without effect.

User.

The extent of previous employment fatal to Patent Grants is termed "user." The amount requisite to constitute user varies with different subjects. If the previous employment of the invention was by way of experiment only,[a] and the object for which the Patent was taken out was not attained, such experimental use of the invention will not prejudice a more successful competitor, who avails himself of his predecessor's discoveries and

Experiment.

[t] *Tennant's case*, Dav. Pat. Ca. 429; *Makepeace* v. *Jackson*, 4 Turn. 770; *Barber* v. *Walduck*, 1 Car. & P. 558; *Bloxam* v. *Elsee*, 1 Car. & P. 558.

[u] Godson, 63; Dav. Pat. Ca. 445.

[x] (1803) Web. P. R. 87; Davies' Pat. Cas. 265.

[y] 8 M., G. & Sc. 821; (1844) 12 L. J., N. S., C. P. 218; *Hearteloup's case*, Web. P. R. 553.

[z] Web. P. R. 585.

[a] *Galloway* v. *Bleaden*, Web. P. R. 521; (1839) Tindal, C. J.

adds the last link of improvements, which brings the whole to perfection.[b]

The abandonment of an invention raises a strong presumption that it failed or was a mere experiment,[c] or not reduced to beneficial practice,[d] and is almost decisive that it was not complete and perfected;[e] although, however, the fact of abandonment, provided it be shown to have attained completion, will not revive its claim to become good subject matter.[f] Presumption of failure.

In *Galloway* v. *Bleaden*,[g] the experiments, on the strength of which it was attempted, but without success, to impeach the novelty of the Patent, had been, according to the account of Mr. Field, who conducted them, perfectly successful, and conducted, as was contended, with such publicity as to deprive the Patentee of his title to the privilege. In 1833 he had made a model of a wheel with floats in a cycloidal curve, and left it for a week at the Admiralty. At his factory he showed it to all persons who wished to see it, and to any persons concerned in steam vessels. In the same year he lodged a caveat at the Patent Office, but took no steps towards preventing the Patent granted in 1835 to the plaintiffs, who maintained an action for infringement of it, the proceedings of Mr. Field not being deemed sufficient to deprive the subject matter of its patentable property. Novelty.

In *Jones* v. *Pearce*,[h] wheels similiar in principle to

[b] *Wood* v. *Zimmer*, per Gibbs, C. J., 1 Holt, N. P. 58.

[c] *Lewis* v. *Marling* (1829), Web. P. R. 495.

[d] *Minter* v. *Mower* (1835), Web. P. R. 139.

[e] *Household Co.* v. *Neilson* (1843), Web. P. R. 692, n. (*p*).

[f] *Household Co.* v. *Neilson* (1843), 9 Cl. & Fin. 788, per Lord Campbell; *Jones* v. *Pearce* (1832), carriages, Web. P. C. 122, Patteson, J.; *Cornish* v. *Keene* (1836), elastic fabrics, Web. P. C. 512, Tindal, C. J.

[g] (1839) paddle wheels, Web. P. R. 521. See *S. C.* 1 M. & G. 247.

[h] (1832) carriage wheels, Web. P. R. 122, N. P., Patteson, J.

those patented had been used publicly in a cart as early as 1814, for carrying heavy loads, during two years. The spokes, however, got bent, and the nave becoming broken, the cart was laid by. A milk cart, on the same principle, although much used, was subject to a similar defect. The deficiency was remedied by the subsequent Patent (1826), which was held good as being successful in remedying the defects in the experimental plan.

Novelty. Conflicting *dicta*.

The danger of applying a *dictum* in any one case upon this head, as a maxim applicable to the decision of all, is evident from the distinctly antagonistic positions assumed by not a few. Thus, in *Cornish* v. *Keene*, Tindal, C. J., remarked, with reference to abandoned[i] inventions,[k] that prior use to invalidate a Patent must be public and continuous;[l] whereas, in *Household Company* v. *Neilson*,[m] the Lord Lyndhurst, L. C., remarked, "If use or trials have been made of it in the eye and in the presence of the public, it is not necessary that the public use of it should come down to the time when the Patent was granted. If it was discontinued, still that was sufficient evidence in support of the prior use to invalidate the Patent."

Test of novelty in public use.

The real test of the novelty of the invention for the purposes of a Patent was that left to the jury by Tindal,

[i] (1832), *Jones* v. *Pearce*, Gods., 2nd ed. 28; Web. P. R. 124.

[k] As instancing the neglect of Society to avail itself of a valuable principle, even when fully reduced into practice, and of the reappearance of inventions at distant epochs, we may notice two of the articles which excited such attention in the Great Exhibition of 1851—the mechanical reaper (Hussey's) and the revolver (Colt's). Both originated in England, but were not fortunate enough to attract attention. Of the latter invention, two specimens are at this moment in London, of so early a date as the reign of Charles I., one of which, labelled "a many times discharging petronel," identical in principle with Colt's, is exhibited in the Museum of the United Service Institution. ('Transactions of the Society of Arts, Jan. 23, 1854.)

[l] Web. P. R. 44.

[m] 9 Cl. & Fin. 788; Web. P. R. 709.

C. J., in *Cornish* v. *Keene*,[n] who directed them to say *whether the invention was or was not in public use and operation at the time the Patent was granted?* The evidence as to the novelty and utility of the invention being fully before the jury, they are perfectly capable of deciding the general question whether or not it be a proper subject for a monopoly. Whether what has been before done was mere experiment or perfected invention is a question for the exercise of common sense.

Danger of user diminished by *new law.*

The publication of an invention by user previous to its protection by Letters-patent is one of the dangers almost removed from the inventor by the recent amendments in the Law, which confers immediate protection on application of the Patentee.

Allowance made for Patentee.

Considerable allowance for the unavoidable promulgation of a discovery during the experiments necessary for its development has been made in recent cases. In *Bentley* v. *Fleming*,[o] the inventor of a card machine lent it to another person for the purpose of having its qualities tested, and for that purpose it was for some weeks in use in a public workroom. This was however held not to be such publication as to deprive the inventor of his right to obtain Letters-patent. In this case however it is to be remarked, that the machine was one of considerable complexity.

Question of user one of fact.

The question of "user" is almost entirely one of fact, to be dealt with according to the circumstances of each particular case. In *Hartley* v. *Howland*[p] the latitude given to the Patentee was very great. The manufacture was glass, and the publication contended for the open use of the plaintiff's invention by the predecessor of the defendant during the period of three months (March to

[n] Web. P. R. 44; *Household Co.* v. *Neilson* (1843), 9 Cl. & Fin. 788.

[o] (1844) 1 C. & K. 587, per Cresswell, J.

[p] (1852) London Journal, *Minter* v. *Wells*, Web. P. R. 132; *Forsyth* v. *Rivière*, Web. P. R. 97. In *Tennant's case* (bleaching), Dav. P. C. 429, the invention had been used five or six years before the Patent, but as a secret.

May, 1835) in a factory employing seventy men. The question put to the jury by the learned Chief Baron was whether that constituted a sufficient publication to the trade and the world to deprive the plaintiff of the right to take out a Patent. The jury found a verdict for the plaintiff.

The distinction between use and exercise *in public* and *by the public* taken by the Court in *Carpenter* v. *Smith*[q] is one of which it seems impossible to introduce into general application.

User.

On the trial of *Lewis* v. *Marling*[q] it was proved that a model of a machine similar to that for which the Patent had been obtained had been brought to England from America before the date of the Patent; but as it appeared that the model was not put to any use or made known to the public, nor any machine made after it, Lord Tenterden thought it ought not to affect the Patent.

Unprosecuted inventions.

In *Household Company* v. *Neilson*[r] it was held that the notorious use of an invention, though subsequently abandoned, will vitiate a Patent subsequently obtained. It appeared however that if the public could be deemed to have wholly lost sight of it, a subsequent Patent could be maintained. The fact of its abandonment is important, as determining that what took place was only an experiment which failed and which never attained to a perfected and complete invention.[s] The lapse of time between the successive attempts must necessarily form an essential element in the consideration. "Although," says Cresswell, J. (1844), "a person may have hit upon a thing and tried an experiment in reference to it, yet if that afterwards is laid by and abandoned, so that the

q (1842) 9 M. & W. 303, per Abinger, C. B. (door-locks).

q 1829 (shearing machine) Tenterden, Lord C. J., 3 C. & P. 502.

r Web. P. R. 692, n. (*p*).

s *Newton* v. *Grand Junction Railway Co.* (1846), 27 London Journ. 223.

public never gets the use of it, the person who afterwards invents and brings it into notice and use may still have a Patent for it.

The circumstances of the case, with reference to the object of the Law, it is evident must form in every instance the grounds of the decision. The effects, as we have seen in the case of apparently trifling alterations in processes or machines, are so disproportionate to the cause, and so many variable elements are necessary to concur in the success of experiments, that an invention may be approached within an almost indefinite distance without giving indications of its being attained. Success is the only proof of its attainment, and abandonment ought, in[t] fairness to others, to be considered constructive failure. Mr. Slaughter, in his evidence before the committee (1851), stated that he had tried nine screw propellers of various diameters, but of constant pitch. Being dissatisfied with the results he tried an increasing pitch, and thus unconsciously stumbled upon Mr. Woodcroft's invention, and finding that, took a licence from him.

Progressive improvements.

Looking to the nature of modern inventions,[u] it is hardly possible to over-estimate the importance of the decisions, originating with that of *Ex parte Fox*,[x] with reference to the progressive improvements in machinery. Our present carding machinery consists of no less than sixty,[y] and cotton[z] spinning machinery of upwards of *eight hundred Patents*, mainly in a regular course of improvement. As to an improvement on a machine or

[t] (1829) *Lewis* v. *Marling*, Web. P. R. 490; (1835) *Minter* v. *Mower*, Web. P. R. 139; (1843) *Household Co.* v. *Neilson*, H. of Lords, Web. P. R. 692, n. (*p*).

[u] The great mass of useful inventions is made up and must be, not of what is altogether new, but of improvements on what is already practised. (Westm. Rev. (1835), January.)

[x] 1 V. & B. 67, Lord Eldon, C. [y] Evid. 542.

[z] Evid. H. of Lords (1851), 545.

process protected by Patent being matter for Patent, his lordship said:—"If the Patentees have invented improvements upon an engine for which a Patent has been granted, and those improvements could not be used without the original engine, at the end of fourteen years the Patentees could make use of a Patent taken out upon their improvement, though before that period expired they would have no right to make use of the others *substratum*."

In *Boulton* v. *Bull*[a] it had been laid down by Buller, J., "that a Patent for an addition was good; but then it must be for the addition only," and such Patent conferred no right to the use of the *substratum*.

Stead v. *Carey*. In *Stead* v. *Carey*[b] the question of *substratum* was the material issue in the cause. The plaintiff's Letters-patent contained a clause of avoidance in the event of the Specification not being enrolled within four calendar months from the date of the grant (19 May, 1835). The Specification was enrolled within six, but not within four, months from the date. On the 29th July, 1839, the defendant, having improved on the plaintiff's invention, obtained Letters-patent. In 1841, an act[c] (local and personal, but to be judicially taken notice of as a public Act) was passed, confirming the plaintiff's Patent.

The point mentioned by Mr. Justice Erle is very important. "The Legislature," he says,[d] "has pointed out the mode in which void Patents may be rendered valid, and no exception is made in favour of parties who have taken out Patents in the intermediate time. If the defendant's Patent included the plaintiff's invention it would be void; if it was for an improvement only he is not injured; at all events he is not in a worse position than the rest of the public."

[a] Dav. Pat. Ca. 203 (1795). See *Morris* v. *Bransom*, cited in *Boulton* v. *Bull* (1795); Dav. Pat. Ca. 202; Web. P. R. 51.

[b] 1 C. B. 496 (1845).

[c] 4 & 5 Vict. c. xci. § 31.

[d] Page 523.

Obstructive Patents.

The metaphor before employed, of an adventurer into the unexplored regions of inventions, is one that serves well to explain, in this respect, the position of the Patentee. Some, in the ardour of scientific research, push forward actively in the van of civilization, while others lead the way only to block it up.[e] From the latter it is clear Society derives no advantage, and any concession of the position gained by the adventurer would be an obstruction, without a corresponding advantage to the public. In a recent case, a Patentee claimed the application of electro-chemical decomposition to electric telegraph purposes; and though the mode of applying it was very slow, and not at all available for the rapid transmission now required, yet that claim would have effectually obstructed, during the continuance of the monopoly, the use of the quickest mode of telegraphic communication now known. Similar instances might be stated in the history of most other important inventions, as every Patentee endeavours, by the multiplicity of his claims, to prevent further improvements in his own branch of manufactures.

Not hurtful to trade.

With regard to the reservation in the Statute of James, "that the new manufacture be not "hurtful to trade, nor generally inconvenient," we have seen that Patents, when granted on the principles[f] at present proposed by Patent Law, are highly conducive to the progress of manufactures. The grant of a monopoly, however, for an invention which is incomplete, and which, it must be remembered, our Law at present allows—(see *post*, "Amendment," "Disclaimer") is simply an obstruction to the general progress of that branch of trade, and may, indeed, be considered as[g] "mischievous to the State, to the hurt

[e] Instances cited in which the obstructive Patent had not been used; Evid. (1851), p. 368. See also Mech. Mag. (1852), p. 9.

[f] 3 Inst. 184.

[g] Stat. 23 Jac. I. c. 3.

of trade, and generally inconvenient,[g] within the meaning of the Statute of James the First;" for no addition to or improvement of such an invention could be made by any one during the continuance of the monopoly, without obliging the person using it to purchase the useless invention.[h]

In *R.* v. *Arkwright*,[i] the point was raised on a *scire facias*, to repeal the Patent, but Buller, J., considered "the issue merely a consequential one; it stated no fact which the defendant could come prepared to answer," and he therefore refused to hear any evidence in support of the allegation.

Prussian Law.

In this respect it is much to be regretted that some provision is not made, as in Prussia,[j] to the effect that, in the event of the Patentee not realizing within a certain time the pretensions put forward in his specification, he should forfeit the privileges conferred on him by the Patent,—laxity in the completion of the idea being exactly the reverse of that forcing process which Patents should produce.[k]

With reference to this point, one French writer[l] is of opinion that an inventor does not lose his right to the privilege by delay while he exercises his invention in secret; while another[m] thinks a distinction is to be made on this point, and that if the inventor delivers the product of his

[g] (1836) Parke, B., *Morgan* v. *Seaward* (paddle-wheels), 2 M. & W. 544; Web. P. R. 198.

[h] *Palmer* v. *Wagstaff* (1853), Exch. 1 C. L. Rep. 448 (candles), Pollock, C. B. "It is a fraud on the Law of Patents to take out a Patent with a view to the obstruction of improvements."

[i] (1785) Web. P. R. 71.

[j] (1851) Evid. 2167. Patent must be at work, with satisfactory results, within six months from the date of the grant.

[k] Turner, 29. See as to American Law on this subject, *Evans* v. *Weiss*, 3 Evans' Law Journal, 180, and *Goodyear* v. *Matthews*, 1 Paine's Rep. 301.

[l] M. Merlin (1825), Rep. Univ. et Raisonné de Jur., Brevet d'Invention.

[m] Renouard, c. 5, § 1, p. 173.

invention in the mean time, and others by examining and analyzing it detect the secret, he loses the privilege.[n]

In *Palmer* v. *Wagstaff*[o] it was stated, that, although the Patent dated from 1840, no use had been made of the invention in 1853. The case of *Bentley* v. *Fleming*[p] established that a machine does not become incapable of being patented by being kept a length of time by the Patentee after it has become complete and workable. The rules published under the new Act[q] have provided against the necessity of asserting the principle of *Hill* v. *Thompson*[r] and *Brunton* v. *Hawkes*,[s] that a Patent for two or more inventions, where one is not new, is void altogether.[t] They provide that "no warrant is to be granted for the sealing of any Letters-patent which contains two or more distinct substantive inventions." The most extraordinary instance of disregard of the principles of Patent law was evinced in the grant of Mill's Patent, which, under the title of "Instruments for writing and marking," included things so heterogeneous as "*penholders, pencils, seals and inkstands.*"[u] A perhaps still stronger was mentioned by Lord Campbell, in a recent judgment.[x] Even so lately as May, 1850, a Patent was enrolled "for improvements in *propelling and ploughing*."

One invention.

[n] *Hancock* v. *Somervell* (1851), 39 Rep. Arts, 158, substance to be used "*for shoes, slippers, floorcloth, and for a substitute for leather and other purposes.*"

[o] (1853) candles, 1 C. L. Rep. Exch. 448; Evid. H. of Lords (1851), 2167.

[p] (1844) 1 C. & K. 587, Cresswell, J.

[q] 2nd Set of Rules, 15 Oct. 1852.

[r] 8 Taunt. 375; 2 J. B. Moore, 424. [s] 4 B. & Ald. 541.

[t] See *Beard* v. *Egerton* (1849), photogrnphs, 8 C. B. 207.

[u] *Reg.* v. *Mill* (1850), 10 C. B. 379.

[x] *Crossley* v. *Potter*, carpets, printed case, 65. "I recollect perfectly well," said his Lordship, "when I was Attorney-General, a Patent being presented for my approbation, the title of which was 'Improvements in Locomotion,' and I said this title embraces every description of assistance from a balloon to a gocart or a walking-stick. I would not grant the Patent."

CHAPTER III.

THE PATENTEE.

THE legal interpretation of "the true and first inventor" furnishes another instance of the extent to which the subjective treatment of Patent Law has succeeded in infixing a technical meaning upon words, almost subversive of their original signification. Its progress has been similar to that above detailed. As in the subject matter intrinsic merit in the improvement has gradually been postponed to the extent of the improvement effected by successive decisions, so here the practice has by degrees been established of viewing the Patentee merely[a] as the channel through which the public is to be made acquainted with the invention in detail. The decisions on this head, it is true, are unusually conflicting and confused; yet amid the *melée* this principle (the only one reconcileable with the general theory of Patent rights) may clearly be discerned. Subject to the deductions to be hereafter made, the "*true and first inventor*, within the terms of the Statute, *is the publisher by means of a specification of the invention*" above defined.[b]

"If I discover a certain thing for myself," says Bailey, J.,[c] "it is no objection to my claim for a Patent that another also has made the discovery, provided I first introduced it into public *use*."

Bogue's *Patent.*

This view of the subject here asserted was adopted by the present Chancellor in a very recent case,[d] on an ap-

[a] Supra, 49, n. (*q*).

[b] *Stead* v. *Anderson* (1847), wood paving, 16 L. J. (N. S.), C. B. 251, per Wilde, C. J.

[c] *Lewis* v. *Marling* (1829), K. B., clothshearing machine, 10 B. & Cr. 27.

[d] *In re Bogue's Patent*, L. C., printing surfaces suitable for type or engraving, April 25, 1854.

plication made by Bogue to seal a Patent for an invention of a French gentleman named Martin. The application dated from October 24, 1853. The warrant of the Attorney-general and the permission of the Solicitor-general, who had assented to the application, had been granted. The application was opposed by Vizetelly, who asserted that Martin had pirated the invention from M. Gillot, who held the French Patent and had disposed of his interest to him, Vizetelly. The Court held that Bogue had purchased the invention *bonâ fide* from Martin, and that the mode in which Martin had become possessed of it did not affect the question. It was quite sufficient that Bogue believed the vendor to be the inventor. The Patent was ordered to be sealed, Vizetelly to pay the costs of the opposition.

D'Arcy v. *Allen*.

Baker's Patent.

Mansell's Patent.

Edgbury v. *Stephens*.

The earliest indications of this principle are in the decision of the case of monopolies,[d] and in the provisions of Baker's[e] and Mansell's[f] Patents. In *Edgebury* v. *Stephens*[g] the point seems to have been first raised upon the wording of the Statute. It was there decided that the introducer into England of an invention in use beyond seas was an inventor within the terms of the Statute, which was "intended to encourage new devices useful to the kingdom, and whether learned *by travel or study is the same thing*." Subsequent cases have proceeded on the same grounds. In *Beard* v. *Egerton*[h] the argument that a Patentee must be meritoriously connected with his invention was disallowed; and if the remarks of Lord Brougham in a recent case[i] may be taken to be Law, the necessity supposed to exist for a "communication" from a foreigner to a British subject no longer exists.

Beard v. *Egerton*.

[d] *D'Arcy* v. *Allen*, 44 Eliz. (A.D. 1602); Web. P. R. 6.

[e] 4 Feb., 6 Jac. I. malt; Web. P. R. 9.

[f] 22 May, 21 Jac. I., glass; Web. P. R. 17.

[g] 3 W. & M., rollers instead of carriage wheels; 2 Salk. 447.

[h] (1846) 3 C. B. 97, photographs; (1847) 2 C. & K. 667, Wilde, C. J.

[i] *In re Berry's Patent* (1850), 7 Moo. P. C. 189.

Berry's Patent.

"The Patent Law,"[k] says his Lordship in that case, "is framed in a way to include two species of public benefactors; the one those who benefit the public by their ingenuity, industry and science, and invention and personal capability; the other those who benefit the public, without any ingenuity or invention of their own, by the importation of the results of foreign invention. Now the latter is a benefit to the public incontestably, and therefore entitled to be placed upon somewhat, if not entirely, the same footing as inventors."

Principle of French Law.

It is in this spirit the French Law has determined that persons civilly dead, that is, who have abjured, or who by way of punishment have been deprived of the rights of civil society, may, notwithstanding such disability, apply for and take out a Patent; though they cannot pursue any person for infringing it, or otherwise derive any benefit from contracts made respecting the use of it.[l] On the hypothesis that the transaction is one by which society is the gainer, the question of the disqualifications of a Patentee receives a ready solution. Viewed from a legal point he is simply the vehicle for communicating the particulars of an important invention; and, provided he can discharge this duty satisfactorily, it is sufficient.

Minor.
Feme coverte.

Nothing prevents a Patent being taken out by an alien,[m] a minor or a married woman, though in the latter case the property in it would, as a matter of course, belong to the husband. An American writer[n] considers the position of the minor as similar to the finding by him of treasure trove.

Bankrupt.

A bankrupt is not disqualified pending the proceedings

[k] *In re Berry's Patent* (1850), 7 Moore, P. C. 189: *Beard* v. *Egerton* (1849), 8 C. B. 165, photographs.

[l] Renouard, p. 311, ch. 8, § 2.

[m] *Bloxam* v. *Elsee* (1825), paper, 1 C. & P. 558; *Beard* v. *Egerton*, (1849), 8 C. B. 165.

[n] Phillips (1837), p. 72.

in bankruptcy, but the Patent when obtained is affected by the previous assignment of the commissioners and vests in the assignees.[o] The interest of an insolvent in Letters-patent will pass under the assignment made by him to the provisional assignee.[q] Insolvent.

The source whence the Patentee may have drawn his information, provided it be not one open to the public, is a matter of which the Law (except in the particular cases hereafter mentioned) *refuses to take cognizance.* The introducer of the invention into actual practice is *primâ facie* assumed to be the inventor.[p] The source of invention immaterial.

Here again, although the preponderating authority is clear, we have the opinions of several very able judges and writers to a directly opposite effect. "It is not only necessary," says Bailey, J.,[r] "that the manufacture for which the Patent may be granted should be new, *but the person to whom the grant may be made must be the true and first inventor thereof*;" thus directly importing the merit of the Patentee into the question. *Brunton* v. *Hawkes.*

In *Minter* v. *Wells*,[s] Alderson, B., thus expressed himself—"If *S. suggested the principle* to M., then *he would be the inventor*; if, on the other hand, *M. suggested the principle to S.* and S. was assisting him, then *M. would* *Minter* v. *Wells.*

[o] *Hesse* v. *Stevenson* (1803), paper from refuse, 3 B. & P. 565, Alvanley, C. J.; *Nias* v. *Adamson* (1819), K. B. 3 B. & Ald. 225; *Longman* v. *Tripp* (1805), C. B., bookseller, 2 N. R. 67; *Coles* v. *Barrow* (1813), C. B., clothdresser, 4 Taunt. 754; *In re Feaver*, Times, Feb. 20, 1853; *Ex parte Granger*, Evans' Stat. Bank. 64. By the French law, the Patent, if taken out before his discharge, operates for the benefit of the creditors. (Renouard, p. 312, ch. 8, § 2.)

[p] 7 Geo. IV. c. 57, ss. 11 & 57, and 1 & 2 Vict. c. 110.

[q] *Walton* v. *Potter* (1841), caoutchouc cards for carding wool, &c., Web. P. R. 592; *Cornish* v. *Keene* (1835), elastic fabrics, Web. P. R. 508; *Minter* v. *Wells*, chairs, Web. P. R. 131.

[r] *Brunton* v. *Hawkes*, 4 B. & Ald. 553. See *contrà*, *Nickels* v. *Ross* (1849), C. B. 8 M. G. & S. 679.

[s] Web. P. R. 132

be the inventor, and S. a machine which M. uses for the purpose of carrying his original conception into effect. They were together at the time of the invention, and it is for the jury to decide which of the two suggested the invention, and which carried it into effect."

Gibson v. Brand.

In *Gibson* v. *Brand*,[u] Tindal, C. J., expressed himself very much to the same effect. "A man may publish to the world that which is perfectly new in all its use, and has not been before enjoyed, and may yet not be the first and true inventor; he may have borrowed it from some other person; he may have taken it from a book; he may have learned it from a specification, and then the *Legislature never intended that* a person who had taken all his knowledge from the act of another, from the labours and assiduity or ingenuity of another, should be the man who was to receive the benefit of that other's skill."

Hindmarch. Corporations.

Mr. Hindmarch very boldly pushes his theory[v] to its extreme in this regard, and places corporations among the parties incapacitated, because[w] "*invention is an act of the mind, which clearly could not proceed from a corporation.*" "It has been erroneously supposed," he says,[x] "that there is a class of persons who may become true and first inventors within the meaning of the law, besides actual inventors and importers of foreign inventions. And it has been said, that in addition to discoverers of new inventions and importers of foreign inventions, the

[u] (1841), silk spinning, Web. P. R. 628; Dav. Pat. Ca. 61.

[v] A summary of this writer's proposed amendments in the Law of Patents, p. 54 (1851), contains the following suggestions, among others: "No Patent to be granted to any person except the actual inventor or his assignee." "A person to whom an invention shall have been communicated by a foreigner shall not be deemed an inventor;" and "Publication in a foreign country after, say twelve months, to be held equivalent to publication here."

[w] On Patents (1846), p. 34.

[x] Ib. p. 30.

[y] Ib. p. 22.

first publishers or introducers of inventions may maintain Letters-patent for them. But it is clear that this supposition is founded in error, for any new invention which a person may possess the knowledge of must either have been discovered by the possessor himself or by some other person. We have seen that an actual inventor can maintain a Patent for his invention, but no one can support a Patent for an invention communicated to him by a fellow countryman in England; and therefore it seems that the only other class of inventors within the meaning of the law besides discoverers, are those who become possessed of foreign inventions, and whom we have termed importers. *The Patentee must himself make the discovery or invention; the idea of it must originate in his own mind,*[y] *and must not be suggested to him by another,*[z] *or taken from a book*[a] *or from anything else.*"[b] Mr. Godson, too, asserts,[c] that "*no person who has not without assistance*[d] *formed the original idea of the subject in his own mind* will be enabled to keep any Patent he may have obtained." Practice, however, has firmly established the contrary as a rule. An alien may become a Patentee,[e] prosecute a *scire facias*[f] for a repeal, or petition[g] for the extension of a Patent. Godson.

"If," says Mr. Williams,[h] "the original inventor Williams.

[y] *Jones* v. *Pearce*, Web. P. R. 124.

[z] *Tennant's case*, Web. P. R. 125.

[a] *Arkwright's case*, Dav. Pat. Ca. 61; *Hill* v. *Thompson*, 8 Taunt. 375; S. C. 2 B. Moo. 424.

[b] *Carpenter* v. *Smith*, Web. P. R. 535.

[c] 2nd ed. 27.

[d] "It was the permitting inventions published in another country to be good subjects of Patents in this, that brought us all our trades." (1851), Evid. 2365.

[e] *Beard* v. *Egerton* (1849), photograph, 8 C. B. 165; *Bloxam* v. *Elsee* (1825), 1 C. & P. 558, as to in trust for an alien enemy (?)

[f] *R.* v. *Prosser*, 11 Beav. 306.

[g] *In re Berry's Patent* (1850), 7 Moo. P. C. 189.

[h] On Personal Property (1853), p. 183.

should sell his secret to another, such other person cannot obtain Letters-patent for the invention in his own name; but the original inventor must obtain the Letters-patent and then assign them to the other"—a proposition involving principles utterly incompatible with practice, and one ultimately detrimental to the interests of the inventor, although put forward with the object of protecting him.[d]

Inventor in fact and in law.

The inventor, in point of fact, is, therefore, not identical with the inventor in point of Law. An attempt to discover the former from among the host of claimants to almost every discovery of importance, shows the necessity of avoiding altogether the introduction of an ingredient itself so undecided into a branch of Law in which there are so many varying elements. Those acquainted with the peculiarities of inventive genius know how little reliance can be placed upon their claims—and how apt all are to appropriate *bonâ fide*[e] the results of the labours of others. Mr. Brunel is of opinion,[f] that few valuable inventions have proceeded from schemers or professional inventors—the greater number have been from practical operatives and men of observation. Speaking of the Electric Telegraph,[g] Mr. Brunel says, "Messrs. Cooke and Wheatstone[h] were the first to put it into practical operation; but there are plenty of persons who have claimed, whether rightly or wrongly I cannot say, subsequent modifications, and the vast variety of apparatus which may be patented connected with the Electric Telegraph has led to their being under

[d] In *Hill* v. *Thompson*, 8 Taunt. 395, it is laid down, that if a servant make an improvement his master is not entitled to take out a Patent for it.

[e] Turner on Patents, 37.

[f] (1851) Evid. 1778.

[g] Evid. (1851), H. of Lords 1784.

[h] As to relative merit of Œrsted and Wheatstone, see (1851) Evid. Sir D. Brewster, 2188.

the necessity of buying up an immense number of Patents. I believe you will find fifty people who say that they invented it also." "In nine cases out of ten," said another witness,[i] "if you conceive the principle of the invention, any intelligent workman may carry out the detail for you."

Public interest the main test.

Attempts to assign the inventorship to the meritorious party have indeed been made in numerous instances, although attempt to view the matter on any narrower consideration than on public grounds has given rise only to confusion. "Though some one else," says Mr. Justice Cresswell,[k] "may have invented it also, although it *may have been in use before, yet if the plaintiff did not derive his information* from the former use of it in this country, or from any person in this country, or from any source of information in this country, but in the manner specified, then he is *in the eye of the Law an inventor*"—a decision clearly holding out a premium to ignorance. The interests of Society are, however, now admitted to be the leading consideration, and these are benefited more by reduction to practice than the theoretical discovery of principles. The objection to Dollond's Patent (achromatic telescope) was, that he was not the *inventor* of the new method of making object glasses, but that Dr. Hall had made the same discovery before him. But it was holden, that as Dr. Hall had confined it to his closet, and the public was not acquainted with it, Dolland was to be considered as the inventor."[l] "*So far as relates to the interests of the public*," said Tindal, C. J.,[m] "Berry has all the merits of the first inventor."

Dollond's Patent.

[i] Evid. 746; F. W. Campin, P. A.

[k] *Newton* v. *Grand Junction Railway Company* (1845), 27 London Journ. 221.

[l] Buller, J., *Boulton* v. *Bull* (1795), 2 H. Bl. 470—487.

[m] *Beard* v. *Egerton* (1846), 3 C. B. 97, photographs.

Tennant's case.

In *Tennant's case*,[o] the public derived the benefit through him as completely as though he had himself discovered the principle. It was there endeavoured to upset the Patent, on the ground that some one had "suggested the idea." The admission, for a moment, of such an argument, introduces a whole multitude of difficulties. Occasionally, indeed, by a very pardonable sympathy with genius, judges have lost sight of the theory which refers everything to the interests of the State, in attempting to adjudicate between the conflicting claims of individuals, even where no question of fraud has been raised.

Cornish v. Keene.

In *Cornish* v. *Keene*,[p] the learned judge before-mentioned evinced a similar desire to descend to the personal merits of the Patentee. The Patent, he says, is granted as a reward of merit in the discovery as well as for the benefit received by the public; and although it is proved that it is a new discovery as far as the world was concerned, yet if anybody is able to show that the party who got the Patent was not the man whose ingenuity first discovered it,—that he had *borrowed it from A. or B., or taken it from a book* that was printed in England and which was open to all the world, then, although the public had the benefit of it, it would become an important question whether he was the first and original inventor of it. The connection of the two sources of information shows at once the non-recognition of the principles above laid down as ruling modern decisions. Society now declares that the addition of the wanting link shall be decisive of the claim to the whole chain.

Howard's Patent.

One of the most productive Patents ever granted was Howard's, for boiling sugar *in vacuo*. Its history is illustrative of the operation of inventive skill. The idea originated with Mr. Howard, who, with the assistance of

[o] Dav. Pat. Cas. 129; *Minter* v. *Wells*, chairs, Web. P. R. 131; *Bloxam* v. *Elsee* (1825), 1 C. & P. 558.

[p] (1835) Tindal, C. J., elastic fabrics, Web. P. R. 508.

Messrs. Boulton and Watt, perfected, as he conceived, its realization. It was tried, and proved an entire failure. A suggestion of a slight improvement by a German workman rendered the whole thing complete after a lapse of some time. The Patent was then worked, and ultimately produced 40,000*l.* or 50,000*l.* a-year.[q]

It is however not a matter of option whether the State will or not allot its favours according to individual merit.[r] Persons most conversant with the subject have declared their inability to decide upon it, and have shown the entire profit, so far as the public is concerned, from some of the most important inventions, to have been the result of improvement in the pettiest detail. It is impossible to define how far the *idea* or the practical realization of it forms the prominent part of the invention.[s]

Reasons for the law.

As a reason for placing the importer on the same footing with the inventor with reference to the first use of new machinery, it was stated before the committee of the House of Lords, 1851,[t] that the first application of it in this country had always involved great outlay, and that, when once established, others can in many instances adopt it at vastly reduced expense. Prejudice against new inventions, although very materially modified by the spread of intelligence at the present day, is still a very material bar to the remuneration of the introducers of some.

Say.

M. Say informs us that when the first cotton manu-

[q] Evid. (1851), Fairrie.

[r] Evid. Campin, H. of Lords (1851), No. 746; *Minter* v. *Wells*, Web. P. R. 131; *Bloxam* v. *Elsee* (1825), 1 C. & P. 558; R. & M. 187; 6 B. & C. 169; 9 D. & R. 215. The auxiliary labour of Donkin in *realizing* the invention in the latter case was greater than that of most "inventors."

[s] *Barker* v. *Shaw*, Web. P. R. 126; *Hill* v. *Thompson*, 8 Taunt. 394.

[t] Evid. 2377, Prosser, C. E. See also Select Committee on Machinery (1831), p. 243; Babbage on Economy of Manufactures; Turner on Patents, 5.

factures were introduced into France, petitions from all the incorporated large towns, from merchants and silk weavers, were sent to Paris, clamouring in vehement terms against the "ungodly calico prints." Rouen, now the busiest of all the French cotton manufacturing places, was among the foremost; and the petition of the united three corporations of Amiens ended thus:—"To conclude, it is enough for the eternal prohibition of the use of printed calicoes that the whole kingdom is chilled with horror at the news of their proposed toleration. Vox populi vox Dei." We now know that the cotton tissue has become one of the greatest blessings of our race, giving comfort, health and respectability to entire masses of men formerly doomed to tatters, filth and its fearful concomitants,—typhus and vice; and we know too cotton manufacture is one of the most lucrative branches of French industry.[u]

As an instance of the *practical* neglect of manufacturers to inquire into foreign manufactures, a case was cited by a witness, a Patentee (Mr. Roberts, C.E.),[x] before the Committee in 1851, in which an invention openly used in France was unknown in Birmingham, where the article was largely manufactured. The improvement enabled them in France to do in a minute what in Birmingham could not be done in an hour. "In passing through Birmingham," said this witness, "I called upon a man who is considered the first in the trade there and showed him one of the articles. He seemed much excited. He put up his hand and said, 'If any man will tell me how that is done I will give him 100*l*.' When I afterwards told him it had been done at one blow, he said, 'We could not do such a thing without fifty blows and ten annealings.'"

Discoverer of a principle.

We have seen[y] that on the great preponderance of cases, as well as on general grounds, a "principle" is

[u] Lieber (1853), on Civil Liberty and Self-Government, 365.

[x] (1851) Evid. 1286.

[y] Ante, p. 70.

not a good subject matter of a Patent. The discoverer of such a principle or property of matter cannot consequently have a right to its exclusive use, further than is necessary to secure him the monopoly of the objects to whose improvement it is applied. To treat this as beyond controversy in the presence of such respectable authority on the other side would be absurd, a very wide diversity of opinion having existed on the Bench upon this point. Such, however, appears to be the principle maintainable on general grounds, and best capable in practice of being fully acted out. "A person who discovers a principle," says Abbott, C. J.,[z] "and also some mode of carrying that principle into practice so as to produce or attain a useful effect or result, is entitled to protection *against all other modes of carrying the same principle into practice* for obtaining the same effect or result."

"*You cannot take out a Patent for a principle*," says Alderson, B.[a] "You may take out a Patent for a principle coupled with the mode of carrying the principle into effect, provided you have not only discovered the principle, but invented some mode of carrying the principle into effect. But then you must start with having invented some mode of carrying the principle into effect; if you have done that you are entitled to protect yourself from all other modes of carrying the same principle into effect, that being treated *by the jury* as piracy of your original invention."

An object identical with one already in public use, provided it be produced in an improved manner, may be the subject of a Patent, and the promulgator of the improvement a Patentee. "It has happened to me,"

[z] (1819) *Forsyth* v. *Rivière* (firearms), Web. P. R. 97; (1836) *Jupe* v. *Pratt*, Exch. (expanding tables), 144; (1829) *Crossley* v. *Beverley* (gas apparatus), Web. P. R. 113; (1841) *Neilson* v. *Harford* (iron), Web. P. R. 341.

[a] *Jupe* v. *Pratt* (1837), Exch. (expanding tables), Web. P. R. 146.

says Lord Ellenborough,[g] "*in the same morning* to give, as far as I was concerned, my consent to the granting of *three different Patents for the same thing*: but the modes of attaining it were all different, and I thought I was entitled to receive them."[h]

Joint stock principle.

One important result of modern experience relative to Patents has been to abate the apprehensions formerly entertained of the effect of extensively introducing the Joint-Stock principle into trade. The mischief caused by gambling in transferable shares of bubble companies at the time of the South Sea project (A.D. 1720) was followed by the stat. 6 Geo. I. c. 18 (repealed by 6 Geo. IV. c. 91), reciting, that several undertakings or projects had been contrived and practised which manifestly tended to the common grievance, prejudice and inconvenience of great numbers of his Majesty's subjects in their trade and commerce, and prohibiting, under severe penalties, the raising or pretending to raise transferable stocks without authority of Charter or Act of Parliament.

To prevent an evasion of the Statute, Letters-patent for inventions were placed under the same restriction; and Patents usually contained a proviso that if the Patentee should transfer and assign the benefit thereof to any number of persons exceeding five[i] (extended in 1832, with the consent of the Board of Trade, to twelve) the Patent should be void. Acts of Parliament were frequently passed for the purpose of relaxing the restrictions.[j]

"It is apparent," said Best, C. J., in *Duvergier* v. *Fellowes*,[k] "from the facts disclosed by the conditions of this bond and from the Patents, that the scheme in which the parties to this action were engaged was one

g As Sir Edward Law, Attorney-General (1801).

h *Huddart* v. *Grimshaw*, Web. P. R. 92 (1803).

i *Bloxam* v. *Elsee* (1825), paper, 1 C. & P. 567; Holroyd on Patents, 137.

j Koop's Patent (paper) was made assignable to not more than sixty; *Hesse* v. *Stevenson* (1803), 3 B. & P. 565.

k (1828) C. B. 2 M. & P. 413.

of those bubbles by which, to the disgrace of the present age, a few projectors have obtained the money of a great number of ignorant and credulous persons, to the ruin of those dupes and their families, and by which a passion for gambling has been excited that has been most injurious to commerce and to the morals of the people; of which any one must discover from reading these instruments, that the parties to them must be fully informed. It cannot be too well known that there is no place for persons engaged in such transactions in Courts appointed for the decision of civil cases. Although the Statute 6 Geo. I. c. 18, is in part repealed, the Common Law relating to such schemes is expressly reserved by the repealing Statute (6 Geo. IV. c. 91); and no one doubts that if it can be shown, as it easily may, that such schemes are mere traps and injurious to the public welfare, the forming of them is an indictable offence at Common Law."

The late Statute, however, has lightened Patent Law of a tremendous load,[l] and effectually swept away all doubt as to the applicability of this species of capital, by expressly enacting,[m] that "it shall be lawful for a larger number than twelve persons hereafter to have a legal and beneficial interest in Letters-patent."

Some circumstances of the inventor are however noticed by the Law in spite of the rule which directs Patent rights to be viewed only from the public side. By the Patent Law Amendment Act[n] provision is made for securing to the estate of the inventor the fruit of his exertions in the event of his dying during the interval between application and the grant of Letters-patent. Another instance in which the Law takes cognizance of the circumstances of the Patentee, notwithstanding

[l] *Duvergier* v. *Fellowes* (1828), 2 M. & P. 384; 10 B. & Cr. 826; 1 Cl. & Fin. 89; *Protheroe* v. *May*, 5 M. & W. 675; *Bloxam* v. *Elsee* (1825), 1 C. & P. 564; 6 B. & Cr. 169; 1 D. & Ry. 215.

[m] 15 & 16 Vict. c. 83, s. 36. [n] 15 & 16 Vict. c. 83, s. 21.

its general adherence to larger grounds, is that in which the Patentee has endeavoured to keep the invention secret until secured by a Patent. Disclosure in confidence and under an injunction of secrecy, although the means of laying the matter fully before the public, will not invalidate the Patent[m] either as regards the subject matter or the inventor.

In *Smith* v. *Dickenson*[n] the defendant agreed, "under the penalty of breach of honour and 1,000*l*.," not to take any undue advantage of a communication made to him of an invention for which the plaintiff intended to take out a Patent, but notwithstanding obtained a Patent for it in his own name. It was afterwards agreed that the Patent should remain in the Defendant's name upon certain terms, which terms, however, the defendant subsequently repudiated, insisting on the invention as his own. In an action of *assumpsit* the jury found a verdict for the plaintiff for 300*l*., the defendant agreeing to assign the Patent to the plaintiff for the remainder of the term at the defendant's own expense. The Court of Common Pleas was of opinion that the word "penalty" in the agreement effectually prevented them from considering the sum mentioned as liquidated damages.

Morgan v. *Seaward*.

In *Morgan* v. *Seaward*[o] it appeared, that, two months before the date of the Patent, two pair of the wheels were made for the plaintiff (the assignee of the Patent) at his own expense in his own factory, under the directions of the Patentee, who enjoined secrecy on the workmen concerned. The disclosure of the secret was held not to invalidate the Patent, there being sufficient evidence that the Plaintiff was at the time connected with the inventor

[m] *Smith* v. *Dickenson* (1804), Lord Alvanley, 3 B. & P. 630, C. B.; *Morgan* v. *Seaward*, 2 M. & W. 544 (confidential sale), Parke, B., Exch.; *Bentley* v. *Fleming* (1844), 1 C. & K. 587.

[n] (1804) 3 Bos. & P. 630 (spring for saddlegirths), C. B.

[o] (1837) Ex. paddlewheel, 2 M. & W. 562, Parke, B. See also *Bentley* v. *Fleming* (1844), card machine, 1 C. & K. 587.

and designed to take a share of the Patent. "A disclosure of the nature of the invention to such a person and under such circumstances," said Parke, B., "must surely be deemed private and confidential."

Rival applications.

In the event of simultaneous applications the decision of the claims is left to the law officer of the Crown.[p]

Incomplete inventions.

As to property in an invention before it has become complete, the Law refuses to interfere. A contract to execute a work of invention cannot, it is clear, be enforced, although it may be negatively withheld from execution for other parties.[q] An inventor may, however, maintain an action for breach of an agreement[r] respecting an invention for which he proposes to take out a Patent.[s]

Assignee, licencee, mortgagee.

Limitation of the rights created by the grant.

The principal interests in Letters-patent, subordinate to that of the Patentee, are those of the assignee, the licencee, and mortgagee of a Patent. On the principle of the illegality of general monopoly and the legal recognition of the rights of every subject to employ his capital and his labour as he will, the rights created by Letters-patent for inventions are limited to those expressly stated in the deed of grant.[t] The grant of the monopoly is to the inventor, "his executors, administrators and assigns," or, "such others as they shall agree with;" and provides, "that they and no others from time to time and at all times hereafter during the term of years herein expressed shall and may lawfully make, use, exercise and vend" the said invention.

Registration.

The New Act imports a fresh, and, it is to be hoped,

[p] *Re Griffith's Patent; Re Saunder's Patent* (1845), atmospheric railway tubes, 5 L. T. 141.

[q] *Clark* v. *Price*, 2 Wils. C. C. 157.

[r] See, as to a somewhat similar case, *Lumley* v. *Wagner* (1852), contract to sing, 1 De G. M'N. & G. 601, overruling *Kemble* v. *Keen*, 6 Sim. 333; and *Kimberley* v. *Jennings*, 6 Sim. 340.

[s] *Smith* v. *Dickenson* (1801), 3 B. & P. 630.

[t] *Duvergier* v. *Fellowes* (1828), 10 B. & C. 829.

very beneficial[u] feature into Patent Law, by the provision,[v] that "there shall be kept at the office for filing Specifications in Chancery a 'Register of Proprietors,' wherein shall be entered, in such manner as the Commissioners shall direct, the assignment of any Letters-patent, or of any share or interest therein, any licence under Letters-patent, and the district to which such licence relates, with the name or names of any person or persons having any share or interest in such Letters-patent or licence, the date of his or their acquiring such Letters-patent, share and interest, and any other matter or thing relating to or affecting the proprietorship in such Letters-patent or licence: and a copy of any entry in such book, properly certified,[x] shall be received in evidence in all Courts and proceedings, and shall be *primâ facie* proof of the assignment of such Letters-patent, or share or interest therein, or of the licence or proprietorship as therein expressed." Until such entry, the grantee is to be deemed the sole and exclusive proprietor of the Letters-patent, and of all the licences and privileges thereby given and granted. The efficiency of the Registration, to the principle of which so fair a trial is offered, will depend much upon the first decisions on contested cases, and the extent to which the Registry books are deemed *conclusive* evidence as to the property.[y]

[u] As an illustration of the value of an authoritative register of Patents easily accessible, a witness (Fothergill, Evid. 1433) before the Committee in 1851 stated, that he had found by searching that there had been fifteen Patents taken out since 1843 for the same thing. They were all with regard to the same principle, and some of them the same process of applying the principle.

[v] 15 & 16 Vict. c. 83, s. 35.

[x] Subject to a stamp of five shillings. Erroneous entries in the Register may be expunged by an order of the Master of the Rolls of any of the Courts of Common Law in term time, or any judge thereof in vacation (15 & 16 Vict. c. 83, s. 37).

[y] See as to the somewhat analogous case of shipping, *Ex parte Yallop*, 15 Ves. 60, where the registry books were held to be conclusive

A Patent is assignable by deed or will. If the Patentee die intestate, it is assets in the hand of the executor.[z] It may also be seized and sold in execution by the sheriff under a *fieri facias*.[a]

Assignable by deed or will.

May be sold in *fi. fa.*

The terms of the grant prescribe no peculiar form of alienation of the property it creates, but places, to a certain extent, those whom the Patentee "agrees with," on the same footing with himself. The technical rule cited by some writers,[b] that things, which can only be granted or created by deed, can only be assigned by deed, is clearly inapplicable on analogy. Licences must, by the provisions of the letters, be under "the hand and seal" of the Patentee, and *à fortiori* it is argued, an assignment should be so too.[c] If, however, the licence be by deed, the revocation of it should also be by deed.[d]

The effect of Letters-patent is to put a prohibition upon the public with respect to certain things, subject, however, to a proviso for relaxation by the Patentee of such prohibition in favour of such other "as he may agree with." The effect of a licence is to remove such prohibitions, so far as the licencee is concerned. To impose *à priori* any arbitrary conditions[e] upon the contracts for such relaxation,[f] or to insist on any indefeasible vir-

evidence of the property upon the policy, even against the claims of creditors upon a joint purchase and various acts of apparent ownership within the Bankrupt Act, 21 Jac. I. c. 19, § 11; *Greswold* v. *Marsham* (1681), 2 Cha. Ca. 170; and see Plowden's Impartial Thoughts upon the Beneficial Consequences of Inrolling (1799), p. 36.

[z] *Ex parte O'Reily* (1790), Italian Opera, Lord Eldon, C., 1 Ves. jun. 118; *Hesse* v. *Stevenson* (1803), paper, 3 B. & P. 573.

[a] Webster on Patents (1811), Law and Practice, 23.

[b] *Davergier* v. *Fellowes*, 10 B. & C. 829; Hindm (1846), 234.

[c] *Power* v. *Walker* (1814), copyright, 3 M. & S. 9.

[d] Noy, 4; *Winter* v. *Fowcracres*, 2 Rol. 39; *Thompson* v. *Brown*, 7 Taunt. 656.

[e] Hindm. 240—3.

[f] "A licence is not really assignable," says Jervis, C. J. (*Bower* v. *Hodges* (1853), 22 L. J., C. B., 198). "The assignment acts only as an estoppel between the parties."

tue in the Patentee, is clearly calculated materially to prejudice the Patentee, by depriving his privilege of its marketable quality.

Assignment.

The insertion of a covenant by the Patentee to amend and disclaim in the matter of the Patent as and when directed by the assignee, and not otherwise, the assignee on his part covenanting to hold the assignor harmless from all consequences of such amendment and disclaimer, seems to be rendered necessary by the cases of *Fisher* v. *Dewick*,[g] *Spilsbury* v. *Clough*,[h] *Wallington* v. *Dale*,[i] and others, it which it has been held that the Patentee, after assignment, still retains the power of affecting the privilege by amending or disclaiming.[j]

Covenants.

In *Hesse* v. *Stevenson*[k] (Koop's Patent), there was a covenant by the assignor of certain shares in the Patent that he had good right to convey, and that he had not forfeited any right he might ever have had over the same. It was held, that the generality of the former covenant was not restrained by the latter. A Patentee who has conveyed away his interest is estopped in an action of infringement by his assignee from denying his title to convey.[l]

Bower v. *Hodges.*

"Licensing a person and his assigns," said Maule, J.,[m] "is licensing him and all whom he shall license. You cannot say there is any particular form for passing a licence." In *Baird* v. *Neilson*,[n] the agreement between a Patentee and licencee was upheld, notwithstanding the

[g] (1838), lace, Web. P. R. 265.

[h] 2 Q. B. 466.

[i] 19 L. T. 187, Exch. (1852).

[j] In the analogous case of a lease (*Doe* v. *Bateman*, 2 Barn. & Ald. 168), where the lessee demised the premises for a term co-extensive with his own, reserving rent and subject to certain conditions, no doubt seems to have been entertained that this was an assignment of his whole interest. (Platt on Leases, i. 12.)

[k] (1803), paper, 3 Bos. & P. 595.

[l] *Oldham* v. *Langmead* (1789), Lord Kenyon, Web. P. R. 291.

[m] *Bower* v. *Hodges* (1853), 22 L. J. (N. S.), C. B., 194.

[n] (1842), iron, 8 Cl. & Fin. 735.

introduction into it of matter which was not the subject of the Patent.

Licence. Implied covenants.

In a recent case,[n] the question as to the covenants implied by Law in a deed of licence, arose with reference to the assignment of a licence. A., there the Patentee of machinery for making iron pipes, granted by deed to B. and his assigns the exclusive licence to manufacture them, B. yielding a royalty of so much for every ton manufactured or sold by him or his assigns, and to account. B. subsequently assigned his interest in the licence to the plaintiff, who transferred it to M. and R., in trust for the defendants; and the defendants covenanted with the plaintiff to perform the covenants made by B. to A. in the first deed. It was held, that the covenant to account was no qualification of the covenants to pay the royalties, but merely auxiliary to it.[o]

In *Tielens* v. *Hooper*,[p] the deed of licence contained a covenant by the licencee to pay the royalties during the term of licence, and an agreement that in the event of the royalties not being paid, it should be lawful for the said plaintiff, by writing signed by him and indorsed on the said indenture or duplicate thereof, to declare that the said indenture and the powers and licence thereby granted should cease and determine. It was held, that this was not an absolute covenant on the part of the defendant to pay the minimum royalty during the whole term, but an alternative covenant enabling the plaintiff to put an end to the licence on non-payment of the stipulated sum by the defendants. This case would appear to establish the position, that non-payment of the rent by the licencee will not work a forfeiture of the lease, without express stipulation to that effect, a position removed from any assistance that might arise from the

[n] (1853), iron tubes, *Bower* v. *Hodges*, 22 L. J., C. B., 194.

[o] See also *Line* v. *Stephenson*, 5 Bing. N. C. 183; S. C. 7 L. J. (N. S.), C. B., 263.

[p] (1850) 5 Exch. 830.

analogy with regard to similar relations between a landlord and his lessee. In the case of a lease, with a condition for re-entry for non-payment of rent, in the event of the rent being in arrear, the lessor may re-enter, but when the lessee pays or tenders upon the land all the arrears, he may enter again. The lessor, however, by such re-entry gains no estate, but an interest by the agreement of the parties to take the profits in the nature of a distress. Here the profits shall not go in part satisfaction of the rent, but it is otherwise if the lessor was to hold the land till he was paid by the profits thereof.[q] Again, if there be a lease for years rendering rent,[r] with condition that if the lessee assign his term, the lessor may re-enter, and the lessee assign without the knowledge of lessor, the acceptance by the lessor of rent from the assignee does not extinguish the right of re-entry in the lessor.

Some writers have attempted to divide licences under various heads, as general, exclusive, revocable and irrevocable, and the like. Such classification, however, seems useless. The nature of the property in the Patentee suggests the conditions on which he can sub-divide the interests it confers. The analogy of a term before remarked, furnishes considerable assistance to our consideration of this part of the subject. A licence of the exclusive use of the invention, over all parts of the realm mentioned in the Patent, amounts to an assignment to the licencee, in the same way that a demise by a lessee of the premises comprised in his lease, for the whole of the term granted to him, amounts to the assignment to the underlessee.[s]

The distinction, says Mr. Turner,[t] as to exclusiveness is material; without it the licence only removes a pro-

[q] Co. Litt. 203. [r] 3 Rep. 65; Cro. Eliz. 553.

[s] *Palmer* v. *Edwards*, 1 Day, 187. n.; *Paminter* v. *Webber*, 8 Taunt. 593; 2 B. Moo. 656; Shep. Touch. 266; Hindm. 241.

[t] On Patents, 68.

hibition, but with it confers a right. Covenants for payment are essential, and for annulling the licence on a certain extent of arrear. A mere licencee cannot, it appears, in any case maintain an action for an infringement of the Patent.[u]

Warwick v. Hooper.

In *Warwick* v. *Hooper*[x] the plaintiffs, the assignees of a Patent, granted a *licence* to the defendant to use the Patent upon the terms of his paying an annual rent of 2,000*l.* to be made up at the end of each year, and reserved to themselves the power of determining the licence in the event of default being made in payment of this rent. The defendant failed in paying the rent, but the Plaintiffs notwithstanding for several years allowed the defendant to use the Patent, and received from him a less annual sum than that stipulated. At length, however, they determined the licence, having subsequently to the expiration of the previous year received from the defendants payment on the footing of the reduced rent:—Held, that by so doing the plaintiffs had elected not to treat the previous breach as a forfeiture of the licence, and that consequently they were not entitled to an injunction restraining the defendant from using the Patent.

In *Pidding* v. *Franks*,[y] on a bill by the Patentee against the equitable assignees of a licence, praying an account and an injunction to restrain them from committing breaches of the assignor's covenants in the deed of licence, the assignees admitted their character, but stated that they had discontinued to use the Patent, and that it was invalid. Upon a motion for an injunction, it was ordered to stand over, with liberty for the plaintiff to bring such action as he might be advised. The Court refused to put the equitable assignees of the licence under terms to admit the execution by them of a deed

[u] Per Lord Abinger, in *Derosne* v. *Fairie* (sugar), Web. P. R. 154.
[x] (1850), knitting machinery, 3 M'N. & G. 60.
[y] (1849), self-clarifying coffee, 13 Jur., Ch., 593.

containing covenants similar to those by their assignor, or to admit the validity of the Patent.

A Patentee may file a bill against a licencee and his partner for an account and *an injunction* to restrain them from using the invention, if they should dispute his right to the payments reserved by the deed of licence, on the ground that the licence had become void.[z]

Mortgage.

In the case of a bankrupt[a] who had mortgaged his Patent *remaining in the notorious use of it*, Lord Eldon, C., inclined to think the right passed to his assignees, and that the right of the mortgagee was not good as against creditors. A case was directed to be stated for the opinion of the King's Bench, but does not appear ever to have been argued.

[z] *Haddan* v. *Smith* (1847), railway wheels, V. C., 16 Sim. 43.

[a] *Ex parte Granger* (1812), Evans's Statutes, vol. iv. p. 67, n.; Godson, 2nd ed. 225; Deacon on Bankruptcy, by De Gex, i. 414.

CHAPTER IV.

THE SPECIFICATION.

The consideration for the grant of Patent privileges is, as we have seen, that the invention shall at the expiry of the term become the property of the public; and for this purpose the early Patents contain a clause[a] requiring the inventor "to take apprentices and teach them the knowledge and mystery of the said new invention," a practice which, as Coke suggests, led to the adoption of fourteen years as the term of privilege, "that others might by seven years' apprenticeship and seven years' practice acquire the invention."

The consideration for the grant.

Former practice.

Early in the last century a very important change[b] was introduced by the substitution, on the authority of the Law officers of the Crown, of the present channel for affording the public the required information. It consists of an instrument, termed the Specification, under the hand and seal of the Patentee, required to be filed in the Court of Chancery, describing the nature of the invention and the means necessary to its employment.[c]

Modern method.

The Act[d] confirming the Patent of the unfortunate Lombe contains a proviso "that his Majesty, under sign manual, may appoint two persons to inspect said three engines, and to take a perfect and exact model thereof,

Lombe's Patent.

[a] Scobell's Collection of Acts and Ordinances during the Commonwealth: Buck's Patent (1651); Web. P. R. 36.

[b] Web. P. R. 8, n.; Godson, 2nd ed. 108; Holroyd (1830), 100.

[c] The first Patent in which a specification was required appears to be that of John Nasmyth, 1st April, 1712; (1851) Evid. 1753, Woodcroft

[d] 5 Geo. II. c. 8; Web. P. R. 38 (1719), organzine silk.

and to deposit the same in such place as shall be appointed, to secure and perpetuate the art of making the like engines for the advantage of the kingdom."

Difficulty of preparing Specifications.

The difficulty of preparing this important document is very great,[e] and materially increased by the indecision before alluded to as to the prominent features of Patent Law, more especially the nature of the subject matter. The safest guide is to keep the objects of the Specification constantly in view. These, as determined by decisions, are two,—to afford a full disclosure of the invention and to furnish a statement of the claim made upon the public in respect of it by the Patentee. It contains therefore two distinct parts,—a description of the invention as perfected and an account of the means by which the perfection is produced.

Two objects.

For a document of so varying a kind[f] it is evidently impossible to prescribe any but the most general rules. A rough drawing may explain some with perfect accuracy,[g] an elaborate description and reference to esta-

e (1851) Evid. Lloyd, H. J. 2721.

f The rules here given are for the complete Specification, unless the contrary be expressed.

g Models are not received at the Commissioners' Office. In *Bloxam* v. *Elsee* (1825), paper, 1 C. & P. 568, it was contended that a Specification could not be made by drawings alone; it must be made by apt words intelligible to mechanics. "I take it to be clear," says Lord Eldon (*Ex parte Fox* (1812), steam engine, 1 V. & B 67), "that a man may, if he chooses, annex to his Specification a picture or a model descriptive of it; but his Specification must be in itself sufficient, or, I apprehend, it will be bad." In the United States the requisites for the Specification are defined by Statute. "Before any inventor," says the Act of Congress of 1836, § 6, "shall receive a Patent for any new invention or discovery, he shall deliver a written description of his invention or discovery, and of the manner and process of making, constructing, using and compounding the same, in such full, clear and exact terms, avoiding unnecessary prolixity, as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, con-

bished principles of science or known rules of trade may be necessary for others.[g] Its object, however, if steadily kept in mind, will serve to point out two qualities indispensable to it. It must be intelligently descriptive, and must be in perfect good faith. *Suppressio veri* or *suggestio falsi* are both fatal to the grant, as obtained by fraud upon the Crown.

The establishment of any one case as a precedent for another is clearly impossible in the interpretation of this instrument. In *Derosne* v. *Fairie*,[h] it was decided that "an inaccurate use of terms of art will not vitiate the Patent"—a decision manifestly inapplicable to most cases from the very object of the Specification. In *R.* v. *Metcalfe*,[i] Lord Ellenborough remarked, that "the meaning attached by the usage of trade to the term employed, if differing from its ordinary use, was to be used as the key of the Specification. In its interpretation reference must of course be had to the state of science and general knowledge at the time of its being filed."[k] Another in- No set form.

struct, compound and use the same; and in case of any machine he shall fully explain the principle and the several modes in which he has contemplated the application of that principle or character by which it may be distinguished from other inventions, and shall particularly specify and point out the part, improvement or combination which he claims as his own invention or discovery. He shall furthermore accompany the whole with a drawing or drawings, and written references where the nature of the case admits of drawings, or with specimens of ingredients, and of the composition of matter sufficient in quantity for the purpose of experiment where the invention or discovery is of a composition of matter; which descriptions and drawings, signed by the inventor and attested by two witnesses, shall be filed in the Patent Office; and he shall moreover furnish a model of his invention, in all cases which admit of a representation by model, of a convenient size to exhibit advantageously its several parts."

[g] *Beard* v. *Egerton* (1846), photographs, 3 C. B. 97.

[h] (1833) Exch., sugar, 1 Gale, 109.

[i] 2 Stark. N. P. 249; Phillips on Pats. 230.

[k] *Crossley* v. *Beverley* (gas-meters), 3 C. & P. 513; 9 B. & Cr. 63; M. & M. 283; Web. P. R. 106.

stance of the danger of applying *dicta*, with reference to special facts, to general cases, is that of Tindal, C. J., in *Haworth* v. *Hardcastle*.[l] "A Patentee is not presumed to claim things which *he must know to be in use*."

State of public knowledge.

The sufficiency of Specifications depends upon the amount of the knowledge presupposed in the public. In recent cases the decisions have proceeded on the grounds of common sense. "The meaning of the Specification," said Lord Mansfield,[m] "is, that persons of *reasonably competent skill* may be enabled therefrom to work the Patent, for probably no sort of Specification would enable a ploughman, ignorant of the whole art, to make a watch." "If," says Grose, J.,[n] "the Specification be such as to enable *artists* to adopt the invention and make the manufacture, it is sufficient." "The modern practice of interpreting a Specification," said the learned Chief Baron in a recent case,[o] "differs from that which recently prevailed. If it is intelligible to workmen, although not logically correct, *as long as no doubt exists as to the meaning of the Patentee*, it must be held to be good."

Specification must be full.

The invention must be so described as to place the public on a footing of equality with respect to it with the Patentee.[p] If a machine, it should be capable of construction, if the result of a chemical process, it should be attainable, by all competent persons in the branch of manufactures to which it belongs, by following the Spe-

[l] 1 Bing. N. C. 182; Web. P. R. 481. See also *Beard* v. *Egerton* (1847), photographs, 2 Car. & Kir. 667.

[m] *Liardet* v. *Johnson*, 1778, Bull. N. P. 76, cited in *Harmar* v. *Playne*, 11 East, 107, per Ellenborough, C. J.

[n] *Hornblower* v. *Boulton* (*in error*), 1799, 8 T. R. 95. See also *Neilson* v. *Harford* (1841), iron, Exch.

[o] *Tetley* v. *Easton and Amos* (1853), N. P. Rep. Arts (centrifugal pump).

[p] *R.* v. *Wheeler* (1819), 2 B. & Ald. 345; *Arkwright* v. *Nightingale* (1778), Web. P. R. 61.

cifications.[q] It must contain every improvement, with regard to the invention, in practice by the Patentee at the date of its execution.[r]

A petition[s] was presented without effect (*Ex parte Koops*[s]) to dispense with the enrolment, or that some provision should be made to prevent the Specification from being made public, suggesting the danger of foreigners obtaining copies of the Specification in consequence of the enrolment. In some instances, however, the Legislature permitted the Specification to be concealed. An Act[t] to this effect was obtained in the case of an invention,[u] purporting to secure to the state in time of war the benefit of a most important discovery. The Specification was thereby ordered to be deposited in the Court of Chancery, to be kept secret for fifteen months, to be produced only by order of the Lord Chancellor, and by him examined whenever occasion required. Specifications open to the public.

The Commissioners are, under the present Act,[v] to cause true copies of all Specifications to be open to the inspection of the public at their office, and at an office in Edinburgh and in Dublin.

In *R.* v. *Arkwright*,[w] Mr. Justice Buller lays down the following rules as to Specifications with reference to the *R.* v. *Arkwright.*

[q] *Turner* v. *Winter* (1787), Dav. Pat. Ca. 147; *Morgan* v. *Seaward* (1836), Web. P. R. 175, Alderson, B. (paddlewheels); *Liardet* v. *Johnson* (1778), Web. P. R. 54, n.; Carp. i. 35, Mansfield, C. J.; *Campion* v. *Benyon* (sailcloth), 4 B. Moo. 71; *Bovill* v. *Moore* (1816), lace, Dav. Pat. Ca. 400.

[r] *Crossley* v. *Beverley* (1829), gasometers, 9 B. & Cr. 63; *Jones* v. *Heaton*, Web. P. R. 404, n., per Tindal, C. J.; *R.* v. *Arkwright* (1785), Dav. Pat. Ca. 61; *Wood* v. *Zimmer* (1813), verdigris, 1 Holt, N. P. 58; *Savory* v. *Price* (1823), N. P., seidlitz powders, 1 Ry. & Moo. 1.

[s] (1802), paper, 6 Ves. 599, Lord Eldon.

[t] 53 Geo. III. c. 179.

[u] Godson, 2nd ed. 179. See *Lacy's case*, 29 Law J. (N. S.) 250, a new mode of preparing flax and hemp.

[v] 15 & 16 Vict. c. 83, s. 29.

[w] (1785) Bull. N. P. 77; Dav. Pat. Ca. 61.

first point:—"A man, to entitle himself to the benefit of a Patent of monopoly, must disclose his secret and specify his invention in such a way that others of the same trade, who are artists, may be taught to do the thing for which the Patent is granted, by following the Specification, without any new invention or addition of their own. He must so describe it that the public may, after the expiration of the term, have the use of the invention in as cheap and beneficial a way as the Patentee himself uses it;[t] and therefore if the Specification describe many parts of an instrument or machine, and the Patentee himself uses only a few of them, or does not state how they are to be put together or used, the Patent is void. If the Specification be in any part of it materially false or defective, the Patent is against Law and cannot be supported.

In a recent case[u] a very dangerous step, which cannot, however, be relied upon, was taken towards relaxing the obligations of the Patentee. It was there held, upon an issue denying the novelty of a patented invention, the plaintiff is not concluded by his Specification, but may *give other evidence* as to what the invention is.

Bovill v. *Moore*.

In *Bovill* v. *Moore*,[v] the maxim of Law was thus stated by Gibbs, C. J.—"A Patentee who has invented a machine useful to the public, and can construct it one way more extensive in its benefit than in another, and states in his Specification only that mode which would be least beneficial, reserving to himself the more bene-

[t] *Liardet* v. *Johnson* (1778), Bull. N. P. 76; *Turner* v. *Winter* (1787), 1 T. R. 602; *Boulton* v. *Bull* (1795), 2 H. Bl. 481; *Harmar* v. *Playne* (1809), K. B. (woollen cloth), 11 East, 101; *Wood* v. *Zimmer* (1813), verdigris, Holt's N. P. C. 38; *Bovill* v. *Moore* (1816), Dav. Pat. Ca. 400; *Hill* v. *Thompson* (1817), 2 Taunt. 393; *R.* v. *Wheeler* (1819), 2 B. & A. 345.

[u] *Bateman* v. *Gray* (1853), Exch. (valves and plugs), 1 C. Law Rep. 512.

[v] (1816), *lace*, Dav. Pat. Ca. 400.

ficial mode of practising it; although he will so far have answered the Patent as to describe in his Specification a machine to which the Patent extends; yet he will not have satisfied the Law by communicating to the public the most beneficial mode he was then possessed of for exercising the privilege granted to him. * * * But the validity of the Patent will not be affected by an improvement made after the Patent is obtained, though the Patentee will have added to his original merit of invention, the further merit of being able to use his own invention more beneficially than the Patent points out." In *Electric Telegraph Company* v. *Brett*[w] it appeared in evidence that after the grant of the Letters-patent it was discovered that a large portion of the wire originally used might be dispensed with; yet the Patent was upheld, and the use of an improvement on it[x] was held to be an infringement on the rights of the Patentees, on the ground apparently that the Patentee had furnished the best means known to him.

[w] (1851) 10 C. B. 838.

[x] The principle of compelling a Patentee to record his improvements or alterations appears to be adopted in the French Law of Patents, 1 Jan. 1791, by the 16 Art., No. 2, of which it is declared, "That every inventor convicted of having used in his manufactures secret means which were not detailed in his description, or of which he shall not have made a declaration to cause them to be added to those given in his description, shall forfeit his Patent;" and the practice of making such declaration of addition is laid down by Arts. 6 & 7, Tit. 2, of tho Law of 25 May, 1791. (Rep. Com. Patents, App. 223—226.)

By the American Law, also (Act of 4 July, 1836, § 13), "when a Patentee is desirous of adding the description and Specification of any new improvement of the original invention or discovery which shall have been invented or discovered by him subsequent to the date of his Patent, he may (like proceedings being had in all respects, as in the case of original applications), and on the payment of fifteen dollars" (the tax on an original Patent being thirty) "have the same annexed to the original description and Specification, and the same shall thereafter have the same effect in Law, to all intents and purposes, as though it had been embraced in the original description and Specification."

Harmar v. *Playne.*

In *Harmar* v. *Playne*,[y] it was objected, that the Specification included, without discriminating it, the improvements effected by a former Patent. The description, however, was upheld as a sufficient conformity with the requirements of the Letters-patent. The Specification being enrolled, was held to be public information, although, until very recently, this source of information was practically inaccessible to the public.

Intention of the legislature.

When we reflect upon the sources of English Legislation, it may seem somewhat whimsical to speak of the *intentions* of the Legislature. The judges are, however, by legal fiction, presumed the depositories of such intention, as well as of the maxims of the Common Law.[z] In the case of Patents, this has been merely synonymous with the private conviction of the judge. "The aim of the Legislature in granting Patents," observes Mr. Justice Grose,[a] "is obvious. On the one hand it was to encourage ingenious artificers and able and studious men to invent and bring forward for the use of the public new manufactures, the produce of their own ingenuity, by holding out to them the reward of fourteen

Grose, J.

[y] (1809) 11 Exch. 101; 14 Ves. 130, K. B. (woollen cloths), Lord Ellenborough, C. J.; *Tetley* v. *Easton* (1853), Q. B. (centrifugal pump), 22 L. T. 134; *R.* v. *Else* (1785), ground lace, Bull. N. P. 76; 11 East, 109, n.; *Cochrane* v. *Smethurst* (lamp), 1 Stark. 205, Le Blanc; *Holmes* v. *London and North Western Railway Company* (1852), turntables, 20 L. T. 112; *R.* v. *Metcalf* (1817), brush, 2 Stark. 249, Ellenborough, C. J.

[z] "The rules of the Common Law," says Mr. Baron Parke, "are clear and well understood, and they have the incalculable advantage of being capable of application to new combinations of circumstances perpetually occurring, which are decided when they arise by inference and analogy to them, and upon the principles on which they rest." "To reduce," says Mr. Justice Talfourd, "unwritten Law to Statute is to discard one of the greatest blessings we have for ages enjoyed in rules capable of flexible application." (Sessional Papers, ordered to be printed 9th February, 1854; *Sharman's case* (1854), per Williams, J., Cr. Ca. Res. 228.

[a] *Hornblower* v. *Bolton*, 8 Term Rep. 97—106 (*in error*), sup. 104.

years' monopoly; on the other hand to secure to the public the benefit of the discovery, by causing to be enrolled a complete description[a] of the thing to be done and the manner of doing it, that others might be fully informed of it, and, at the end of the fourteen years, to be enabled to work or make the manufacture of which the Patentee was the inventor."

Good faith indispensable.

The most fatal objection to the claims of the Patentee are however those grounded on the suspicion that he has not made the disclosure in good faith.[b] In *R.* v. *Arkwright*[c] it was contended that some articles inserted were immaterial and introduced solely for the purpose of puzzling and perplexing. In *Savory* v. *Price*,[d] Abbott, C. J., remarked :—" By reading the Specification we are led to suppose a laborious process necessary to the production of the ingredients, when in fact we might go to any chemist's shop and buy the same things ready made. The public are misled by this Specification." "Where the disclosure is not fully made, the Court ought to look with a very watchful eye to prevent any imposition on the public."[e]

Good faith not sufficient.

Honesty of intention will not however be allowed to remedy material defects in the description, however *bonâ fide* introduced. "It is obvious," said Abbott, C. J., in *R.* v. *Wheeler*,[f] "that if the Patentee has not invented the matter or thing of which he represents himself to be the inventor, the consideration of the Royal grant fails, and the grant consequently becomes void; and this will not be the less true if it should happen that the Patentee

[a] The obscurity of Watt's Specification is said to have secured him for thirty years after the expiration of his Patent in the exclusive enjoyment of his invention. (Smith's Epit. App. 44.)

[b] *Neilson* v. *Harford* (1841), Web. P. R. 341, Alderson, B.; *Sturtz* v. *Delarue* (1828), Lyndhurst, L. C, 5 Russ. 322.

[c] (1785) Web. P. R. 71. [d] 1 Ry. & Moo. 1 (seidlitz powders).

[e] Per Butler, J., *Turner* v. *Winter*, whitelead (1787); Dav. Pat. Ca. 147.

[f] (1819) 3 B. & Ald. 349.

has invented some other matter or thing of which upon a due representation thereof he might have been entitled to a grant of the exclusive use." "Unlearned men," said Lord Kenyon, C. J.,[g] "look at the Specification and suppose everything new that is there. If the whole be not new it is hanging terrors over them." "If," says Lord Brougham, "the Crown be deceived as to the originality of the grant, the Patent is void; but the Patentee will equally lose the benefit if he honestly but mistakenly claim as original any part that is not so."[h]

Wide claims.

The attempt to include a larger space by mere generality of wording has in many instances proved fatal to the Patentee. In *Crompton* v. *Ibbotson*[i] the Specification contained these words:—"The invention consists in conducting paper by means of a cloth or cloths against a heated cylinder, which cloths *may be made of any suitable material, but I prefer it to be made of linen warp and woollen weft.*" The Specification was held bad, as tending to mislead, it being proved that no other known substance could be substituted for that which the Patentee said he *preferred.*

In *Turner* v. *Winter*[k] an ambiguity in the Specification avoided the Patent. In that case Ashurst, J., says:—"It is incumbent on the Patentee to give a Specification of the invention in the clearest and most unequivocal terms of which the subject is capable; and if it appears that there is any unnecessary ambiguity[l] affectedly introduced

Studied ambiguity.

[g] *Bramah* v. *Hardcastle* (1789), Holroyd, 81.

[h] (1821), chain cable, 4 B. & Ald. 541; *Brunton* v. *Hawkes* (1835, June 3rd), H. of Lords, Hans. 28, 472.

[i] (1828), paper-making, K. B., Dan. & Lloyd, 33.

[k] 1 T. R. 602.

[l] Mr. Hindmarch (Observations on the Defects of the Patent Law (1851), p. 39) thus ably discloses the source of this ambiguity. "*Delusive Specifications are enrolled almost daily* . . . . . It is a very common practice to describe the whole subject to which the invention relates, the particular nature of the invention being mentioned in as general terms as possible. No particular claims are inserted, or, if in-

into the Specification, or anything which tends[m] to mislead the public, in that case the Patent is void. And Buller, J., adds:—"If the Patentee could only make the colour with two or three of the ingredients specified, and he has *inserted others which will not answer the purpose*, that will avoid the Patent." "A Specification," says Abbott, C. J.,[n] "which casts upon the public the expense and labour of experiment and trial is undoubtedly bad."

The publication of Provisional Specifications recently agreed upon introduces another material difficulty into the position of the Patentee, since its harmony with the Title[o] and complete Specification has at one and the same time to be kept constantly in view.

Danger of inconsistent Title.

One very important improvement in the Law lately effected in favour of the Patentee, is the removal of the danger to which he was formerly exposed from the logical accuracy required in the Title, and its exact coincidence

serted, made as indefinite as possible, and every one reading the Specification is left to put his own construction upon the instrument, and, if he can, discover to what invention the Patent relates . . . . . The difficulty is much increased by Specifications *purposely framed in ambiguous language by persons who devote their attention to the subject.* Patentees may avail themselves of the skill of such persons, so as to give to the public the smallest amount of information which is deemed safe; and if the validity of the Patent or the Specification should ever come into question, *the person employed to draw the Specification becomes a most convenient witness, capable of proving the validity of the Patent in the most satisfactory manner possible.*"

[m] *Hill* v. *Thompson* (1817), 3 Mer. 622; *Brunton* v. *Hawkes* (1821), chain cable, 4 B. & Ald. 541; *R.* v. *Wheeler* (1819), malt, Web. P. R. 622; 2 B. & A. 345; *Walton* v. *Bateman*, Web. P. R. 622.

[n] *R.* v. *Wheeler* (1819), *sci. fa.*, 2 B. & Ald. 349.

[o] *R.* v. *Metcalfe* (1817), 2 Stark. 249; *Arkwright* v. *Nightingale* (1781), Dav. Pat. Ca. 37; Web. P. R. 61; *Cochrane* v. *Smethurst*, 1 Stark. 205 (lamp); Dav. Pat. Ca. 354; *R.* v. *Wheeler* (1819), 2 B. & Ald. 349; *Sturtz* v. *Delarue* (1828), copperplate, 5 Russ. 322. See the recent case of *Hancock* v. *Noyes* (1854), waterproofing substance, 23 L. J. 110, Exch.

with the Specification of the Patent. If the Title embraced objects[p] which the Specification left undescribed, it was too large; if it excluded[q] any that were mentioned in that instrument, it was too small. In either case, if an inference could by any ingenuity be drawn prejudicial to the nicest agreement of the two, the Patentee was overthrown.[r] Recent cases have, however, relaxed the rigour of the rule. In *Cook* v. *Pearce*[s] it was established that the inclusion of objects not contemplated by the Specification was not of itself a ground for avoiding the Patent;[t] and in *Neilson* v. *Harford*[u] it was held, that ambiguity in a Title will not invalidate a Patent, provided it be explained in the Specification. The Title, in fine, should be the expression of the subject-matter, so as fully to cover the invention. "It must give," in the words of Lord Lyndhurst,[x] "some idea, and so far as it goes, a true idea, of the alleged invention, though the Specification may be brought in aid to explain it."

Requisites of Title.

Duty of the Law Officer.

The duties assigned by the Act[y] to the Law Officer are such as, if competently discharged, would relieve the Patentee from the real grievances under which he has

[p] *Cochrane* v. *Smethurst* (1816), lamp, Dav. P. C. 354.

[q] *R.* v. *Wheeler* (1819), 2 Barn. & Ald. 349; *R.* v. *Metcalf*, 2 Stark. 249.

[r] *Gibson* v. *Brand* (1841), silk, 4 Man. & G. 179.

[s] Q. B. (carriage shutters), 13 L. J. 189, Q. B.

[t] *Cook* v. *Pearce* (1843), carriage shutters, 7 Jur. 499; *Neilson* v. *Harford* (1841), per Abinger, C. B. In *Croll* v. *Edge* (1850, C. B., 14 Jur. 553) the title of the Patent, which was declared void, was for "certain improvements in the manufacture of gas *for the purpose of illumination*, and in the apparatus used when transmitting and measuring gas." A sugar Patent is said to have escaped the *caveat* set to watch it by entitling itself "a mode of treating vegetable substances." (Turner, 35.)

[u] (1841) Web. P. R. 341; (1843) 8 M. & W. 806.

[x] *Sturtz* v. *Delarue* (1828), copperplate printing, 5 Russ. 322; and see per Parke, B., *Newton* v. *Vaucher* (1851), soft metal packing, 6 Exch. 859; *Household Company* v. *Neilson* (1843), iron, Web. P. R. 678.

[y] 15 & 16 Vict. c. 83, s. 8.

hitherto been oppressed, arising from inapt Titles and Specifications. By it he is to "be satisfied that the provisional Specification describes the nature of the invention;" and a proviso is made, that, "in case the Title of the invention or the Provisional Specification be too large or insufficient, it shall be lawful for the Law Officer to whom the same is referred, to allow or require the same to be amended." The Provisional Specification must state distinctly and intelligibly the whole nature of the invention, so that the Law Officer may be apprised of the improvement, and of the means by which it is to be carried into effect.[z]

Claim of the Patentee.

The Specification should further, it appears, point out clearly the extent of the improvements claimed to be effected by the Patentee.[a] This is obviously quite different from simply bringing the result of the invention to public knowledge, and is exacted rather as a check upon the Patentee, than for the information of society at large. "Every Patent," says Dallas, J.,[b] "being a monopoly, that is, an infringement of public right, and the Specification having for its object to give the public warning of the precise extent of the privilege conferred on the Patentee, the Court is bound to require that such warning should be clear, and accurately describe what the inventor claims as his own."

Must be accurately stated.

The improvement effected by the Patentee must be *accurately* described. The Specification must contain such a description of it as shall enable persons versed in the particular branch of art to adopt it in as beneficial a manner as the Patentee himself; and if, on a fair interpretation, its meaning is equivocal, the Patent is void.[c] If the invention be an improved machine, the Patentee must be careful not to claim the invention of the original

[z] Second Set of Rules and Regulations, dated 15 Oct. 1852.
[a] R. v. *Else* (1785), ground lace, Dav. Pat. Ca. 145.
[b] *Campion* v. *Benyon* (1821), sail cloth, C. B., 3 B. & B. 5.
[c] *Hastings* v. *Brown* (1853), windlass, Q. B., 1 E. & B. 454.

machine.[d] "The policy of an inventor," says Tindal, C. J.,[e] "is to ask for a Patent for what he has invented, and not to fence himself about with wide claims."

Co-extensive with the improvement.

As the description must be co-extensive with the invention, the "claim" must be co-extensive with the improvement. In *Macfarlane* v. *Price*,[f] the description of the invention was correct, but the claim included improvements larger than those effected by the Patentee.

Principle of the improvement.

The importance of the word "principle"[g] is the point which enters into the question when considering the inventor's "claim." His claim is not only to the monopoly of the finished article, but all right to the benefit of the discovery he has made, so far as it is applicable to the improvement of that article. His discovery is in general that of a principle or law of matter, a process, mode, method or system; and it is the application of these, in so far as they have reference to the invention, from which the public is debarred. In *Forsyth* v. *Revière*,[g] the Specification, after describing the improvement, proceeded as follows: "I have hereunto annexed drawings or sketches exhibiting *several constructions*, which may be made and adopted, *in conformity with the foregoing plan and principles, out of an endless variety* which the subject admits of."

The term "principle," said Mr. Justice Rooke,[h] "is

[d] *Hill* v. *Thompson* (1817), 8 Taunt. 375; *R.* v. *Else* (1785), Dav. Pat. Ca. 144; 11 East, 108.

[e] *Walton* v. *Potter* (1841), Web. P. R. 594.

[f] Umbrellas, 1 Stark. 199.

[g] (1819), supra, 93.

[h] *Boulton* v. *Bull* (1795), 2 H. Bl. 465; Dav. Pat. Ca. 186. "The true legal meaning of the principle of a machine," says Mr. Justice Story (1828, *Barrett* v. *Hall*, 1 Mason, 470), "with reference to the Patent Act, is the peculiar structure or constituent parts of the machine. Now the principles of two machines may be the same, although the form or proportions may be different. On the other hand, the principles of two machines may be very different, although their external structure may have great similarity in many respects.

equivocal. It may denote either the radical elementary truths of a 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."

Equivalents.

The question of equivalents in inventions, involving improvements attained by chemical or mechanical means, is another with reference to which the dicta of judges, although very decided, are frequently opposed. In fact, each case must be taken by itself, and it is in general a question submitted to the jury whether, what the defendant has done has been an exercise of his own invention in the use of materials open to all the world, or an infringement on the privileges of the plaintiff.[i]

Tetley v. *Easton.*

The Specification of a Patent,[k] for improvements in machinery for raising and impelling water, described part of the machinery as consisting of a hollow wheel, having hollow spokes, into which, the air being exhausted, the water was introduced, and which, being made to rotate, expelled the water in the spokes, and a corresponding portion of water ascending up the pipes to supply its place, a continuous flow of water was thereby maintained. It stated that the Patentee did not confine himself to the number or use of hollow spokes, but in some cases proposed to substitute circular discs, &c. It then stated that the Patentee did not claim the discovery that water might be raised by centrifugal force, nor the sole application of machinery for raising water by that method; but that he claimed as his invention (among other things) the construction of machinery for raising it would be extremely difficult to contend that a machine which raised water by a lever was the same in principle with a machine which raised it by a screw pulley or a wedge, whatever in other respects might be the similarity of the apparatus."

[i] *Crossley* v. *Potter* (1846), coach lace, printed case, p. 63, Pollock, C. B.; *Heath* v. *Unwin* (1848), Exch. Ch., steel, 19 L. T. 272.

[k] *Tetley* v. *Easton*, 18 Jur. 350 (1853), Q. B. (centrifugal pump).

and impelling water by means of introducing it into compressed air in virtue of centrifugal force imported thereto by such machinery, and the application of the before-mentioned inventions both when used in combination and when used severally. The use of a wheel with hollow spokes for raising and propelling water by virtue of centrifugal force was not new; but the plaintiff's improvement consisted in a new combination of the hollow wheel with other machinery. In an action for infringing the Patent, it was held that, "*primâ facie*, the Patentee has as his invention all the machinery which he described in the Specification." The Specification was therefore bad, because it described the wheel as part of the machinery for raising and impelling water, and did not point out that it was old and that it was not claimed.

The introduction of any one objectionable item into the Patent is fatal to the whole. "This was the case with that admirable and useful invention the chain cable. That it was a worthy subject for Letters-patent no one could doubt; but it so happened that the inventor thought he had invented an anchor and included the same in his Patent. It afterwards appeared that some other person had used one before of a similar construction. The whole Patent, as well for the chain cable as for the anchor, was declared void."[l] The objection of there being two distinct inventions[m] under one Patent does not seem to have been pressed.

In *Manton* v. *Parker*,[n] the invention was a gun, very materially improved by a peculiar construction of lock. The Specification gave reason to suppose that the lip, the groove and the hole, in the arrangement of which the

[l] Lord Brougham (1835), H. of Lords, 28 Hans. 472.

[m] Second Set of Rules and Regulations under the Act 15 & 16 Vict. c. 83.

[n] Infringement (1814), Dav. Pat. Ca. 329. See also *Manton* v. *Manton* (1815), Dav. Pat. Ca. 333.

improvement consisted, were all new. Witnesses were called to impeach the novelty, who proved that they had constructed locks on the same principle, but *had not made them answer*. Experienced gunsmiths spoke to the efficient condition of the plaintiff's invention. He was, however, nonsuited.

Use of the invention.

The Patentee is bound to give all the information he possesses to the public, and, as a part of it, necessarily the uses to which his invention may be put. In so doing, however, he must be careful not to include matters to which it has not been ascertained by actual practice to be applicable, or of which the modus operandi is not contained in the Specification. As a general rule, if in a Specification the Patentee states that his invention may be carried into effect by either of two modes, and it be shown that one of these modes is impracticable, the patent fails.[n] In *Felton* v. *Greaves*,[o] the Patent was for a machine "for sharpening knives, razors and scissors." The Specification disclosed a method applicable to knives only. The plaintiff (the Patentee) was nonsuited. In *Heath* v. *Unwin*[p] it was held (*dissentiente* Alderson, B., and Coleridge, J.), that the *modus operandi* given by the Patentee in his Specification was *only one instance* of the ways in which the invention might be used; and in *Wallington* v. *Dale*,[q] on similar grounds, a Specification was held sufficient, describing a process (of which a material part consisted in reducing hides to shavings) as commenced by "reducing skins or hides to their shavings or films by *some suitable instrument*. The instrument I have used has been an ordinary carpenters' plane." In *Beard* v. *Egerton*[r] the process prescribed by the Pa-

[n] *R.* v. *Cutler* (1847), Q. B., tubular flues, 3 C. & K. 215.

[o] 3 C. & P. 61; Web. P. R. 42.

[p] (1852) Exch. Ch., steel carburet of manganese, 19 L. T. 272; (1845) Exch. 13 M. & W. 583.

[q] (1852) Exch. 19 L. T. 187.

[r] (1849), photographs, 8 C. B. 165.

tentee in his Specification was complex, and involved in its success very delicate manipulation. Its sufficiency turned mainly upon the period of the application of the acid. The Court decided that an ambiguous direction was to be interpreted in such a manner as was found to render the process a successful one, it being proved that the application of the acid after the second operation, viz. the coating the plate with iodine, would render the whole process abortive. On the other hand, *Bloxam* v. *Elsee*[s] and *Hastings* v. *Brown*[t] are cases in which the Patentee was held rigorously to the terms of his Specification. In *Stevens* v. *Keating*,[u] the Specification, after stating the mode of using the cement made according to the directions of the Patentee, concluded by stating that "other alkalies and acids besides those before mentioned would answer the purposes of the invention, though not so well." The Specification was held bad, for that *either the inventor claimed all acids and alkalies, or only those which would answer the purpose.* In the former case it was bad, as some acids and alkalies would not answer the purposes of the invention; in the latter it was bad for not specifying those acids and alkalies which would be found to succeed.

Drawings.

With regard to drawings, there existed formerly[x] tech-

[s] (1825), paper, 6 B. & C. 169; 9 D. & R. 215; 1 C. & P. 558; R. & M. 187.

[t] (1853) Q. B., windlasses, 1 E. & B. 450.

[u] (1848), plasters, stucoes and cements, 2 Exch. 772; (1847) Ch., injunction, 2 Phill. 333.

[x] "I take it to be clear," says Lord Eldon, in *Ex parte Fox* (1812, steam-engine, 1 V. & B. 167), "that a man may, if he chooses, annex to his Specification a picture or a model descriptive of it, but his Specification must be in itself sufficient, or I apprehend it will be bad. At present, however, the drawings form part of and stand on the same footing with the rest of the Specification." *Hastings* v. *Brown* (1853), windlasses, Q. B., 1 E. & B. 454. Drawings explanatory of the Specification, *Lowe* v. *Penn* (1848), screw popeller, N. P., Denman, C. J., 32 Lon. Journ. 140.

nical rules inconvenient and unsuited to the subject. At present the relaxation may be said to be complete. The object of the Specification is the full description of the invention, and for this purpose, it is evident, a drawing alone may sometimes be sufficient.[q] In *Hastings* v. *Brown*,[r] the Court decided that a drawing might be taken to explain an ambiguity in the written description.

Rules as to drawings.

The details prescribed with respect to the drawings accompanying the Provisional Specification at present are as follows.[s] They must be on paper, parchment or cloth, with an inch margin all round, and when folded must be of the size of twelve inches by eight and a half. Those with the complete Specification must be on parchment, twenty-one and a half by fourteen and three quarters inches, or twenty-nine and a half by twenty-one and a half, with one inch and a half margin all round. The Commissioners recommend a scale of one inch to a foot for elevation drawings.[t]

Models not received.

The object of the Specification being considered, the rejection of models and specimens, the clearest source of instruction in the case of mechanical inventions, seems an unfortunate course adopted by the Commissioners—their collection being carefully attended to, and with the best effect, in the United States.

First requisite.

On the discovery of any principle or property of matter capable of being applied so as to effect an improvement in trade, the first requisite is to consider to what articles of commerce it should be applied, with the probability of creating a remunerative demand,[u] the general

[q] *Williams* v. *Brodie*, cited in *R.* v. *Arkwright* (1785), Web. P. R. 71; *Bloxam* v. *Elsee*, 6 B. & Cr. 169 (papermaking); *M'Farlane* v. *Price*, 1 Stark. 199 (umbrellas); (1845) *Newall* v. *Webster*, 26 Lon. Journ.

[r] 1 E. & B. 454 (1853), windlass, Q. B.

[s] See First Set of Rules under 15 & 16 Vict. c. 83, dated Oct. 15, 1852.

[t] Order of Lord St. Leonards (1852—3), note.

[u] Urling (1845), Introd. ix. (1851), Evid. 164, Carpmael.

application of the principle, as before said, not being appropriable. The next is to secure to the discoverer the exclusive profit of trading in those articles. In the great majority of cases, as we have seen, Letters-patent form the means of attaining this monopoly. With the obtaining of such Letters-patent, however, the inventor's task is but begun. Unlike the author of a literary production, the inventor of a new machine, or the discoverer of new arts, cannot[y] dispose of his discovery at once. He must, in many cases, devote himself night and day to the practical application of his principle. Difficulties[z] attend all important inventions in manufactures. Time and outlay are necessary to overcome the prejudice against their novelty, and impress the public with confidence in their worth. Watt, it has been said, lost six years in bringing his invention into a good working state. Lord Norton, of Leith, the inventor of the Patent slip,[a] as a substitute for dry docks, lost the same time before his invention became profitable. A like[b] loss of time, prior to the invention becoming productive, appears to be an almost constant occurrence in important inventions.

Differ from Copyright.

Inventors' difficulties.

The caprice of fashion[c] has ruined some, the uncertainty of the Law many. Lord Ellenborough[d] repealed a Patent[e] for what was allowed to be a new invention, and where the Specification alone communicated to the public the secret of the inventor. In 1778, when an action for infringing[f] Sir R. Arkwright's Patent for spinning machinery was tried in the King's Bench, the

[y] 43 Qu. Rev. (1830), p. 336.

[z] Phillips, 14; (1851) Evid. 204, Carpmael.

[a] Farey's Evid. H. of Com. (1833) on Patents.

[b] 43 Westm. Rev. [c] 32 Ed. Rev. (1819), p. 63.

[d] 43 Qu. Rev. 341.

[e] Metcalf (1817), N. P. ("tapering" brush), 2 Stark. 250. A rule for a new trial was refused.

[f] *Arkwright* v. *Nightingale* (1785), Web. P. R. 61; Dav. Pat. Ca. 37.

obscurity and imperfection of the Specification were urged, and because certain workmen could not make the machinery, a verdict was given against the Patentee. In 1785, when another action[g] was tried in the Common Pleas, a verdict was given for the Patentee on the ground that several witnesses had made the machinery from the Specification alone, and yet in the same year this Patent was repealed! Such was the fate of an invention which produced a saving of several hundred thousand pounds per annum, and has proved one of the richest sources of British wealth. The inventors of this extraordinary machinery were, Hargrave, Arkwright and Crompton. Hargrave's Patent for a spinning jenny, in 1767, was invaded by an association of pirates. Ruined in his circumstances, and persecuted by the mob, he died in poverty and want, in the middle of a population that had grown rich by his inventions. Crompton suffered similar persecutions, but after languishing in poverty through a long life, a reward of 5,000*l.* was at last obtained from Parliament. Sir Richard Arkwright suffered great losses by his Patents: and yet after they were set aside he acquired an immense fortune, along with many others who had availed themselves of his inventions.

Hardy's Patent.

In the case of Hardy's Patent for railway axles,[h] the Patentee made his invention known to the different railway companies, but could not succeed in getting it into general use, although his axles were better, and he sold them at a less rate than the common axles, and he ultimately assigned his Patent, having lost upwards of 3,000*l.* by it. Within four years the assignees were enabled to realize about 23,000*l.*

Sometimes the motive of inventors.

The very difficulties, however, which beset the inventor, act frequently as the motives to invention; Senefelder, the inventor of lithography, was an instance. He was

[g] *R. v. Arkwright* (1785), Web. P. R. 71; Dav. Pat. Ca. 61.

[h] (1849) P. C. 14 Jurist, 177.

the son of a poor actor, had written a play and was too poor to get it printed.[j]

Invention.

In spite of the numerous and important inventions for which the world is indebted to lucky accident,[k] such is by no means the source of the majority of those which conduce to the improvement of our manufacture, and which are owing less to fortunate accident than steady application. "Invention," says Buffon, "depends on patience. Contemplate your subject long. It will gradually unfold, till a sort of electric spark convulses for a moment the brain and spreads down to the very heart a glow of irritation. Then come the luxuries of genius."

Buffon.

Wants of Society the motive to invention.

The most powerful and efficient motive to invention of manufactures is, as has been before[l] said, the existing want of them on the part of the public.[m] A remarkable instance of this was furnished by the recent strikes of mill-hands in the north. On this subject the local organ

[j] 43 Westm. Rev. (1835). "Some want arises and men exert themselves to supply it. Take, for example, the case of the Electric Telegraph. The requirements of the Blackwall Railway rendered a communication of that kind essential: so that the introduction of railways led to its establishment in consequence of the want which was created of communicating from end to end of the railway." (1851, Evid. 53, Webster.)

[k] Watt's discovery of parallel motion is said to have been by chance.

[l] Dis. Cur. Lit. i. 45. To a considerable extent prejudices (see supra, 110) against new inventions, *as new*, may be said to have died away, yet the sanguine temperament of inventors should never lead them to forget the saying of a very able writer, "that Fortune has rarely condescended to be the companion of Genius. Those who have laboured most zealously to instruct mankind have been those who have suffered most from ignorance; and the discoverers of new arts and sciences have hardly ever lived to see them accepted by the world."

[m] In the first three months of 1853, the Patents were for

Locomotives and railways	42
Weaving	31
Spinning	31
Steam-engines	19
Ship propellers	16
New meters	9

of the Masters' Association says:—"One result of the strike has been to bring into the labour market a few thousand hands, who, in future years, will compete with the turn-outs for work, to the prevention of wages rising. Another result is, that far fewer hand-spinners are now required than were employed when the mills closed. The cessation from work has been taken advantage of by many millowners to convert their hand-mules into self-acting machines. Strikes have been the main cause of the introduction of this labour-saving machine.[m] The strike of 1828 caused the attention of our ingenious machinists to be directed to the subject, and the result was the invention of the 'self-actor;' the strike of 1836 caused its introduction to a large extent in Preston, the strike of 1853 has occasioned its general adoption, and hand-mules are now only used in works where very high numbers are spun." Strikes.

The real value of Letters-patent, and in fact the possible assistance of legislative enactments in the prosecution of inventions, is by the majority of inventors greatly overrated, while the exorbitant price and insignificant consumption of many valuable inventions exhibit the lamentable discrepancy between the estimation entertained of it by the public and the Patentee. Mr. Turner humorously suggests,[n] as the only means of realizing the expectations of such persons, an Act by means of which "any invention for which Letters-patent may be obtained shall immediately thereupon come into successful operation, any law of gravitation or rule of arithmetic to the contrary notwithstanding;" and which shall provide "Capitalists to enter upon the speculation on terms to be settled by the Patentee." When a Patent is properly obtained and strenuously put forward, a reasonable price[o] should Wrong estimate of Patent powers by inventors.

[m] *Roberts' Patent* (1839), P. C., spinning mule, Web. P. R. 573.

[n] Remarks on the Law of Patents, Turner (1851), p. 4.

[o] The Belgian Government affixes to its Patent the condition that the Patentee shall allow any one the use of his invention on payment of a reasonable remuneration, determined, in case of dispute, by arbitration.

be asked by the Patentee, or the public is induced to wait for the expiration of the Patent, or devise some cheaper means of obtaining the same end.

Changes in the practice of obtaining Letters-patent.

The changes in the practice of obtaining Patents has been attended with great benefit to the Patentee, by abolishing useless forms and consequent expenses.° The

° The following is a List of the Official Stages passed through and the Fees paid by an Inventor, unopposed, in obtaining Letters-patent previous to the passing of Stat. 15 & 16 Vict. c. 83 :—

	£	s.	d.
1. Inventor prepared Petition to the Crown.			
2. Made a Declaration before a Master in Chancery .	0	1	6
3. Delivered Petition and Declaration at the Home Office, in Whitehall	2	2	6
4. Petition signed by Home Secretary referred to Attorney or Solicitor-General			
5. Petition taken to the Attorney or Solicitor-General, at their Chambers. Fees to them and Clerks . .	4	4	0
6. Attorney-General reported in favour of Petition (as a matter of course, unless opposed).			
7. Report taken to the Home Office.			
8. Home Office prepared a Warrant, echoing the Report, and			
9. Sent to the Queen to sign . . .	7	13	6
10. Returned to Home Office, and . .			
11. Warrant countersigned by Home Secretary			
12. Warrant taken to Patent Office, in Lincoln's Inn.			
13. Clerk of the Patents prepared a draft of the Queen's Bill and docquet of the Bill (fees) . . .	5	10	6
14. Engrossing two copies of Bill, one for the Signet Office and one for the Privy Seal Office. . . .	1	7	6
15. Stamp Duty on each	3	0	0
16. Engrossing Clerk of the Patent Office engrossed Queen's Bill for signature	1	1	0
17. Stamp for the same	1	10	0
18. Queen's Bill taken to Attorney-General or Solicitor-General, and signed by them	5	0	0
19. Taken to Home Secretary . .			
20. Sent by Home Secretary to the Queen			
21. Signed by the Queen . . .	7	13	6
22. Returned to the Home Secretary .			
22. Queen's Bill taken to Signet Office, in Somerset House			
24. Clerk of the Signet prepared a Signet Bill for the Lord Keeper of the Privy Seal . . .	4	7	0

great majority[p] of Patents are still however procured through the instrumentality of "Patent Agents." It seems very desirable that steps should be taken to constitute this class efficient and responsible officers of the Court, as a means of preventing the reprehensible practices complained of[q] before the Committee of 1851, as comprising "all sorts of manœuvres and what we understand by racing," and which gave advantages to an unscrupulous over a scrupulous Patent Agent—a system, indeed, well deserving the epithet "scandalous," applied to it by the President of the Board of Trade. Some few Solicitors practise as Patent Agents.

Printing Specifications.

Both Provisional and Complete Specifications are now printed at the expense of the Commissioners, and sold at a very trifling charge; and arrangements are in contemplation by the Commissioners for transferring from the Enrolment Office the enrolment of Patents

	£	s.	d.
25. Clerk of the Lord Keeper of the Privy Seal prepared a Privy Seal Bill for the Lord Chancellor, and stamp	4	2	0
26. Privy Seal Bill delivered to the Clerk of the Patents			
27. Clerk of the Patents engrossed the Patent .	5	17	8
Stamps for the Patent, &c.	30	0	0
28. Clerk of Patents prepared a docquet thereof.			
29. Stamp for the docquet of Patent.			
30. Boxes for the Patent	0	9	6
31. Fees to the Deputy Lord Chancellor's Purse-bearer .	2	2	0
32. Fees to the Clerk of the Hanaper	7	13	0
33. Fees to the Deputy Clerk of the Hanaper . .	0	10	0
34. Receipt of the Lord Chancellor for the Privy Seal Bill	1	11	6
35. Fees to the Deputy-Sealer and Deputy-Chaff Wax .	0	10	6
	£96	7	8
This was exclusive of the fee for enrolling the Specification, varying with the length of that document, and averaging	5	10	0

[p] By a Rule, dated 15th Oct. 1852, made in pursuance of the Act, all former Rules are annulled, and the practice is declared entirely dependent on the Rules and Regulations to be subsequently issued. The proportion obtained in the year 1852—3, by Patentees or solicitors, to that by Patent agents, was one to fifty.

[q] (1851) Evid. 482, "dodging," 886, 1452, 2319; Turner, 31.

and Specifications made previously to the late Act,[s] with a view to their publication.

Official Index.

By 16 Vict. c. 5, the Commissioners were empowered to purchase Professor's Woodcroft's Index of Patents for 1,000*l.* The facilities afforded for its inspection at the Office of the Commissioners reduce almost incalculably the difficulties to which inventors were exposed of re-patenting old inventions.

Search in the Register and Index of Patents.

Previous to the late Act, no official Record of Patents existed. The Specifications were enrolled in three different Offices, the Petty Bag Office, the Rolls Chapel, and the Enrolment Office in Chancery. No Index existed, and the expense and labour of searching through the Specifications by persons unaccustomed to the handwriting was very great. A witness before the Committee of 1849 stated, that he paid in the Petty Bag Office alone, in one day's search, fees to the amount of *2l.* 8*s.* So entirely indeed were the Specifications inaccessible for practical purposes, that an attempt was made[t] to establish a Copyright in the list of Specifications published in "The Repertory of Arts, Manufactures and Agriculture." An injunction to enforce the claim was refused. A Copyright was however declared[u] to exist in an engraving made on a reduced scale from a drawing annexed to the Specification; and from the reasoning of the Court on that occasion it would seem that such would have been the decision independently of the scale of the engraving.

First steps.

The caution with which experiments must be conducted in the preliminary stage has been above remarked upon. The invention being fully matured the first step[x] is by Petition[y] to the Crown, to be left by the inventor or his

[s] See 15 & 16 Vict. c. 83, s. 31.

[t] *Wyatt* v. *Barnard* (1814), 3 V. & B. 77. See Drewry on Injunctions (1849), 213.

[u] *Newton* v. *Cowie* (1827), C. B., London Journal of Arts and Sciences; 12 Moo. 457.

[x] Rule 9, Second Set (1852).

[y] The Petition (subject to a stamp of five pounds), Declaration and Provisional Specifications, are to be written on sheets of paper twelve

agent at the office of the Commissioners of Patents,[z] who are directed[a] to refer all applications to one of the Law Officers in such manner as they think fit. The following is the form prescribed in the Schedule of the Act:—

PETITION.

Form of Petition.

No. ——

To the Queen's most excellent Majesty.

The humble Petition of for, &c.

Sheweth,

That your Petitioner is in possession of an Invention for

[*the Title of the Invention*,]

which Invention he believes will be of great public utility; that he is the true and first Inventor thereof; and that the same is not in use by any other person or persons, to the best of his knowledge and belief.

Your Petitioner therefore humbly prays, that Your Majesty will be pleased to grant unto him, his executors, administrators and assigns, Your Royal Letters-Patent for the United Kingdom of Great Britain and Ireland, the Channel Islands and Isle of Man, for the term of fourteen years, pursuant to the Statutes in that case made and provided.

And Your Petitioner will ever pray, &c.

Signature of Petitioner.

The Petition must be accompanied by a Declaration in the following form:—

DECLARATION.

Form of Declaration.

No. ——.

I , of , in the County of , do solemnly and sincerely declare, That I am in possession of an Invention for, &c.

[*the Title as in Petition*,]

which Invention I believe will be of great public Utility; 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,

[*where a Complete Specification is to be filed with the Petition and Declaration, insert these words*: "and that the Instrument in Writing under my Hand and Seal, hereunto annexed, particularly describes

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inches by eight and a half, with a margin of one and a-half inches on each side of the page. Lithographed forms may be purchased at the stationers in the neighbourhood.

[z] 15 & 16 Vict. c. 83, s. 6. The office is in Southampton Buildings.

[a] 15 & 16 Vict. c. 83, s. 8.

and ascertains the Nature of the said Invention, and the manner in which the said Invention is to be performed,"] and I make this Declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the Session of Parliament held in the Fifth and Sixth Years of the Reign of His late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits,' and to make other Provisions for the Abolition of unnecessary Oaths."

A. B.

Declared at , this Day of ,
A. D. , before me,

A Master in Chancery,
or
Justice of the Peace.

Specification.

With the Petition and Declaration the inventor must forward either a Provisional or Complete Specification of his invention. We will first suppose them accompanied by a Provisional Specification, the form for which, as prescribed by the Act, is as follows:—

PROVISIONAL SPECIFICATION.

Provisional Specification, form of.

No. ——.

I do hereby declare the nature of the said Invention for
[*insert Title as in Petition*]
to be as follows:—

[*here insert Description.*]

Dated this Day of , A. D. .

[*To be signed by Applicant or his Agent.*]

Delivery of.

The day of the delivery of every Petition, Declaration and Provisional Specification is to be recorded at the Office, and indorsed on such Petition, Declaration and

Certificate.

Provisional Specification, and a Certificate thereof given to the applicant or his agent.[u]

Forwarded to the Law Officer.

The papers must be left two clear days in the Office of the Commissioners to be recorded. They are then forwarded by the Commissioners to the Law Officer of the

[u] Stat. 15 & 16 Vict. c. 83, s. 6.

Crown (the Solicitor and Attorney-General alternately), the following indorsement being made on the Petition :—

REFERENCE.

Her Majesty is pleased to refer this Petition to , to consider what may be properly done therein.

Clerk of the Commissioners.

May require amendments.

If the Law Officer finds the Title of the invention or the Provisional Specification insufficient, he will require them to be amended.[x]

Provisional Protection.

If he be satisfied he grants[y] a Certificate of his allowance, which is filed in the Commissioners' Office, and confers upon the applicant what is termed Provisional Protection, which is the right of using the invention during the term of six months from the date of the application, without prejudice to any Letters-patent to be granted for the same.

Applicant cannot alter his Provisional Specification.

No alteration of a Provisional Specification at the instance of the applicant will be allowed after the same has been recorded, except for the correction of clerical errors or of omissions made *per incuriam*.[z]

Reference to the Law Officer.

The allowance by the Law Officer of the Certificate is almost a matter of course. The course of reasoning on his part seems somewhat difficult to follow.[a] It is, as his Warrant expresses it, "*entirely at the hazard of the said petitioner whether the said invention is new or will have the desired success; and*, as it may be reasonable,"

[x] 15 & 16 Vict. c. 83, s. 8.

[y] 15 & 16 Vict. c. 83, s. 9. This usually occurs about nine days from the date of application.

[z] Rule 9, Second Set.

[a] In the first year of the operation of the new Act not above half-a-dozen applications were refused, and those mainly on the ground of the want of clearness in the Specification. In America the practice is much stricter. There is a Patent Commissioner, with an appeal, formerly to an extempore Board of Assessors, but now to the Chief Justice of Columbia. The Commissioner appears to be usually present at the appeal. It appears, from the Report of that officer, that in 1848 he *rejected two-thirds* of the applications.

the document continues, "for Her Majesty to encourage all *arts and inventions which may be for the public good, I am of opinion* that Her Majesty *may grant* Her Royal Letters-patent," &c.

Alternative course.

The applicant may however proceed otherwise, by depositing with his Petition and Declaration a Complete[a] Specification, which at once confers upon him Provisional Protection.

Proceedings during Provisional Protection.

An action for infringement cannot be maintained during Provisional Protection. It is therefore desirable to proceed as speedily as possible to procure the Letters-patent.

Notice to proceed.

So soon as the invention is provisionally protected, or after the deposit of a Complete Specification, the applicant may give notice in writing at the Office of the Commissioners of his intention to proceed with his application for Letters-patent.[b]

Certificate.

A Certificate[c] of such notice is granted from the Commissioners' Office.

Advertisement.

The Notice to proceed is advertized[d] by the Commissioners in the *London Gazette*. Twenty-one days from the date of the advertisement are allowed for the delivery of objections to the Patent.

Objections.

At their expiry the Provisional or Complete Specification and Particulars of objection are referred to the Law Officer.

Second reference.

This is termed the second reference.

The Hearing.

The Hearing takes place before the Law Officer, who has full power[e] at his discretion to order by or to whom costs are to be paid at the opposition.

Costs of the opposition.

A rule to make such order a rule of Court can be made at chambers, and is absolute in the first instance.

[a] The number of Provisional Specifications deposited in the first year of the new system was 2,995, and the number of Complete Specifications 50.

[b] Stat. 15 & 16 Vict. c. 83, s. 12, Rule 5, First Set (1852).

[c] Of 3,045 applicants during the first year, 2,420 gave notice to proceed. The Certificate of notice is subject to a stamp of five pounds.

[d] Notices to proceed are in the Tuesdays', Allowances of Provisional Protection in the Fridays' Gazette.

[e] 15 & 16 Vict. c. 83, s. 14. About eight per cent. of the applications are opposed.

The following fees are payable[f] by the applicant and the person opposing the grant:—

	£	s.	d.
To the Law Officer	2	12	6
To his Clerk	0	12	6
To his Clerk, for summons . .	0	5	0

A copy of the summons, sent by post to the address of the party opposing as given in his Particulars of objection, is sufficient service.

The Law Officer will not go into any question of utility. If there is any considerable doubt as to whether two inventions are distinct, the Law Officer will not decline to issue his Warrant.[g]

Law Officer's Warrant. To be sealed.

After the Hearing a Warrant[h] may be granted by the Law Officer, sealed with the Commissioners Seal for

[f] Order of the L. C. and M. R. 1852. The fees are payable at the Office of the Law Officer at the time of hearing by the opposer, and at the period of taking out the summons for hearing the objections by the applicant.

[g] 15 & 16 Vict. c. 83, s. 16.

[h] Subject to a stamp of five pounds. The Warrant is in the following form:—

WARRANT.

Form of Warrant.

In humble obedience to her Majesty's command, referring to me the Petition of , of , to consider what may be properly done therein, I do hereby certify as follows: that the said Petition sets forth that the Petitioner

[*Allegations of the Petition.*]

And the Petitioner most humbly prays

[*Prayer of the Petition.*]

That in support of the allegations contained in the said Petition, the Declaration of the said Petitioner has been laid before me, whereby he solemnly declares that

[*Allegations of the Declaration.*]

That there has also been laid before me a Provisional Specification, signed ——, and also a Certificate [*or* a Complete Specification and a Certificate of the filing thereof], whereby it appears that the said invention was provisionally protected [*or* protected] from the —— day of ——, A.D. ——, in pursuance of the Statute.

That it appears that the said application was duly advertised.

Upon consideration of all the matters aforesaid, and as it is entirely at the hazard of the said Petitioner whether the said invention is new

the sealing of the Patent, and setting forth the tenor and effect of the Letters-patent to be granted, and directing the insertion of all such restrictions, conditions and provisions as he may deem usual or expedient in such grants.[i] No appeal lies from the refusal of the Law Officer to grant a Warrant.[k]

Letters-patent.

The Warrant having been sealed, the Commissioners, when required by the applicant,[l] will cause Letters-patent to be prepared, and forwarded with the Warrant to the Office of the Lord Chancellor, who signs the *recepi* and returns it[m] with the Letters-patent, sealed with the Great Seal[n] of the United Kingdom. The Letters-patent bear date as of the day of application, unless the Law Officer or Lord Chancellor shall otherwise order.[o] If the Letters-patent be destroyed or lost, other Letters-patent will be issued on the authority of the original Warrant.[p]

or will have the desired success, and as it may be reasonable for her Majesty to encourage all arts and inventions which may be for the public good, I am of opinion that her Majesty may grant Her Royal Letters-patent unto the Petitioner, his executors, administrators and assigns, for his said invention within the United Kingdom of Great Britain and Ireland, the Channel Islands and Isle of Man, for the term of fourteen years, according to the Statute in that case made and provided, if Her Majesty shall be graciously pleased so to do, to the tenor and effect following:

[*Form of Letters-patent.*]

Given under my hand this —— day of ——, A.D. ——.

(*Seal of the Commissioners.*)

[i] *Wilson* v. *Northop* (1835), 2 C. M. & R. 326; Chitty's Archbold, 1411.

[k] *Re Cutler's Patent* (1839), 4 M. & C. 511.

[l] Stat. 15 & 16 Vict. c. 83, s. 19, enacts, that such application must be made within three months from the date of the Warrant.

[m] As to the discretion exercised at this period by the Lord Chancellor, see *Ex parte Heathcote, In re Lacy* (1816), lace, Web. P. R. 431, where Lord Eldon, L. C., refused to seal a Patent, giving the Patentee fifteen months to enrol his Specification.

[n] The Officer to whom the duty of sealing Letters-patent is entrusted is the Lord Chancellor's Pursebearer.

[o] 15 & 16 Vict. c. 83, s. 23. [p] Id. s. 22.

With regard to the expressions as to time.[l] In a case[m] in which the Patent bore date 10th May, 1808, and contained the usual proviso that a Specification should be enrolled "within one calendar month next and immediately after the date thereof," Lord Ellenborough, C. J., said:—"It used to be held, that 'from the date' includes the day, and 'from the day of the date' excludes it. But since the case of *Pugh* v. *The Duke of Leeds*,[n] these formal distinctions have been done away, and the rule of good sense has been established that such words shall be construed according to the meaning of the persons who use them. . . . . The day on which the Patent bears date is not to be reckoned. The month therefore only began on the 11th of May, and included the 10th of June, the day on which the Specification was enrolled." Legal time.

By the new Act the powers of the Chancellor,[o] and the Prerogative of the Crown,[p] are expressly preserved. The power of the former to seal Letters-patent as of an earlier day was formerly controlled by the Stat. 18 Hen. VI. c. 1, which enacted, that "the date shall be the day of delivery of the King's warrant into Chancery, and not before in any wise." The late Act, however, removes this restriction, by providing,[q] that Letters-patent may (the Act of the 18th year of King Henry the Sixth, chapter one, or any other act to the contrary notwithstanding) be issued in pursuance of this act, to be sealed and bear date as of the day of the application for the same, and[r] such Letters-patent so ante-dated shall be of the same validity as if sealed on the day of date. Stat. 18 Hen. VI. c. 1.

By a subsequent Act[s] it is provided, that where Letters- Powers of the Lord Chancellor in cases of accidental delay.

[l] Woolrych on Legal Time (1851), 125—128, and cases there cited.

[m] *Watson* v. *Pears* (1809), 2 Camph. 294.

[n] Cowp. 714. See also *Ex parte Fallon and Wife*, 5 T. R. 283; *Clayton's case*, Hob. 139.

[o] 15 & 16 Vict. c. 83, s. 15. [p] Id. s. 16.

[q] 15 & 16 Vict. c. 83, s. 24. [r] Id. s. 24.

[s] 16 & 17 Vict. c. 115, s. 6.

patent have not been sealed during the continuance of the Provisional Protection on which the same is granted, provided the delay in such proceeding has arisen from accident, and not from the neglect or wilful default of the applicant, the Lord Chancellor may, if he shall think fit, seal such Letters-patent, at any time within one month after the expiration of such Provisional Protection.

Notice of opposition at Great Seal.

A Notice of opposition,[s] entered at the Office of the Commissioners, may, however, even at this stage, although of late much discouraged, afford obstruction to the sealing of Letters-patent. In a case[t] before Lord Eldon, L. C., a *caveat* being entered under an existing Patent, from which it was alleged the subject of the new Patent was borrowed, his Lordship sealed the Patent upon reading the affidavits, one of which, by an engineer, stated that the subjects did not resemble each other.

In a recent case,[u] where a *caveat* was lodged before the Great Seal was affixed to the Patent, Lord St. Leonards, L. C., declined to enter into the merits of the opposition, but referred the matter back to the Attorney-General, with orders to proceed expeditiously, and with leave for Petitioner to apply in case of unreasonable delay, the costs of all parties being reserved. "I cannot," said his Lordship, "take upon myself the duty of entering into an examination of the merits of rival Specifications in Court. Lord Eldon seems to have done it in *Ex parte Fox*, but a more inconvenient practice I cannot well conceive. If there was any danger of stopping the Petitioner's application by my not entering into the merits, I might hear the case myself, but I can see no such ground. Under these circumstances I will not act in opposition to the authorities which have been cited, nor am I

[s] Lithographed forms of Notice to proceed, Objections to the grant, and Objections to the sealing of Letters-patent, are supplied by the Commissioners. The Notice must state the ground of objections.

[t] *Ex parte Fox* (1812), steam engine, 1 V. & B. 67.

[u] *In re Fawcett's Patent* (1852), carpets, 2 D. G. M. & G. 439.

inclined to interrupt the general business of the suitor by introducing a very mischievous practice, and one which would lead parties to delay entering their *caveats* for the mere purpose of compelling the Lord Chancellor to hear the merits."

Seal without reference.

Where objections were filed[x] to an application for a Patent, and overruled by the Law Officer, who granted his Warrant for the sealing, to which also objections were filed, on Petition, Cranworth, L. C., made an order to affix the Great Seal without directing a reference. "I think," remarked his Lordship, "that Lord Eldon was correct in *Dyer's* case. In that case *both parties invented the same thing at the same time;* and the question was, who was to be preferred, the first who applied for or the first who obtained the Patent? His Lordship decided in favour of the latter. In my opinion the question is the same as if under the old Law application were being made to me for Letters-patent to be granted at the time when the application for this Patent was made. This application is resisted on two grounds; first, that the Patentees are not the true inventors; and, secondly, that the invention is not new. I am quite ready to say that *I think there is strong evidence that it was not; but I shall not take upon myself so to decide.* If I were to consult my ease, I should be disposed to send the case back to the Law Officers of the Crown; but there must be some end to such references. The Solicitor-General has had the advantage of seeing and hearing the Patentees themselves. He came to the conclusion that there was at least such a *primâ facie* case that the Patentees ought to have their Patent. I think I am bound to decide myself, not whether they have made out that they are the true inventors, and that the invention is new, but whether such a *primâ facie* case has been made, that I ought to put them into a position

[x] *Re Simpson and Isaacs' Patent* (1853), pulp veneer, 21 L. T. 81.

to litigate the question with the public. I am of opinion, therefore, that I clearly ought to order the Great Seal to be affixed on these Letters-patent."

On a Petition[a] to discharge an objection filed by H. against the sealing of a Patent to the Petitioner B., where B. and H. had been partners, and where the late Attorney-General had reported in favour of the Petitioner, but the present Attorney-General had allowed the Patent to H. to be sealed, a compromise was recommended to be settled by the junior conveyancing counsel of the Court—the Patent to the Petitioner to be forthwith sealed and to bear date from the 1st of October last, and the Specification to be filed within one month from the day of the order.

An application for the sealing of a Patent, which, with the consent of the Petitioner and the opposing party (opposing on the ground that he had obtained a Patent for the same or a similar invention), the Lord Chancellor had referred to the Assistant Commissioner in the Patent Office for his opinion as to whether there was an infringement of a Patent already granted, was, upon that officer's opinion[b] being unfavourable to the Petitioner, refused. An order was made for the fee for sealing being returned, subject to cause being shown to the contrary. The Lord Chancellor observed: "The Solicitor-General has, by his Warrant, sanctioned the Petitioner's Patent: he has, therefore, a *primâ facie* right to have his Patent sealed, but before that proceeding takes place the question whether there be any infringement or not should be settled." In *Campbell's* Patent,[c] the opposing party being out of the jurisdiction, service of a Petition, for the sealing, upon his Solicitor was granted.

[a] *Re Brandies' Patent*, 1853, sugar, Cranworth, L. C., 1 Eq. Rep. 121.

[b] *Re Stolls' Patent* (1853), shoes, 21 L. T. 233.

[c] (1854) L. C. 22 L. J. 93.

Costs of opposition at Great Seal.

As to the costs of the opposition at this stage, much will depend from the view taken by the Court of its reasonableness. In *Ex parte Fox*,[d] Lord Eldon refused to grant the costs occasioned by a *caveat*, on the ground that the jealousy was not unreasonable. In *Re Cutler's Patent*,[e] the costs of the unsuccessful opposition were given, but a Petition to review the taxation, which had reduced them by nearly two-thirds, was dismissed with costs. An unreported case[f] was mentioned, in which Lord Brougham is said to have given the Patentee the costs of the *caveat*. In *Re Joyce's Patent*,[g] the costs were given by consent.

Filing Complete Specification.

The last step to be taken by the Patentee, who has obtained Letters-patent by the deposit of a Provisional Specification, is the filing of the Complete Specification in the Office of the Commissioners. Formerly, as above stated, six months were allowed after the grant within which Specifications might be inrolled,[h] with the object of enabling the Patentee to complete his invention. An attempt was made to remedy the inconveniences of the several offices concerned in the old practice by stat. 11 & 12 Vict. c. 94, s. 14 (*Petty Bag, &c. Offices, Chan-*

[d] (1812), steam engine, 1 V. & B. 67.

[e] (1839) 4 M. & Cr. 511; Web. P. R. 422; see supra, 101.

[f] *In re Alcock's Patent* (1832), lace, cited 4 My. & Cr. 511; 2 Lon. Jour. 32.

[g] 20 Dec. 1837, ib.

[h] How much this licence was abused may be seen from the evidence before the Committee in 1851. Mr. John Fairrie (Evid. 916) thus describes its effect:—"A man gets hold of an idea; he runs immediately to the Patent Office before he has made any attempt to perfect his process. He gets a protection for six months, and he goes about examining every publication connected with the particular, and getting all the information he can; and when the time for delivering in his Specification comes, he has entirely altered the original view he entertained. I know that by experience." Such abuses may recur under the present system if any material deviation is admitted between the Provisional and Complete Specification.

cery), re-enacted by Stat. 12 & 13 Vict. c. 109, s. 15 (*Petty Bag, &c. Offices Amendment*), which directed their enrolment in the Enrolment Office of the Court of Chancery, and provided (ss. 15 and 16) for the issue of Certificates and Copies of the Enrolments, which should be admissible in evidence. Stat. 15 & 16 Vict. c. 83, s. 27, dispenses with the enrolment and substitutes the filing of the Specification in the Office of the Commissioners (Great Seal Patent Office). A considerable reduction in expense[g] is effected by the substitution[h] of filing[i] for enrolment.[k]

Form of complete Specification.

The contents of the Specification have been already discussed. The formal parts of it prescribed by the Act are as follows:—

SPECIFICATION.

To all to whom these Presents shall come,

I , of , send greeting:

Whereas her most Excellent Majesty Queen Victoria, by Her Letters-patent bearing Date the Day of A.D. in the Year of Her Reign, did for Herself, Her Heirs and Successors, give and grant unto me the said her special Licence that I the said

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[g] Ante, p. 147.

[h] 15 & 16 Vict. c. 83, s. 27.

[i] A file or filace, whereupon process and other matters are filed, is commonly a piece of Cat's Guts twisted hard and dried, and is thrust through anything which is filed, and, being then in the proper Office for that purpose, it becomes a record of the Court. (Lilly's Pr. Regist. "FILING OF PROCESS," 1735.) The Filazers of this Court (King's Bench), styled Clerks of our Sovereign Lord the King, were assigned to inroll pleas, &c., that is to say, by original writ only. They made out all Process thereupon, and entered them and all Issues joined thereupon. As Lord Mansfield remarked, however, with reference to the terms "feoffment," "tenure," "seisin" and "freeholder," we have little left us but the names, without any precise knowledge of the thing originally signified by these sounds. (Jus Filazarii, by John Trye, of Gray's Inn, Esq., 1684, p. 104.)

[k] Inrollment of a Deed is the entering of it fairly upon the Records of one of the King's Courts of Record at Westminster, or at the Quarter Sessions of the Peace. (Lilly, INROLLMENT.)

my Executors, Administrators and Assigns, or such others as I the said , my Executors, Administrators and Assigns, should at any time agree with, and no others, from time to time and at all times thereafter, during the term therein expressed, should and lawfully might make, use, exercise and vend within the United Kingdom of Great Britain and Ireland, the Channel Islands and Isle of Man, an Invention for

[*Insert Title as in Letters-patent.*]

upon the condition, amongst others, that I, the said by an Instrument in Writing under my Hand and Seal, should particularly describe and ascertain the Nature of the said Invention, and in what manner the same was to be performed, and cause the same to be filed in within calendar months next and immediately after the Date of the said Letters-patent: Now know ye that I the said do hereby declare the Nature of my said Invention, and in what manner the same is to be performed, to be particularly described and ascertained in and by the following Statement (that is to say):

[*Describe the Invention.*]

In witness whereof I the said *A. B.* have heretofore set my Hand and Seal this Day of A D.

A. B.

Extension of time for filing.

Where, by reason of objections having been filed to the application for a Patent[m] (Provisional Specification lodged 2nd October, 1852) and to the Warrant for sealing (issued 9th February, 1853), Patentees were unable to file their Specification within the six months, the Lord Chancellor, on a Petition by the original Patentees, extended the time to seven months; his Lordship observing, that the Court clearly had a right to make such order, inasmuch as the time was fixed only in pursuance of a General Order.[n]

Powers of the Lord Chancellor in cases of accidental delay.

The express power has, however, been conferred by Stat. 16 & 17 Vict. c. 115, s. 6, by which, where the Specification, in pursuance of the conditions of any Letters-patent, has not been filed within the time limited by such

[m] *Re Simpson and Isaacs' Patent* (1853), Cranworth, L. C., pulp veneer, 21 L. T. 81.

[n] Rules, 2nd Set.

Letters-patent, provided the delay in such filing has arisen from accident and not from neglect or default,[m] the Lord Chancellor is empowered at his discretion to extend the time for the filing of the Specification by a period not exceeding one month.

Effect of depositing documents with the Commissioners.

No documents can be received conditionally by the Officers of the Commissioners. In a case[n] under the old practice, the Master of the Rolls refused to cancel the enrolment of a Specification which had been left at the Office and had been enrolled, notwithstanding directions not to enrol it until further order.

Copies of Specifications open to the public;

The Commissioners are to cause[o] true copies of all Provisional Specifications left at their Office, to be open to the inspection of the public at such times after the date of the record thereof respectively as the Commissioners shall, by their order, from time to time direct.

must be left by the Patentee.

A true copy,[p] under the hand of the Patentee or applicant, or agent of the Patentee or applicant, of every Specification, and of every Complete Specification, with the drawings accompanying the same, if any, must be left at the Office of the Commissioners.

Certified copies and extracts receivable in evidence.

Printed or manuscript copies or extracts, certified and sealed with the Seal of the Commissioners of Letters-patent, Specifications, Disclaimers, Memoranda of alterations, and all other documents recorded and filed in the Commissioners' Office, or in the Office of the Court of Chancery appointed for the filing of Specifications, shall be received in evidence in all proceedings relating to Letters-patent for inventions, in all Courts whatsoever within the United Kingdom of *Great Britain and Ireland*, the Channel Islands, the *Isle of Man*, and her

[m] *Re Campbell's Patent* (1854), L. C., 22 L. T. 93.

[n] *In re Brough* (1844), 7 Beav. 101, Lord Langdale. See as to similar cases, *Re Sharp's Patent* (1840), Web. P. R. 641; *Nickel's Patent* (1841), caoutchouc, Web. P. R. 650.

[o] 16 & 17 Vict. c. 115, s. 2. [p] Id. s. 3.

Majesty's Colonies and Plantations abroad, without further proof or production of the originals.[q]

Certified printed copies,[r] under the seal of the Commissioners, of all Specifications and Complete Specifications, and fac-simile printed copies of the drawings accompanying the same, if any, Disclaimers and Memoranda of alterations filed under the Patent Law Amendment Act, shall be transmitted to the office of the Director of Chancery in *Scotland*, and to the Enrolment Office of the Court of Chancery in *Ireland*, within twenty-one days after the filing thereof respectively, and certified copies or extracts from such documents shall be furnished to all persons requiring the same, on payment of such fees[s] as the Commissioners shall direct; and such copies or extracts shall be received in evidence in all Courts in *Scotland* and in *Ireland* respectively, in all proceedings relating to Letters-patent for inventions, without further proof or production of the originals.

To be transmitted to Scotland and Ireland.

[q] 16 & 17 Vict. c. 115, s. 4.

[r] Id. s. 5.

[s] See Appendix, Rule III. Second Set.

CHAPTER V.

Reservation by stat. 21 Jac. I. of the Royal Prerogative.

THE grant of Letters-patent for inventions is the Prerogative of the Crown. In *Boulton* v. *Bull*,[a] Mr. Justice Heath observes: "The Statute of 21 Jac. I. prohibits all monopolies, reserving to the King, by an express proviso, so much of his ancient Prerogative as shall enable him to grant Letters-patent, and grants of privilege for the term of fourteen years or under, of the sole working or making of any manner of new manufactures within this realm, to the true and first inventor and inventors of such manufactures."

Royal grants of the present day construed as grants between subjects.

The principles of interpretation with reference to Royal grants of the present day are thus laid down by Mr. Justice Coleridge in a recent case:[b] "Although in the old books not a few cases may be found distinguishing between grants from the Crown and grants from a subject, on grounds, some of them hard to reconcile with justice or common sense—some of them reasonable enough at the time with reference to the then condition and interests of the Crown, but wholly unreasonable now; yet the general principle to be traced in the main current of authority is both a just and reasonable one, establishing *the same guiding principle of construction* for instruments

[a] (1795) Watts' engine, 2 H. Bla. 465.
[b] *R.* v. *Archipelago Company* (1853), Q. B., 21 L. T. 33.

of both kinds. If, indeed, the King has been deceived by any *false suggestion* as to what he grants or the consideration of his grant,—if he appears to have been ignorant or misinformed of his interest in the subject matter of his grant,—if the language of his grant be so general that you cannot in reason apply it to all that would literally fall under it, or if it be couched in terms so uncertain that you could not tell how to apply it with that precision which a grant from one so especially representing the public interest ought in reason to have, or if the grant, *reasonably construed*, would work a wrong or something contrary to Law—in these and such like cases the grant would be perhaps either wholly void or restrained according to circumstances, and equally so whether the technical words *ex certâ scientiâ et mero motu* be used or not. That is applying the same principles of construction on which a grant from a subject is construed, viz., on default of effectuating the intention of the grantor, to hold the grant valid, or to construe it *secundum intentionem domini regis*, and not in *deceptione domini regis*. It is satisfactory to see that this language of good sense,[c] used even in times when the Prerogative was at least suffi-

Grounds of avoidance.

Construed on principles of good sense.

[c] A strong contrast to the language used in the House of Commons on the motion before alluded to of Lawrence Hyde, where "Mr. Spicer said: 'This act may touch the Prerogative Royal, which, as I learned last Parliament, is *so transcendant, that a subject may not aspire thereto.*' Sir F. Bacon said: 'I say, and say it again, that we ought not to deal, or judge or meddle, with Her Majesty's Prerogative.' I wish, therefore, every man to be careful of this business. Dr. Bennett said: 'He that goeth about to debate Her Majesty's Prerogative had need to walk warily.' Mr. George Moore said: '*We know that the power of Her Majesty cannot be bound by any act; why, therefore, should we thus talk?* Admit that we make this act with a *non obstante*, yet the Queen may grant a Patent with a *non obstante*, to cross this *non obstante*.' On a subsequent day, the subject was again introduced, when Mr. Spicer said, 'It is to no purpose to offer to tie Her Majesty's hands by Act of

ciently favoured in Courts of Law, and in the very books to which reference is made for a strict and inequitable construction, and in the celebrated *Alton Wood's case*,[c] which contains a store of learning on this head, in what Lord Coke calls 'the Treasurer's brief and effectual judgment,' it is laid down that 'no violent or *strained construction is to be made of the King's grant, but his grant shall be taken in its usual and common sense, according to its intent and meaning.*' In *Sir John Molyn's case*,[d] Lord Coke desires the reader 'to note the gravity of the ancient sages of the law to construe the King's grant beneficially for his honour and the relief of the subject, and not to make any strict or literal construction in subversion of such grants.' And Lord C. B. Comyns, in his Digest,[e] gives accordingly the substance of this case, and *Beverly's case*,[f] and the *Churchwardens' case*,[g] in these words: '*When the King's grant is capable of two constructions, by one of which it will be valid and the other void, construction must be made to make it valid*, for that will be more for the benefit of the subject and the honour of the King, which ought to be more regarded than his profit.'"

The following is the Form (prescribed by the Patent Law Amendment Act, 1852) of the Letters-patent at present issued.

Parliament, *when she may loosen herself at her pleasure.*' Mr. Davis said: '*God hath given that power to princes which he attributes to himself, Dixi quod Dii estis.*'" D'Ewes, 652.

[c] 1 Co. Rep. 26.

[d] 6 Co. Rep. 6.

[e] Tit. "Grant by the King," G. 12.

[f] 9 Co. Rep. 129.

[g] 10 Co. Rep. 66.

LETTERS-PATENT.

VICTORIA,[h] by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith; Queen's Title.

To all to whom these presents[i] shall come, greeting:

Whereas hath by his Petition humbly represented unto Us[k] that he is in possession of an Invention for , which the Petitioner conceives will be of great public utility;[l] that he is the true and first Inventor thereof, and that the same is not in use by any other person or persons, to the best of his knowledge and belief:[m] The Petitioner therefore most humbly prayed, that We would be graciously pleased to grant unto him, his executors, administrators and assigns, Recital of Petition.

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[h] As to the general powers of the executive in allowing or prohibiting the importation or exportation of particular goods, or the carrying on of any trade, see Heinec. El. Jur. Civ. ii. 169; Puff. iv. 6, 10; Valin, Com. i. 217; Vattel, i. 94; Blk. bk. iv. pt. 3, ch. i.; Chitty, P. C. ch. x. § 2; Hawk. P. C. i. c. 29, § 20; Com. Dig. "Patents;" Noy, 182; Hindm. 7; Foster, Sci. Fa. 237; Godson, 10; Skin. 224; Hard. 55; 1 Rol. 5; Anderson's Hist. and Chron. Ded. i. 478; *Child* v. *Sands*, 4 W. & M., K. B.; Carth. 295; Dyer, 177. In the Case of Monopolies (*Darcy* v. *Allein*, Noy, 178), it was said, "Such Charter of a monopoly against the freedom of trade and traffic is against divers Acts of Parliament, as 9 Edw. III. c. 1 and 2, which, for the advancement of trade and traffic, extends to all things vendible, notwithstanding any Charter of franchise granted to the contrary, or usage, or custom, or judgment given upon such Charters, which Charters are adjudged by the same Parliament to be of no force and effect."

[i] The King cannot grant but by matter of record (Com. Dig. "Prerog."), and by the Common Law no grant is available or pleadable, unless under the Great Seal. R. 2, Co. 16 b; 2 Rol. 182, l. 5.

[k] The use of the plural form by the King in his grants dates from the reign of John. 2 Inst. 2.

[l] In *Lovell* v. *Hicks* (1836, 2 You. & Coll. 46), the subject matter of a Patent (economical baking apparatus by means of alcoholic evaporation) turned out a mere bubble. The Patent was set aside, as obtained by fraud upon the Crown, and the money paid under an agreement to purchase a share in the Patent ordered to be returned.

[m] The allegations in the Petition as to the utility and novelty of the invention are the grounds on which the *scire facias* is prosecuted for a repeal of a Patent, as obtained by fraudulent representations to the Crown.

Our Royal Letters-patent for the sole[n] use, benefit and advantage of his said invention within Our United Kingdom of Great Britain and Ireland, the Channel Islands and Isle of Man, for the term of fourteen years, pursuant to the Statutes in that case made and provided:

[And whereas[o] the said *A. B.* hath particularly described and ascertained the nature of the said Invention, and in what manner the same is to be performed by an instrument in writing under his hand and seal, and has caused the same to be duly filed in :]

Concession of the Prayer.

And We, being willing to give encouragement to all Arts and Inventions which may be for the public good, are graciously pleased to condescend to the Petitioner's request: Know ye, therefore, that We, of Our especial grace,[p] certain knowledge[q] and mere motion,[r] have

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[n] "The Crown has always exercised a control over the trade of the country, and, though restrained by the Common Law and the Statute of Monopolies within reasonable limits, may grant the exclusive right to trade with a new invention for a limited period. The Statute 21 Jac. I. c. 3, did not create, but controlled the power of the Crown in granting to the first inventors the privilege of the sole working and making of new manufactures." Per V. C. Turner (1851), *Caldwell* v. *Vanvlissingen* (ship-propeller), 9 Hare, 415.

[o] This in the case in which a complete Specification has been filed in the first instance.

[p] "Although the thing may be new in every particular, yet it is in the judgment of the Crown whether it will or will not, *as a matter of favour*, make the grant." Per Bailey, J., *Brunton* v. *Hawkes*, 4 B. & Ald. 552.

[q] Sup. 49. The words *ex certâ scientiâ* are said to import that the King has knowledge of that which he grants, and therefore such Charter is called assertive, and not suggestive. 1 Co. 44 a; 10 Co. 112 b; 3 Levinz, 249; Plowd. 502 b. "The Deed of Grant," Mr. Turner very truly observes (1851, Remarks on Patent Law, p. 19), "swells with imposing terms, which are but the shadows of Majesty. The 'certain knowledge and mere motion' turns out to be *clausula clericorum*, the prohibitions aweless to the infringer, the proviso for favourable construction useless to the Patentee."

[r] "*Ex mero motu* properly imports the honour and bounty of the King, who rewards the Patentee for the merit of his service of the mere motion of the King himself, without any suit of the party." (Vin. Abr. "Prerog.;" Bac. Abr. "Prerog.;" Com. Dig. "Grant.") Hindm. "It is the duty of every one obtaining a grant from the Queen to see that she is correctly informed respecting the grant." 1 Co. R. 52 a.

given and granted, and by these presents for Us, Our heirs and successors, do give and grant, unto the said *A. B.*, his executors, administrators and assigns, Our especial licence, full power, sole privilege and authority that he the said *A. B.*, his executors, administrators and assigns, and every of them, by himself and themselves, or by his and their deputy or deputies, servants or agents, or such others as he the said *A. B.*, his executors, administrators or assigns, shall at any time agree with, and no others, from time to time, and at all times hereafter during the term of years herein expressed, shall and lawfully may make, use, exercise and vend his said Invention within Our United Kingdom of Great Britain and Ireland, the Channel Islands and Isle of Man, in such manner as to him the said *A. B.*, his executors, administrators and assigns, or any of them, shall in his or their discretion seem meet; and that he the said *A. B.*, his executors, administrators and assigns, shall and lawfully may have and enjoy the whole profit, benefit, commodity and advantage from time to time coming, growing, accruing and arising by reason of the said Invention for and during the term of years herein mentioned, to have, hold, exercise and enjoy the said licences, powers, privileges and advantages hereinbefore granted, or mentioned to be granted, unto the said , his executors, administrators and assigns, for and during and unto the full end and term of fourteen years, from the[r] Day of , A. D. next immediately ensuing, according to the Statute in such case made and provided; and to the end that he the said *A. B.*, his executors, administrators and assigns, and every of them, may have and enjoy the full benefit and sole use and exercise of the said Invention according to Our gracious intention hereinbefore declared, We do by these presents for Us, Our heirs and successors, require and strictly command all and every person and persons, bodies politic and corporate, and all other Our subjects whatsoever, of what estate, quality, degree, name or condition soever they be, within Our United Kingdom[s] of Great Britain

Words of grant.

Term of the grant.

Extent of the grant.

Prohibitory words.

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[r] See 15 & 16 Vict. c. 83, s. 23.

[s] Letters-patent obtained in England previous to the late Act conferred exclusive privilege only within England, Wales and the town of Berwick-upon-Tweed, and also within the islands of Guernsey, Jersey, Alderney, Sark and Man, and Her Majesty's colonies and plantations abroad, if so expressed. The privilege for Ireland and Scotland was required to be by separate Letters-patent. An instance of the injustice and grievance this produced is given in evidence by Mr. Macfie, sugar-refiner of Liverpool, Evid. 980. The Letters at present granted

and Ireland, the Channel Islands and Isle of Man, that neither they[u] nor any of them at any time during the continuance of the said term of fourteen years hereby granted, either directly or indirectly do make, use or put in practice the said Invention, or any part of the same, so attained unto by the said as aforesaid, nor in anywise counterfeit, imitate or resemble the same; nor shall make or cause to be made any addition thereunto or subtraction from the same, whereby to pretend himself or themselves the inventor or inventors, devisor or devisors thereof, without the consent, licence or agreement of the said *A. B.*, his executors, administrators or assigns, in writing under his or their hands and seals first had and obtained in that behalf, upon such pains and penalties as can or may be justly inflicted on such offenders for their contempt of this Our Royal command, and further to be answerable to the said *A. B.*, his executors, administrators and assigns, according to Law, for his and their damages thereby occasioned; and moreover We do, by these presents, for Us, Our heirs and successors, will and command all and singular the justices of the peace, mayors, sheriffs, bailiffs, constables, headboroughs and all other officers and ministers whatsoever of Us, Our heirs and successors, for the time being, that they or any of them do not nor shall at any time during the said term hereby granted in anywise molest, trouble or hinder the said *A. B.*, his executors, administrators or assigns, or any of them, or his or their deputies, servants or agents, in or about the due and lawful use or exercise of the aforesaid Invention or anything relating thereto: Provided always, and these our Letters-patent are and shall

Proviso for revocation.

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are valid for the whole of the United Kingdom, the Channel Islands and the Isle of Man. A provision was made with respect to their operation in the Colonies: none, are, however, now granted. A case (*Caldwell* v. *Vanvlissingen* (1851), screw-propeller, V. C. T., 9 Hare, 415) which, shortly before the passing of the Patent Law Amendment Act, occupied the attention of the Courts, led to the introduction into the bill of the permission (15 & 16 Vict c. 83, s. 26) to use patented inventions on board such foreign ships when within Her Majesty's jurisdiction, where such inventions are not used for the manufacture of any goods to be vended within or exported from Her Majesty's dominions, and where reciprocal advantages are conceded with respect to the Patents of that country.

[u] "The prohibitory words of the Patent, which are addressed only to the subjects of this country, are in aid of the grant, and not in derogation of it." V. C. Turner, *Caldwell* v. *Vanvlissingen* (1851), ship-propeller, 9 Hare, 415.

be upon this condition,[x] that if at any time during the said term hereby granted it shall be made to appear to Us, Our heirs or successors, or any six or more of Our or their Privy Council, that this Our grant is contrary to Law or prejudicial or inconvenient to Our subjects in general, or that the said Invention is not a new Invention as to the public use and exercise thereof, or that the said *A. B.* is not the true and first Inventor thereof within this realm as aforesaid, these Our Letters-patent shall forthwith cease, determine and be utterly void to all intents and purposes, anything hereinbefore contained to the contrary thereof in anywise notwithstanding: Provided also, that these Our Letters-patent, or anything herein contained, shall not be construed to extend to give privilege unto the said *A. B.*, his executors, administrators or assigns, or any of them, to use or imitate any Invention or work whatsoever which hath heretofore been found out or invented by any other of Our subjects whatsoever, and publicly used or exercised, unto whom Our like Letters-patent or privileges have

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[x] On the effect of a proviso of this kind—enabling the Crown in a summary way, by writing under the Great Seal or Sign Manual, to revoke or modify Letters-patent granted to Incorporated Companies—upon the power to have them repealed by *scire facias*, the Queen's Bench, in *Reg.* v. *Eastern Archipelago Company* (21 L. T. 35), was equally divided. "I am of opinion," said Campbell, C. J., "that the proviso in no respect limits the power of proceeding by *scire facias*, and gives only an additional and cumulative remedy by enabling the Crown in a summary manner to revoke the Charter or modify it. The supposition that it takes away all power to proceed by *scire facias* cannot possibly be sanctioned. It is difficult to imagine how such a proceeding would be conducted, as no instance can be discovered, although a similar power of summary revocation has been contained in all Letters-patent granted since the Statute of Monopolies . . . The grant of a Patent is matter of grace and favour, and therefore the Crown may annex any conditions it pleases to the grant." Mr. Hindmarch (p. 432) suggests that it was under this or a simiar proviso that Queen Elizabeth recalled her obnoxious Patents (supra, 7). If exercised by the Privy Council, it must be under the hands of six or more of the members of it. In *Ledsam* v. *Russell* (House of Lords, 1 Cl. & Fin. 687) renewed Letters-patent were granted to B., on his securing to A, the original Inventor, an annuity of 500*l.* as long as the new Letters-patent should last; but if he could not secure such annuity, then upon signification thereof by Her Majesty, the new Letters-patent should cease.

been already granted for the sole use, exercise and benefit thereof; it being Our will and pleasure that the said *A. B.*, his executors, administrators and assigns, and all and every other person and persons to whom like Letters-patent or privileges have been already granted[y] as aforesaid, shall distinctly use and practise their several Inventions by them invented and found out, according to the true intent and meaning of the same respective Letters-patent and of these presents: Provided likewise, nevertheless, and these Our Letters-patent are upon this express condition, *that, if the said* A. B. *shall not particularly describe*[z] *and ascertain the nature of his said Invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and cause the same to be filed in within* [a]*calendar months next and immediately after the date of these our Letters-patent*, [that if the said instrument in writing filed as aforesaid does not particularly describe and ascertain the nature of the said Invention, and in what manner the same is to be performed,] and also if the said *A. B.*, his executors, administrators or assigns, shall not pay or cause to be paid at the Office of Our Commissioners of Patents for Inventions the sums[b] following; that is to say, the sum of

Conditions as to the Specification.

On nonpayment of stamp duty.

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[y] Hindmarch, 431. The express stipulation is needless, it being established Law, that "if the King by his Letters-patent grant the same thing to several persons, a *scire facias* lies for repealing the last Patent." 4 Inst. 88; Dy. 197 b, 198 a; Adm. Dy. 1336; 2 Rol. 191, c. 50, cont.; 39 Hen. VI. 33. See *Dobbs* v. *Penn* (1849), blind-rollers, 3 Exch. 427.

[z] Where Letters-patent are obtained by means of a Provisional Specification, the portions within brackets are inserted,—when by means of a complete Specification, those in italics take their place.

[a] 16 & 17 Vict. c. 115, s. 5. By 32 Geo. III. c. 73, Booth's Patent (1792) was allowed eight months to enrol, to prevent the invention getting to foreign countries.

[b] By stat. 16 Vict. c. 5, s. 2, repealing stat. 15 & 16 Vict. c. 83, ss. 17, 44, 45, 46 and 53, and so much of the Schedule as relates to Fees and Stamp Duties payable under the act, it is enacted, that "all Letters-patent for Inventions under the said act shall be void, and their powers determine at the expiration of three and seven years respectively from the date thereof, unless before then the Stamp duties prescribed by the Schedule to the act be paid: and such Letters-patent, or a duplicate thereof, shall be stamped with proper stamps, showing the payment of such respective stamp duties, and shall, when stamped, be produced before the expiration of such three years and seven years respectively, at the Office of the Commissioners, and a

pounds on or before the day of
A.D. and the stamp duty payable in
respect of the certificate of such payment; and the sum of
pounds on or before the day of A.D.
and the stamp duty payable in respect of the certificate
of such payment; and also if the said *A. B.*, his executors, administrators or assigns, shall not supply[c] or cause to be supplied for Our

Conditions of supplying articles for Her Majesty's service.

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certificate of the production of such Letters-patent or duplicate so stamped, specifying the date of such production, shall be endorsed by the Clerk of the Commissioners on the Letters-patent or duplicate, and a like certificate shall be endorsed upon the Warrant for such Letters-patent filed in the said Office."

Schedule of Stamp Duties to which this Act refers.

	£	s.	d.
On Petition for grant of Letters-patent . . .	5	0	0
On Certificate of Record of Notice to proceed .	5	0	0
On Warrant of Law Officer for Letters-patent .	5	0	0
On the Sealing of Letters-patent	5	0	0
On Specification	5	0	0
On the Letters-patent, or a Duplicate thereof (meaning those issued 15 & 16 Vict. c. 83, s. 22, in lieu of those destroyed or lost), before the expiration of the third year . . .	50	0	0
On the Letters-patent, or a Duplicate thereof, before the expiration of the seventh year . .	100	0	0
On Certificate of Record of Notice of Objections	2	0	0
On Certificate of every Search and Inspection .	0	1	0

[c] Considerable difficulty has arisen under this provision, which does not, it appears, amount to a contract to purchase the articles of the Patentee. In a case before Lord Eldon (*Walker* v. *Congreve* (1816), powder-barrels, 29 Lond. Journ. 311; Carp. Pat. Rep. i. 356), the invention of the Patentee had been used in the Royal Laboratory at Woolwich, under the direction of Sir W. Congreve, Secretary to the Board of Ordnance. An injunction to restrain its use was disobeyed. On a motion to commit the defendant for its breach, Lord Eldon, C., remarked "Speaking with all due respect, I will treat Government here as I would any other suitor . . . . . I recommend Government to pay the costs of this application. I can only recommend to Government; but by the use of this language I give it to be understood that if the *recommendation* is not attended to, I will make an *order* for the defendant, Sir William Congreve, to pay the said costs." In the case of Pering's Patent (1836 (anchors), 6 N. & M. 472; 4 A. & E. 949),

service all such articles of the said Invention as he or they shall be required to supply by the Officers or Commissioners administering the department of Our service for the use of which the same shall be required, in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled for that purpose by the said Officers or Commissioners requiring the same, that then and in any of the said cases these Our Letters-patent, and all liberties and advantages whatsoever hereby granted, shall utterly cease, determine and become void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding: Provided 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 *A. B.*, his executors, administrators and assigns, that these Our Letters-patent, on the filing thereof, shall be in and by all things good, firm, valid, sufficient and effectual according to the true intent and meaning thereof, and shall be taken, construed[c] and adjudged in the most favourable and beneficial sense for the best advantage of the said *A. B.*, his executors, administrators and assigns, as well in all Our Courts of Record as elsewhere, and by all and singular the Officers and Ministers whatsoever of Us, Our heirs and successors, in Our

Power to grant licences.

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the invention was made use of by the Admiralty in the Royal Dockyards, with the consent of the Patentee, who gave instructions gratuitously in the employment of it. The Court of Queen's Bench refused to issue a *mandamus* to compel the Lords of the Admiralty to settle terms according to the Patent. "Such a *mandamus*," said Littledale, J., "would be a sort of *quantum meruit* for the use of the Patent, and that as not only debts but unliquidated damages may be recovered at Common Law against the Crown by Petition of Right; so, therefore, unless this complete and ordinary remedy be taken away by the Patent, the applicant is not entitled to avail himself of the extraordinary remedy by *mandamus*." (See Tapping on Mandamus (1848), 213, and authorities there cited.) The evidence of Mr. Westhead, M. P., before the Committee, in 1851 (2660), disclosed a case of great hardship on the part of Patentees from this arrangement.

[c] *Travell* v. *Carteret*, 3 Lev. 135; *Alcock* v. *Cooke*, 5 Bing. 340. The King's Patents are usually construed strictly in favour of the Crown. (5 Bac. Abr. 602; Web. P. R 26.) The grant of Letters-patent for inventions confers no *primâ facie* right on the Patentee. (*Dobbs* v. *Penn*, 1849, 3 Exch. 427.) A recent case (Captain Carpenter's screw propeller, extended 1854) has directed the attention of Parliament to this subject. (Times, July 11th, 1854.)

United Kingdom of Great Britain and Ireland, the Channel Islands and Isle of Man, and amongst all and every the subjects of Us, Our heirs and successors whatsoever and wheresover, notwithstanding the not full and certain describing the nature or quality of the said Invention or of the materials thercunto conducing or belonging. In witness whereof we have caused these Our Letters to be made Patent this[d] day of A.D. and to be sealed and bear date as of the said day of A.D. in the year of Our reign.

Change in the practice by abolition of enrolment.

The present practice with regard to the revocation of the privileges granted by Letters-patent differs very materially from that formerly observed, in consequence of the changes effected with reference to the documents connected with it, and the discontinuance of the enrolment of Letters-patent and Specifications. The surrender of the Letters-patent by the Patentee, and the cancellation of the enrolment by "drawing strikes through it like a lattice,"[e] seem formerly to have been always insisted on as indispensable formalities.

Surrender of Patent.

If a man surrendered his Patent and it were cancelled, and a note of it endorsed and afterwards the surrender enrolled, the Patent was vacated by it; and after the *vacatur* entered upon the roll, a *constat* of it could not be granted." The surrender of the original Patent, where a Patent was granted to two, and the Chancellor made a duplicate, was held sufficient to vacate the Patent, "for the duplicate was made by the Chancellor without a warrant."[f]

Formerly, in the event of the loss of original Letters-patent, a certificated transcript from the enrolment, called an "exemplification" or "constat," was obtainable, and was of the same force[g] as the original Patent. By the

[d] Letters-patent are no longer signed by the Queen.

[e] "It is the highest point of the Lord Chancellor's jurisdiction to cancel the King's Letters-patent under the Great Seal." 4 Inst. 88; 1 Hawk. P. C. 627.

[f] Dy. 167 a, in marg.

[g] By stat. 3 & 4 Edw. VI. c. 4, explained by stat. 13 Eliz. c. 6; 5 Co. 53 b; Co. Litt. 225 a.

new Act, the proceedings in the event of the original Letters-patent being destroyed or lost are much simplified, the Commissioners being empowered[h] to issue other Letters-patent,[i] of the like tenor and effect and of the date of the original Patent.

R. v. Newton.

In the *Queen* v. *Newton*,[k] a curious instance is afforded of rigorous adherence to ancient custom in deciding the practice as to Patents in the present day. It was an application to compel the defendant to bring the Patent into Court to have the same cancelled and the Seal cut therefrom. The question had been tried by action of *scire facias*,[l] and judgment awarded, that the Patent was to be considered null and void. The Court inquired where precedents were to be found for the present application. It was admitted that there was no case upon record exactly similar to that before the Court, but one "bearing upon the point" occurred in the reign of Edward III., in reference to[m] a Charter granted to the Friars Carmelites: this charter had been annulled by the Court of King's Bench, and the Friars were ordered "to take the Patent into the Court of Chancery (whence it had issued), there, according to form, to be *cancellated*, crossed with lines, and the Great Seal broken and cut off." After some further discussion it was decided, that the enrolment of the Patent should be cancelled, that a *vacatur* should be entered on the roll, and that the defendant should undertake not to bring a writ of error, or make any assignment of the Patent.

Revocation by the Queen's Bench.

Several precedents are to be found in the records of the Court of Queen's Bench of judgments given by that

[h] 15 & 16 Vict. c. 83, s. 22.

[i] Copied from the Warrant which embodies the form of the Letters-patent, and is filed in the Commissioners' Office.

[k] (1845) 26 Lond. Jour. 361, cor. Lyndhurst, L. C., assisted by Lord Langdale, M. R.

[l] (1844) Lord Denman, Q. B.

[m] No mention is made of this in *Dugdale* or *Stevens*.

Court to repeal Letters-patent. In *Mich.* 3 & 4 *Phil. & M., Roll.* 16,[n] is a record of *scire facias* to repeal Letters-patent, returnable in the King's Bench, '*quod literæ patentes revocentur, admittentur et evacuentur, et quod officium in manus Domini Regis seisiatur.*'

Cancelling.

In *Bynner* v. *Queen*,[o] the power of Courts of Common Law to order the cancelling of a Patent was argued at great length. In an elaborate judgment expressing the opinion of the Court, Tindal, C. J., said, "On the whole, we think the balance of authorities is decidedly in support of the position contended for on the part of the Crown; that the record is sent down to the Queen's Bench; that the Queen's Bench has authority to award the judgment, and afterwards to transmit either the record or the tenor thereof to the Court of Chancery, in order to be fully carried into execution; and that nothing remains to be done in the Court of Chancery but a mere ministerial act by the officers of that Court." The judgment of the Court below being complete, the Court of Chancery will not stay the necessary formal execution of that judgment.[p]

Documents remaining of Record.

The documents remaining of Record under the new practice are the Warrant of the Law Officer for the sealing, and the Specification, both of which are filed in the Office of the Commissioners.

Transcripts of Letters-patent for Scotland and Ireland.

Transcripts of the Letters-patent are to be transmitted to the Director of Chancery in Scotland,[q] and to the Court of Chancery in Dublin,[r] for enrolment in the records of those Courts.

[n] To repeal a grant of the Office of Keeper of the Gaols of *Ilchester* and *Dorchester*.

[o] Ex. Ch. 9 Q. B. 523. See 12 & 13 Vict. c. 109, ss. 35, 36 (Petty Bag, &c., Offices Amendment), and *post*, under head of "*Scire Facias.*"

[p] *R.* v. *Eastern Archipelago Company* (1854), L. C., 1 Eq. Rep. 513. The formality observed in this case was the proclamation three times by the Clerk of the Petty Bag for the defendants to bring in the Charter to be cancelled. No answer being returned, his Lordship named fourteen days as the period within which the Charter should be delivered up.

[q] 15 & 16 Vict. c. 83, s. 18. [r] 15 & 16 Vict. c. 83, s. 29.

CHAPTER VI.

AMENDMENT AND DISCLAIMER.

Disclaimer wrong in principle.

A CONSIDERATION of Amendment and Disclaimer, from the point of view assumed in this Treatise, produces a strong conviction on the mind that the theory proceeded on is false, and the practice, beyond a doubt, highly prejudicial to public interests. Good policy requires that the invention at the period of the grant should be complete,[a] and the proceedings connected with it such as to discourage all laxity in the Patentee. The very contrary appears to be at the foundation of the practice as at present established, as the terms of the Patent privilege, carelessly conceded in the first instance,[b] may, with as little supervision, at any period of their continuance, be varied, almost arbitrarily, by the Patentee.

How necessary.

That inaccuracies in the Specification, and misunderstandings as to the nature of some inventions in their earlier stages, are unavoidable, and that against such it is mere justice to protect the Patentee, is what no one will attempt to deny. The evils attendant on Disclaimers afford, however, a fair subject of complaint as an abuse of the remedy proposed, and an appropriation by parties never contemplated by the Act,[c] of the relief devised

[a] Co. Litt. 70 (1851), Evid. 1121, Fairbarn.

[b] 2 Vent. 344; *Attorney-General* v. *Vernon*, 1 Vern. 277; 2 Ch. Rep. 353.

[c] "The power to disclaim," says the Master of the Rolls (Sir J. Romilly), *Reg.* v. *Mill* (1851, 14 Beav. 315), "given by Lord Brougham's Act, is very valuable, and of great importance to Patentees; but it is a power which, if indiscriminately exercised, would

against hardships arising in the case of meritorious inventions and unforeseen inaccuracies. The necessity for allowing some mode of escape from the defects arising from the necessarily secret and hurried manner in which experiments were formerly conducted,[d] is to a very considerable extent diminished by the institution of the new feature in Patent Law—Provisional Protection.

Inconveniences of the present practice.

Admitting, however, the necessity of some such powers being placed within reach of the Patentee, it is much to be regretted that the practice[e] has not followed the channel opened for it by section 2 of 5 & 6 Will. IV. c. 83, which provides for the *Confirmation* of Letters-patent where the invention is really meritorious, and the errors vitiating the grant have been involuntary on the part of the Patentee: an arrangement which, by substituting the jurisdiction of the Privy Council for that of the Law Officer, bade fair to place this branch of the Law on as satisfactory a footing as that connected with the Prolongation of Patents.

Necessity for enactments on the subject.

Another reason for providing some such resource for work considerable injustice to the public. In many cases a person may make an Invention, some part of which may be comprised in another Patent, which he may be advised is wholly invalid, and yet by the effect of a subsequent disclaimer it may become perfectly good, and a liability created which did not previously exist. It is very desirable to afford protection to Patentees in consequence of the difficulties arising from the nature of the subject and the state of the Law. It is proper they should be allowed to correct errors in their Patents by removing from the Specification parts which are not material or substantial, or which they have since discovered not to be new inventions; but this power ought to be exercised with great care and discretion."

[d] (1841) Web. Law and Pr. 17.

[e] The inclusion of the conditions of validity for Disclaimers in 7 & 8 Vict. c. 69, prescribing the powers of the Privy Council, evidences the intention of superseding the ordinary practice by a jurisdiction similar to that exercised by the Judicial Committee in the prolongation of Patents.

Powers of the Master of the Rolls.

Patentees is to be found in the technical difficulties with which the correction of the public records in this department was surrounded. At Common Law the power of the Master of the Rolls to amend[f] the Records of the Court of Chancery was limited to the correction of clerical errors, and did not extend to the removings from those Records a memorandum of alteration enrolled under Stat. 5 & 6 Will. IV. c. 83, the terms of which were inconsistent with the provisions of the first section of that Statute. In a case of this kind Lord Langdale, M. R., said, with reference to the practice[h] of the Court in the amendment of enrolments, "It would seem that it has always been usual to amend clerical errors. When errors have been made in grants, as was said, *per incuriam et ex inani inadvertentiâ scriptoris*, they have been amended by the Master of the Rolls, sometimes under the authority of a Warrant from the Crown, sometimes with the consent of the Attorney-General, sometimes in consequence of a reference to him by the Lord Chancellor; and there is an instance of an amendment being made by an order of the Lord Chancellor, pursuant to an order of the King."

The Lord Chancellor's power.

Even the powers of the Lord Chancellor were confined within narrow bounds. In *Ex parte Beck*[i] the question was whether there was to be an amendment of the enrolment or a new Patent. The Chancellor held his powers did not amount to effecting the former, but inti-

[f] For instances of records so amended, see Web. P. R. 647, n. (*l*). Under the present practice no alteration is to be allowed in a Provisional Specification *at the instance of the applicant* after it has been recorded, except for the correction of clerical errors or of omissions made *per incuriam*. (2nd Set of Rules.)

[g] *Re Sharp's Patent, Ex parte Wordsworth* (1840), flax spinning, Web. P. R. 641; 3 Beav. 245.

[h] The cases referred to by his lordship are cited in Web. P. R. 647, note (*l*).

[i] (1784) Thurlow, L. C., 1 Br. Ch. Ca. 578; Web. P. R. 430, n.

mated an opinion that if the Petitioners applied for a new Patent, the Law Officers, under the circumstances, would forego their fees.

Instances of trifling amendments.

In a case before Lord Gifford,[k] the Specification, in which the word "wire" had been written instead of "fire," was ordered to be amended. In one before Sir J. Leach, "which" for "wheel," and "increase" for "invert," were amended. There are other similar cases, in which the errors have been more or less numerous, but all of the same kind. The alterations were attended with much formality, and entailed consequently considerable expense. The cost of altering the word "pressing" into "dressing" is mentioned as having amounted to 30*l.*

Amendment of Patents.

Such was the posture of affairs[l] previous to the enactment of 5 & 6 Will. IV. c. 83, an Act for which inventors are indebted almost wholly to the exertions of Lord Brougham. By section 1 of that Statute the Patentee was enabled to enter with the Clerk of Patents, by permission of the Crown, a Disclaimer of any part of the Title or Specification, or a Memorandum of any alteration therein. "The spirit of the Act," says Mr. Justice Maule,[m] "is this, that inasmuch as there may be trifling defects in some small and insignificant portions of a Patent *which is in all other respects good*, in such case amendments may be made. The principle of the enactment seems to be that when there is some matter which the Attorney-General, in his judgment, may consider to be such a matter as may properly be amended by disclaimer or alteration, in such a case the Patent shall not be avoided, but may be amended. Before this Act the Master of the Rolls had the power of amending Letters-patent in some

Spirit of the Act.

[k] *Whitehouse's Patent* (gas tubes).

[l] *Gibson* v. *Brand* (1842), silk, Web. P. R. 640; *Morgan* v. *Seaward*) paddlewheels), 7 Lond. Journ. 182; *Rubery* v. *Burrs*, 3 Lond. Journ. 246; Carp. 94.

[m] *Reg.* v. *Mill* (1850), C. B., instruments for marking, &c., 1 L. M. & P. 707.

trifling matters; under this Act, however, an amendment must be made with more formality."

Rubery's case.

The emendation of clerical errors was, however, continued after the passing of the Act. In *Rubery's* case,[n] the Specification, reciting a false date (October for November) for the Grant, was amended by an order of the Master of the Rolls. In another[o] the numbers of reference to a plan had by accident become transposed, the amendment was allowed.

Nickel's.

In the case of *Nickel's Patent*,[p] "recovering" had been written for "covering." The Chancellor and Master of the Rolls made a joint order for the resealing of the Letters-Patent with the alteration, on the undertaking of the Patentee to abandon an action then pending, and not to bring any action for infringement before the resealing.

In a recent case[q] the engrossment of the Letters-patent bore date two days before the date of the Privy Seal, and the Patentee, not being aware of the discrepancy, was a day too late in enrolling his Patent. It was there ordered, that, as the mistake arose from the misprision of the clerk, the enrolment should be amended.

The practice relating to such Disclaimers and Memoranda of alterations is regulated by the provisions of the following Statutes, in addition to the provisions of the Act creating them, viz., 7 & 8 Vict. c. 94; 12 & 13 Vict. c. 109; 15 & 16 Vict. c. 83, and 16 & 17 Vict. c. 115. The distinction originally observed[r] between Disclaimers and Memoranda of alterations has in the course of practice become obliterated, the terms being at present used indifferently or together.[s]

[n] (1837), umbrellas, Langdale, M. R., Web. P. R. 649, n.
[o] *Re Redmund* (1828), door hinges, 5 Russ. 44.
[p] (1841), fibre covering, Langdale, M. R., Web. P. R. 656.
[q] *Re Adams' Patent* (1853), L. C., 21 L. T. 38.
[r] Hindm. 204.
[s] *Reg.* v. *Newton* (1845), 26 Lond. Journ. 362.

Who is to disclaim.

The party eligible to act in the case of Amendment and Disclaimer was at the outset of the practice the subject of considerable difference of opinion,[t] according to the interpretation affixed to the words "any person who as grantee, assignee or otherwise, hath obtained, or who shall hereafter obtain, Letters-patent."

Patentee, after assignment, entering disclaimer.

In *Spilsbury* v. *Clough*,[u] where the disclaimer had been enrolled by the grantee, who did not at the time possess the entire interest in it, Lord Denman, C. J., observed, "I think the grantee falls within the description given in the statute of the persons who may enter a disclaimer; any inconveniences which might arise from such a power may be obviated by the exercise of the discretion conferred upon the Attorney and Solicitor-General, who will, before they grant leave for that purpose, take cognizance of the name in which permission is given." The opinions expressed by the learned judges in that case amounted in effect to the position, that, irrespective of his interest in the Patent, the Patentee was the proper party to disclaim.

7 & 8 Vict. c. 69.

To set at rest, however, all doubts as to whether under the above provisions a plaintiff, after assigning his interest, could enter a Disclaimer, the Stat. 7 & 8 Vict. c. 69 (Privy Council Appellate Jurisdiction), was enacted, by sect. 5 of which[v] it is enacted, "That in case the original Patentee or Patentees hath or have departed with his or their whole, or any part of his or their interest, by assignment to any other person or persons, it shall be lawful for such Patentee, together with such assignee or assignees, if part only hath been assigned, and for the assignee or assignees, if the whole hath been assigned, to enter a Disclaimer and Memorandum of alteration,

[t] *Russell* v. *Ledsam* (gas tubes), 1848, 1 H. of L. Cases, 687.

[u] (1842), chloride of lime, 2 Gale & Dav. 17; 6 Jur. 579; Web. P. R. 255; 2 Q. B. 466.

[v] Per Pollock, C. B., *Wallington* v. *Dale* (1852), Exch., gelatine, 19 L. T. 187.

under the powers of the said recited Act,"[x] which, when entered and filed as there prescribed, "shall be valid and effectual in favour of any person or persons in whom the rights under the said Letters-patent may then be, or thereafter become, legally vested; and no objection shall be made in any proceeding whatsoever, on the ground that the party making such Disclaimer or Memorandum of such alteration had not sufficient authority in that behalf."

Section 6.

By sect. 6, Disclaimers and Memoranda of alterations made before the passing of the act "by such Patentee with such assignee, or by such assignee as aforesaid," are declared valid.

Disclaimer part of Letters-patent.

The new Act extends to the Patentee[y] the advantages conferred by 5 & 6 Will. IV., amended by 11 & 12 Vict. c. 94, s. 14, and re-enacted by 12 & 13 Vict. c. 109, s. 15, whereby the grantee, assignee or otherwise proprietor of Letters-patent, may enter a "Disclaimer" of any part of either the title of the invention, or of the Specification, stating the reason for such Disclaimer, "which, being enrolled with the Specification, shall be deemed and taken to be part of such Letters-patent and such Specification in all Courts whatsoever." It also declares the filing of the Disclaimer or Memorandum of alteration by leave of the Law Officer to be, except in cases of fraud, conclusive as to the sufficient authority for the entry of the Disclaimer.[z]

What may be disclaimed.

The next consideration is the matter to be disclaimed, or the nature and extent of the changes effected by Disclaimer or Memorandum of alteration. As in the case of the subject matter of the original grant, this is a matter with respect to which general rules are inapplicable, and

[x] 5 & 6 Will. IV. c. 83.

[y] 15 & 16 Vict. c. 83, s. 39.

[z] *Spilsbury* v. *Clough* (1842), chloride of lime, 2 Q. B. 466; *Perry* v. *Skinner* (1837), Exch., pens, 2 M. & W. 471; *Reg.* v. *Mill* (1850), C. B., instruments *for marking*, 1 L. M. & P. 444.

which must in each case[a] depend upon the nature of the invention. The only restriction imposed by Statute is, that it must not be "such Disclaimer or such alteration as shall extend the exclusive right granted by the said Letters-patent."

The extent of the alterations in its description gives, as we have seen, a very inadequate idea of the extent of the alteration in the results of a manufacture. The real effect of any alteration in a Specification[b] may, therefore, be to create a Patent right materially different from that intended to be conferred by the original Letters-patent.

Reason for the Disclaimer.

The Act requires a statement of the reason for making the Disclaimer. This is usually complied with by setting out shortly in the Petition the points in which the Patentee believes the Title, the description, or the claims in the Specification of his Patent, to be defective. Inconsistency between the Provisional and Complete Specifications seems, in the present aspect of the Law, likely to constitute the main reasons for desiring an alteration in Letters-patent granted under the present system.

Assent of the Crown.

The assent of the Crown to the entry of the Disclaimer or Memorandum of alterations is an indispensable preliminary. The Act originating the procedure[c] provided for this assent by means of the *fiat* and signature of the Attorney or Solicitor-General in the case of an English, of the Lord Advocate or Solicitor-General of *Scotland* in the case of a Scotch, and of the Attorney or Solicitor-General of Ireland in that of an Irish, Patent. Patents being now granted for the United Kingdom, the assent of the Attorney or Solicitor-General alone is requisite for Patents granted under the new Act; Disclaimers must be assented to by the same Law Officers as before.

Amendment of Patents granted under the old system.

Applications for Disclaimer and alterations of Patents

[a] 14 Jur. Pt. II., 462, *Heath's Patent* (steel), 10 M. & W. 444.
[b] (1851) Evid. 2789, Sir J. Romilly, M. R.
[c] 5 & 6 Will. IV. c. 83, s. 1.

granted under the old system (previously to 1st October, 1852) are not received at the Office of the Commissioners. The practice with regard to these is that obtaining[d] previous to the operation of 15 & 16 Vict. c. 83—Petitions and *caveats*, with reference to English Patents, must be entered, as before that Act, at the chambers of the Law Officers.

Practice of disclaiming.

Application for leave.

The first step to be taken by the party entitled to disclaim is by an application for leave,[e] in the following form, to be left at the Office of the Commissioners.

To the Commissioners of Patents.

The petition of *A. B.* of , in the county of showeth that your Petitioner hath obtained her Majesty's Letters-patent for , bearing date the day of , and hath duly described the nature of his invention, and in what manner the same is to be performed, by an instrument in writing duly filed in the office of the Court of Chancery appointed by the Lord Chancellor for filing Specifications [*nature of and reasons for the alterations intended to be made*].

Your petitioner therefore prays leave to file in the Office appointed for filing Specifications in Chancery the said Disclaimer [*or* "Memorandum of alteration"], a copy of which, signed by your Petitioner, is left herewith, in the form in which your Petitioner is desirous the same should be entered as aforesaid. And your Petitioner, &c.

Caveat on opposition.

Parties interested may oppose the entry of a Disclaimer or Memorandum of alteration, the provisions of the Act[f] being, "that any person may enter a *caveat* in like manner as *caveats* are now used to be entered against such Disclaimer or alteration; which *caveat*, being so entered, shall give the party entering the same a right to have notice of the application being heard by the Attorney-General or the Solicitor-General respectively." A *caveat*[g] in the following form, left at the Office of the Commissioners, entitles the party leaving it to notice of

[d] Hindmarch, Godson, Webster.
[e] Subject to a stamp duty of 5*l*.
[f] 5 & 6 Will. IV. c. 83, s. 1.
[g] Subject to a stamp duty of 2*l*.

any application for leave to enter, and seven days notice of the next meeting appointed by the Law Officer.

Caveats may be lodged at any time before the actual issuing of the *fiat*. May be lodged until issue of the *fiat*.

Caveat against Disclaimer.

Caveat against any fiat or leave being granted to *A. B.* to enter any Disclaimer or Memorandum of alteration of any part of the Title or Specification in the Patent of the said *A. B.* for , dated the day of , without notice to [*party opposing*].

The effect of the Patent Law Amendment Act, 1852, has been to substitute one *caveat* at the Office of the Commissioners for the *caveats* at the chambers of the Law Officers of the three kingdoms.[h] Only one requisite.

The *caveats* lodged with the Commissioners are forwarded, with the Petition, the Disclaimer, and a copy of the original Specification, to the Law Officer,[i] who may, before granting his *fiat* for the entry of a Disclaimer or Memorandum of alteration, require the party applying to advertise[j] in such manner as he may think fit. The following is the form in present use :— Law officer may require applicant to advertise.

Notice is hereby given, that *A. B.*, grantee [*or* "assignee"] of Letters-patent for , dated , has applied to her Majesty's Commissioners of Patents [*or* "Attorney" *or* "Solicitor General"] for leave to enter a Disclaimer [*or* "Memorandum of alterations"] of certain parts of the Title or said Invention. Form of advertisement.

In the event of advertisements being required, the Law Officer will fix any time, not sooner than ten days from the first publication of any such advertisement, for resuming the consideration of the matter. Time for resuming the consideration of the matter.

In the absence of *caveats*, or non-appearance of opponents, the usual practice of the Law Officer is to allow the entry of the Disclaimer, which he does by putting Practice if unopposed.

[h] 5 & 6 Will. IV. c. 83, s. 1.

[i] Ibid.

[j] The regulations are similar to those observed by the Judicial Committee in the cases of Prolongation.

his signature to the *fiat*, authorizing its entry by the Clerk of the Commissioners.

The *fiat* is written or engrossed on the same parchment with the Disclaimer or alteration, and is filed with the Specification.

Record of Disclaimers, &c.

The Disclaimer is of no effect until entered of record. By Stats. 11 & 12 Vict. c. 94 (Petty Bag, &c., Office, Chancery), and 12 & 13 Vict. c. 109 (Petty Bag, &c., Offices Amendment), Disclaimers and Memoranda of alterations were directed to be enrolled in the Enrolment Office of the Court of Chancery, whether the Specification of the Invention to which such Disclaimer or memorandum of alteration related had or had not been enrolled there. The general changes effected by the Patent Law Amendment Act, 1852,[k] affect the practice to the extent of substituting filing in the Office appointed for filing Specifications in Chancery, for the filing and enrolling required by preceding Acts. The filing of a copy of the Disclaimer is a sufficient compliance[l] with the provisions of 5 & 6 Will. IV. c. 83, s. 1.

Effect of Disclaimer.

The effect of Disclaimer upon the privileges of the Patentee[m] was the subject of considerable discussion, more especially with reference to the period from which the validity conferred by it was to date, and the consequent liability of parties who had used the Invention to the penalties of infringement. Letters-patent, it was clear by the wording of the original Act, where amended by Disclaimer, were of equal validity with, and stood on the same footing as, original valid Patents,[n] it being enacted by that Statute that "such Disclaimer or Memorandum of alteration, being filed by the said Clerk of the Patents, and enrolled with the Specification, shall be

[k] Sect. 39.

[l] *Wallington* v. *Dale* (1852), Ex. 23 L. J. 49; 19 L. T. 187.

[m] *Morgan* v. *Seaward*, paddle-wheels, 7 Lond. Journ. 182; *R.* v. *Newton* (1845), 26 Lond. Journ. 362.

[n] See *Wallington* v. *Dale*, gelatinous substances, 6 Exch. 285.

deemed and taken to be part of such Letters-patent or such Specification in all Courts whatever."

"It appears to me," said Erle, J., "that where a Disclaimer is entered as to part of a Patent, the amended Patent has all the incidents of a valid Patent from the date of the original grant. It is amended for all purposes subsequent to the Disclaimer." In that case, however, the effect of a Disclaimer of part of a Specification upon rights acquired under a Patent granted to another person, although much discussed, was not decided.

Perry v. Skinner.

The question was fully argued in *Perry* v. *Skinner*,° which occurred soon after the passing of the Act.

"It cannot be doubted," said Lord Abinger, C. B., in the same case, "that the Act of Parliament is obscurely worded, and we are now called upon to put an interpretation upon it. The Act would be unjust if it made a man, who was acting consistently with the Law at a certain time, subsequently a wrongdoer by relation. We never can presume that such was the intention of the Legislature, and we are not at liberty to construe a doubtful Act by any such presumption. The only argument that can be offered is upon the proviso, which says 'that no Disclaimer shall be receivable in any action or suit pending at the time when such Disclaimer was enrolled.' We consider the sound way of interpreting that is, that it shows the Legislature did not intend to make a person a wrongdoer by relation, because it did not presume that any man would have the courage to bring an action after he had actually disclaimed for an infringement of a Patent long before such Disclaimer was thought of. The *intention of the Legislature*, doubtless, was, that he should not have the benefit of the Disclaimer as to infringements gone by long before such Disclaimer was made."

° (1837) Exch., pens, 2 M. & W. 471; 1 C.B. 167; Web. P.R. 250; *Stocker* v. *Warner* (1845), pumps, 1 C. B. 148; 26 Lond. Journ. 110; *Clark* v. *Kenrick* (1843), Ex. glazed iron ware, 12 M. & W. 219.

"The construction contended for by the plaintiff" (that the Disclaimer should be deemed and taken for part of the Letters-patent as originally enrolled) "would lead," said Mr. Baron Parke, "to the manifest injustice of a party who might have put himself to great expense in the making of machines or engines, the subject of the grant of the Patent, on the faith of that Patent being void, being made a wrongdoer by relation. That is an effect the Law will not give to any Act of Parliament unless the words are manifest and plain."

Important principles are involved in what followed.

"The rule by which we are guided in construing Acts of Parliament is to look at the precise words, and to construe them in their ordinary sense, *unless it would lead to any absurdity or manifest injustice;* and if it should, *so to vary and modify them* as to avoid that which it *could certainly not have been the intention* of the Legislature should be done. We must engraft, therefore, a modification upon the words of the Act in this case for the purposes of its construction, and read it as though it had been 'shall be deemed and taken as part of the said Letters-patent, &c. from thenceforth,' so as not to make the defendant a wrongdoer."

The Patent Law Amendment Act,[p] however, with reference to this point expressly declares, "that no action shall be brought upon amended Letters-patent for infringements prior to the amendment, unless the Law Officer shall certify in his *fiat* that such action may be brought notwithstanding the entry or filing of the Disclaimer or Memorandum of alteration."

Entry of Disclaimer no admission of invalidity of Patent.

Whether or not the entry of a Disclaimer is to be taken in presumption of Law as admission of the invalidity of the Patent previously to such entry is a matter which has elicited a great difference in the opinions of the Bench: "I can never consider," says Chief Justice

[p] 15 & 16 Vict. c. 83, s. 39.

Tindal,[q] "that the entering of a Disclaimer, as to part of a Patent, *necessarily* imports that the Patent is bad; the object of the proceeding being, not merely to get right the description of the alleged invention where it is known to be wrong, but to obviate any doubts that may arise on the Specification as enrolled." "I think," says Sir J. Romilly, M. R.[r] "on the other hand, that a Patentee who disclaims must take the consequence of *having it assumed*, in the absence of evidence, that the Patent was invalid previous to the Disclaimer."

Admissible in evidence in *scire facias*.

A Disclaimer is admissible in evidence in an action of *scire facias* for repeal, and the prosecutor is bound to read it as part of the Specification, even although the Disclaimer was enrolled after issue joined, and the parts disclaimed were objected to in the notice of particulars delivered with the Declaration.[s] The entry of the Disclaimer need not be replied to a pleading alleging want of novelty or utility on the part of the invention.

R. v. *Mill*.

The judgment of Maule, J., in *R.* v. *Mill*,[t] contains a very clear exposition of his reasons for this view. "A *scire facias*," he says, "is a proceeding in which a person takes upon himself the part of a public prosecutor for the purpose of questioning the validity of a Patent. It is admitted that there may be a Patent for a meritorious invention which may be affected by some legal infirmity, arising from the strictness of the Patent Laws; and it was to meet such a case, and to enable Patentees to avoid the consequences of this strictness, that the Statute was passed. When, therefore, a person comes forward on behalf of the public and brings a *scire facias*, if the Patent

[q] (1845) *Stocker* v. *Warner*, pumps, 1 C. B. 166; 14 L. J., N. S., 10, C. B.

[r] (1851) *Reg.* v. *Mill*, 14 Beav. 315.

[s] *Reg.* v. *Mill* (1850), C. B., instruments *for marking*, 20 L. J. 16; 16 L. T. 2141; 10 C. B. 379; 1 L. M. & P. 695; *Wallington* v. *Dale* (1851), gelatinous substances, 6 Exch. 284.

[t] (1850) C. B., instruments for marking, 1 L. M. & P. 705.

be for some useful invention[u] (such as this is admitted to be), but which has some vice, such as that imputed here—viz., that although some things are new and useful, yet inasmuch as the Patentee has made a mistake in claiming some things which have been discovered before, it seems to me that such a case is meritorious within the Act, and that such a person is a fit person to be protected; and it is to be observed that, except for the practice of requiring a bond to be given by the defendant, the prosecutor would, as soon as the Disclaimer or any alteration which has healed the vice of the Patent, is enrolled, would have all he asks. *He does not pretend to say that the Patent is null and void to all intents and purposes, and ought not, and cannot, be amended.*[x] He must take the Patent as he finds it, and the Patent is subject to this Law, that as soon as the Disclaimer is enrolled, everything which the prosecutor ought to wish for[y] on behalf of the public has been done. So that when the only fault is healed, the Patent, instead of being a bad Patent, which is a bad thing, is a good Patent, *which is a good thing*. Therefore as his object is only *to get a bad Patent cancelled*, he has got all he wishes for (?)—for he has the Patentee *confitentem reum*." The proper course[z] for the prosecutor in that case is, it appears, to give notice that he will discontinue, and that he will oppose any application to put the bond in suit.

[u] The Specification in this case claimed nearly a dozen, comprising pens, pencils, seals and inkstands.

[x] It would appear from this that an averment to this effect should be inserted in the Declaration.

[y] The Specification having published the invention, the public *interest* is clearly in the suppression of the monopoly, and the object of the public prosecutor should be, as stated by the learned judge, "to get a bad Patent cancelled."

[z] Per Williams, J., same case.

CHAPTER VII.

CONFIRMATION AND EXTENSION OF PATENTS.

Confirmation and Extension by Judicial Committee.

THE powers conferred upon the Judicial Committee of the Privy Council with respect to the Confirmation and Extension of Letters-patent are well adapted to encourage inventors, by excepting them, in the case of ingenious and deserving inventions, from the operation of general rules, which would deprive them of reaping an adequate reward for their exertions.

Powers of Confirmation little exercised.

In the case of Confirmation they have been very sparingly resorted to, a circumstance to be regretted, from the evident intention of the devisers of those powers to substitute the mode of operation there prescribed for the present system of Amendment and Disclaimer.[a] Forgotten discoveries, which have never led to any practical result, are, as we have seen, in strictness fatal to the claims of the Patentee. To relieve him in some degree from the hardships resulting from this rule provision is made by Stat. 5 & 6 Will. IV. c. 83, s. 2, for the case in which the Patentee is proved not to be the real inventor, though he believed himself to be so. It enacts, that "if in any suit or action it shall be proved or specially found that any person, who shall have obtained Letters-patent for any invention or supposed invention, was not the first inventor thereof, or of some part thereof, by reason of some other person or persons having invented or used the same or some part thereof before the date of such Letters-patent, or if such Patentee or his assigns shall discover that some other

Where Patentee believes himself to be the inventor.

[a] See remarks on *Westrupp and Gibbins'* Patent (1836), distilling apparatus, P. C., Web. P. R. 551.

person had, unknown to such Patentee, invented or used the same or some part thereof before the date of such Letters-patent, it shall and may be lawful for such Patentee or his assigns to petition Her Majesty in Council to confirm the said Letters-patent or to grant new Letters-patent." The grounds on which the Committee may report in favour of the Petition are, if it shall be satisfied that such Patentee *believed himself to be* the first and original inventor, and that such invention had not been publicly or generally used before the date of such first Letters-patent. The Crown may then, if it see fit, accede to such Petition.

An alternative of two grounds, it is to be observed, is proposed on which to found the Petition. It must either have been found "not new" by a Court of Law, or the Patentee must "discover" that some other person, unknown to such Patentee, "has invented or used the same." The effect of the Act would seem to be to remove prior user from the list of elements that may dissolve the Patent, and to render *pro hâc vice* matters already known good subject matter for Patents. The provisions of the Act seem,[b] however, only intended to apply to cases in which it shall appear that the Patentee, at the time he obtained his Patent, was ignorant of his title being defective. He must show that he believed himself to be the first and original inventor;[c] by evidence of the course of experiments by which he arrived at the knowledge of the invention.

Confirmation not to prejudice existing rights.

The recommendation is entirely discretionary with the Privy Council. It is exercised only in extreme cases, and then in such a manner as not to prejudice existing rights. The principle, however, on which the whole proceeding is founded appears a very questionable one.

Erroneous in principle.

To admit the amount of knowledge in the Patentee to enter into the question, and adopt his ignorance as the

[b] (1846) Hindm. 201.

[c] *Re Card's Patent* (1848, P. C.), candlewicks, 6 Moo. 207.

standard of validity, is opposed to the essential principle of Patents, and creates an unnecessary deviation from general rules. The invention may be a very proper subject for the exercise of dispensing powers; but the amount of ignorance on the part of the Patentee surely ought not to be appealed to as a title to advance his position.

Effect of Confirmation.

The Act continues, "and the said Letters-patent shall be available in Law and Equity to give to such Petitioner the sole right of using and making such invention, as against all persons whatsoever, any law, usage or custom to the contrary notwithstanding." The wording of the clause introduces some obscurity as to the course of practice intended by the Act with reference to the instrument itself, and the nature of the rights created by its operation. "The said Letters-patent" may mean either the original Letters-patent confirmed, notwithstanding the vitiating matter, or new ones, reducing the pretensions of the Patentee within legitimate bounds.

Proceedings to obtain Confirmation.

The proceedings before the Judicial Committee are regulated by Rules dated Council Office, Whitehall, 18 Nov. 1835. By Rule I., the party intending to apply for the Confirmation of Letters-patent is required to give

Advertisement.

"public notice by advertising in the London Gazette three times, and in three London papers, and three times in some country paper published in the town where or near to which he carries on any manufacture of anything made according to his Specification, or near to or in which he resides in case he carries on no such manufacture, or published in the county where he carries on such manufacture, or where he lives, in case there shall not be any paper published in such town, that he intends to petition" Her Majesty under the said section.

Object of Petition.

The advertisement must state the object of such Petition, and give notice of the day on which he intends to apply for a time to be fixed for hearing the matter of his Petition (which day shall not be less than four weeks from the date of the publication of the last of the advertise-

ments to be inserted in the London Gazette); and that on or before such day notice must be given of any opposition intended to be made to the Petition. Any person intending to oppose the said application must lodge notice to that effect at the Council Office, on or before such day so named in the said advertisements, and, having lodged such notice, will be entitled to have from the Petitioner four weeks' notice of the time appointed for the hearing[e].

Notice of opposition.

Petitions[f] must be presented within one week from the insertion of the last of the advertisements required to be published in the London Gazette. All Petitions must be accompanied with affidavits of advertisements having been inserted according to the provisions of section 4 of the said Act, and the first and second of these Rules, and the matters in such affidavits may be disputed by the parties opposing, upon the hearing of the Petitions.[g]

Notice to parties to suits or actions.

All parties[h] to any former suit or action touching the Letters-patent, and all persons giving notice of opposition, are entitled to be served with a copy of the Petition, and no application to fix a time for hearing shall be made without affidavit of such service.

Opposition.

Parties served with Petitions are to lodge at the Council Office, on or before the days named in the advertisements, notice of intention to oppose; and within a fortnight of such service, notice[i] of the grounds of their objections to the granting of the prayer of such Petition. Such parties may be heard in opposition before the Privy Council. The Crown may object *ore tenus* at the hearing.[k]

[e] (1836) 3 Knapp. App. I. II. III.; Rules dated 18 Nov. 1835.

[f] Rule III.

[g] Rule IV.

[h] Rule V. It seems doubtful whether licencees are entitled to notice; *Re Heurteloup's Patent* (1836), fire-arms, Web. P. R. 553.

[i] Rule VI.

[k] *Re Card's Patent* (1848), candlewicks, 6 Moo. 207.

Heurteloup's Patent.

A Petition[l] presented shortly after the passing of the Act seems to have proceeded on an erroneous apprehension of the circumstances affecting the validity of the Letters-patent. It stated, that since the date of the Letters-patent (1834) the petitioner had discovered that a Patent had been granted *in France*, in 1821, for the same invention, but that the Specification of the French Patent was not to be found, except in a French work containing an account of expired Patents. No legal proceedings had been instituted by the Patentee. The Judicial Committee directed notice of the day of hearing to be furnished to the French Patentee, and on an affidavit that such notice had been sent through the Post Office, addressed "L. de Valdahon, Paris," recommended the Letters-patent to be confirmed.

Westrupp and Gibbins' Patent.

In the case of *Westrupp* and *Gibbins' Patent*,[m] the application was by the assignee. The Letters-patent were dated 24th May, 1831, and assigned by the Patentees separately in 1833 and 1834. The Petition was accompanied by the affidavit of the surviving Patentee, stating his belief that they were the true and first inventors. In opposition it was contended that the invention was old, and that the proper course was by disclaimer of such parts of it as were incontestably known. The question of the invention being generally known was the point mainly in dispute. It was contended for the Petitioner that there was no later account of it than a letter from a learned French gentleman in the Philosophical Transactions of 1670, "concerning the way of making sea water sweet." On the other hand, copies of two Specifications dated 1806 and 1809 were produced, describing precisely, as was alleged, the subject matter of the Patent sought to be confirmed. The Petition was dismissed with costs, the following remarks being made by

[l] *Re Heurteloup's Patent* (1836), fire-arms, Web. P. R. 553.

[m] (1836) Apparatus for making fresh water from salt, Web. P. R. 551.

Lord Lyndhurst, L. C., with respect to the costs:—"If a party entitled to oppose does come and oppose, and opposes successfully, if we do not give costs we shall discourage persons coming to protect the interests of the public. We have the power to give costs in any matter referred to us: and sitting here as a Judicial Committee, we can give costs under the general Act, not under the Patent Act."

Stead v. *Carey.* A somewhat curious state of circumstances was produced by the direct interference of the Legislature,[n] confirming a Patent which had become void from non-enrolment of the Specification as required by the Letters-patent. Letters-patent, dated 19th May, 1838, containing a proviso for enrolment of the Specification within four months from their date, had been granted for the invention of wood-paving to S., who from inadvertence and misinformation omitted to enrol until 19th November, 1838, thereby avoiding his Patent. On the 29th January, 1839, Letters-patent for an improved pavement were granted to C., who duly enrolled his Specification.[o] The Act recited the grant of the Letters-patent confirming the Patent of S., the enrolment of the Specification within *six* months from the date of the Patent, and the proviso for avoiding it if it should become vested in or in trust for more than twelve persons; and, after further reciting that certain persons had agreed to form a company to work the Patent, sanctioned the formation of the Company, and enabled the Patentee to assign the Patent to them, or license them to work it. A subsequent section, reciting the non-enrolment of the Specification within due time, from inadvertence and misinformation, and that it was expedient that the Patent should be rendered valid to the extent thereinafter mentioned, enacted that the Letters-Patent should during the remainder of the term be considered, deemed and taken to be as valid and

[n] 4 & 5 Vict. c. 91, s. 31 (Local and Personal).

[o] *Stead* v. *Carey* (1845), 1 C. B. 496.

effectual as if the Specification had been enrolled within four months. *Held*, that the Confirmation of the Patent was unconditional, and was not dependent on the formation of a company, and that the defendant was precluded from using the plaintiff's Patent.

Robinson's Patent.

An unsuccessful application for Confirmation of Letters-patent for Scotland was made by the assignee in the case[p] of *Robinson's Patent*. The Petitioner had discovered, since the grant of the Letters-patent, that the invention had been used in England prior to their date,[q] and was advised that, in consequence of the decision in *Brown* v. *Annandale*,[r] such user would invalidate his Patent for the purpose of taking legal proceedings in Scotland. The assistance of the Committee was refused on the ground that "the Act of Parliament was meant to meet a totally different case.[s]"

Card's Patent refused for want of novelty.

Upon an application for a Confirmation of *Card's Patent*,[t] it was proved that the Patent article was not publicly and generally known prior to the Letters-patent, but that some persons *had systematically used an article identical with the Patent article for several years prior to the grant* of the Letters-patent, and that the subject of the Patent was little more than the application of a well-known article of trade. Under such circumstances, their Lordships refused to recommend the Confirmation of the Letters-patent. Caveats had been entered against this Petition, but, owing to the objections not having been lodged in time, were not prosecuted.

In delivering the judgment of the Committee in that case, Lord Campbell said: "By the law as it stood prior

[p] (1845) nipping lever, 5 Moo. 65.

[q] 22 March, 1833.

[r] (1842) paper, 8 Cl. & Fin. 437; Web. P. R. 433; and see *Roebuck* v. *Stirling* (1774), oil of vitriol, 5 Browne's Supp. Morrison, 522, and cited 8 Cl. & Fin. 447, n.

[s] Per Lord Campbell.

[t] (1848, P. C.), candle-wicks, 6 Moo. 207; 12 Jur. 507.

to the Stat. 5 & 6 Will. IV. c. 83, it was necessary to the validity of the Patent that the invention should be new as well as that it should be useful; and if it could be proved that the invention had been practised publicly by any person before the Letters-patent were granted, the Patent was invalid. That Law led to hardships in many cases, because it often happened that after experiments had been tried and a certain progress made in the invention, and the experiments proving abortive, they were subsequently abandoned, some other ingenious man *de novo* took up the invention and completed the process, by which a great benefit was conferred upon the community, whereupon he obtained a Patent for his invention; but as soon as he began to reap the fruit of his invention his Patent was infringed; and when he brought an action for such infringement, the former abortive experiments were brought up to prove that the invention was not new. Some doubt existed in Westminster Hall whether, if the experiment, although it had been to a certain degree successful, had been abandoned, it would vitiate the after-acquired Patent: but to remove all doubt upon the subject this enactment was resorted to by the Legislature (5 & 6 Will. IV. c. 83), that, although there may have been a general knowledge of the invention, if it was not actually carried out and had been abandoned, that such knowledge should not vitiate the Patent which perfected and *rendered beneficial* the original discovery. The language used by the Legislature is this, that the Committee, 'upon examining the matter and being satisfied that such Patentee believed himself to be the first and original inventor, and being satisfied that such invention, or part thereof, had not been publicly and generally used before the date of such first Letters-patent, may report to His Majesty their opinion that the prayer of such Petition ought to be complied with, whereupon His Majesty may, if he think fit, grant such prayer, and the said Letters-patent shall

be available in Law and Equity to give such Petitioner the sole right of using, making and vending such invention, as against all persons whatsoever;' probably with the words intended to be understood, notwithstanding any prior use of the said invention. It seems to us, that in this case the Petitioner has not afforded sufficient evidence from which we can reasonably infer that he was the first inventor."

The invention had become partially known and adopted by persons not licencees. The injustice to such, of confirming the Letters-patent, was strongly dwelt upon. "Their Lordships are of opinion," said the noble Lord,[u] "that this is not a case which the Legislature had in contemplation when this enactment was passed; that it had in view the case where there had been an invention which had actually been practised, but which had not been continued to be practised; so that, under the circumstances, the Patent should not be rendered invalid by the attempts to use it in the first instance having been abortive, and where the Letters-patent, under those circumstances, are confirmed, no injury can be done to any one. The inventor who has obtained his Letters-patent and made his invention public for the benefit of the community has his fair reward for his ingenuity and his industry and the capital which he has employed, and no one suffers by justice being done to him. Therefore, in a case where it appears that an invention has been carried on to a certain degree and abandoned, the Act of Parliament may most beneficially be acted upon. But their Lordships are of opinion, that a case of this sort, where the invention was used before the Patent was considered beneficial by those who carried it out, and was proved to be beneficial by the persons so using it, never having been abandoned, but used by them down to the time at which this application is made, is a case to which the Act was never intended to apply."

User discontinued at date of Patent.

Confirmation a reward for ingenuity, industry and capital.

Abandoned inventions.

[u] *In re Curd's Patent* (1848, P. C.), candle-wicks, 6 Moo. 214.

Extention of the term of Patent privileges.

An equally important function of the Judicial Committee with that of confirming Letters-patent, and one more frequently resorted to, is that of deciding on the extension of the term of Patent privileges. The term of fourteen years, prescribed by the Statute of James as the limit of their duration, is, as has been above remarked, in many cases inadequate for the remuneration of the Patentee. Till very recently, however, nothing short of a resort to the Legislature[v] could extend that term. Frequent applications for such assistance suggested the advisability of framing some general measure to confer the requisite relief, and resulted eventually in the enactment of Stat. 5 & 6 Will. IV. c. 83; by section 4 of which it was declared, "that if any person, who now hath or shall hereafter obtain any Letters-patent as aforesaid,[w] shall advertise in the 'London Gazette' three times and in three London papers, and three times in some country paper published in the town where or near to which he carried on any manufacture of anything made according to his Specification, or near to or in which he resides in case he carried on no such manufacture, or published in the county where he carries on such manufacture or where he lives, in case there shall not be any paper published in such town, that he intends to apply to His Majesty in Council for a Prolongation of his term of sole using and vending his invention, and shall petition His Majesty in Council, it shall be lawful for any person to enter a *caveat* at the Council Office; and if His Majesty shall refer the consideration of such Petition to the Judicial Committee of the Privy Council, and notice shall first be by him given to any person or persons who shall have entered such *caveats*, the Petitioner shall be heard by his counsel and witnesses to prove his case, and the persons entering *caveats* shall likewise be heard by their counsel and witnesses; whereupon, and upon hearing and inquiring of

Special Acts.

Stat. 5 & 6 Will. IV. c. 83, s. 4.

Advertisement of intention to apply.

Caveat.

Hearing.

[v] See the instances cited Web. P. R. 38.

[w] "As grantee, assignee or otherwise." Stat. 5 & 6 Will. IV. s. 1.

the whole matter, the Judicial Committee may report to His Majesty that a further extension of the term in the said Letters-patent should be granted, not exceeding seven years; and His Majesty is hereby authorized and empowered, if he shall think fit, to grant new Letters-Patent for the said invention for a term not exceeding seven years after the expiration of the first term, any law, custom or usage to the contrary notwithstanding: provided that no such extension shall be granted if the application by Petition shall not be made and prosecuted with effect before the expiration of the term originally granted in such Letters-patent."

Report.

Seven years additional term.

A further term of seven years was added by a subsequent Act,[x] which declared, that "it was expedient for the further encouragement of inventions in the useful arts to enable the time of monopoly in Patents to be extended in cases in which it can be satisfactorily shown that the expense of the invention hath been greater than the time now limited by Law will suffice to reimburse; and enacted, that if any person, having obtained a Patent[y] for any invention, shall before the expiration thereof present a Petition to Her Majesty in Council, setting forth that he has been unable to obtain a due remuneration for his expense and labour in perfecting such invention, and that an exclusive right of using and vending the same for the further period of seven years, in addition to the term in such Patent mentioned, will not suffice for his reimbursement and remuneration,[z] then, if the matter of such petition shall be by Her Majesty referred to the Judicial Committee of the Privy Council, the said Committee shall proceed to consider the same after the manner and in the usual course of its proceedings touching Pa-

Increased to fourteen years.

[x] 7 & 8 Vict. c. 69, s. 2.

[y] The term, it is to be observed, is used interchangeably with that of "Letters-patent."

[z] See Mitchell's Patent for screw pile for erecting lighthouses, &c., on sands (1847), 30 Lon. Journ. 357.

tents; and if the said Committee shall be of opinion, and shall so report to Her Majesty, that a further period, greater than seven years, ought to be granted to the Petitioner, it shall be lawful for Her Majesty, if she shall so think fit, to grant an extension thereof for any time not exceeding fourteen years, in like manner and subject to the same rules as the extension for a term not exceeding seven years is now granted under the powers of the said Act of the sixth year of the reign of His late Majesty: provided always, that nothing herein contained shall prevent the said Judicial Committee from reporting that an extension for any period not exceeding seven years should be granted, or prevent Her Majesty from granting an extension for such lesser term than the Petition shall have prayed."

Her Majesty may grant a lesser term than that prayed.

Powers of the Judicial Committee under 3 & 4 Will. IV. c. 41, s. 4.

Present jurisdiction.

The Judicial Committee has power under the Privy Council Act, 3 & 4 Will. IV. c. 41, s. 4, to entertain questions relative to the granting an extension of time in Letters-patent. The present jurisdiction of that body is exercised under Stat. 6 & 7 Vict. c. 38 (1843), by the first section of which it is enacted, "that in any appeal, application for Prolongation or Confirmation of Letters-patent, or other matter referred or hereafter to be referred by Her Majesty in Council to the Judicial Committee of the Privy Council, it shall be lawful for Her Majesty, by Order in Council or special direction under Her Royal Sign Manual, having regard to the nature of the said appeal or other matter, and in respect of the same not requiring the presence of more than three[a] members of the said Committee, to order that the same be heard; and when so ordered, it shall be lawful that the same shall be accordingly heard by not less than three of the members of the said Judicial Committee, subject to such other rules as are applicable, or under this Act may be applicable, to the hearing and making

[a] *In re Bodmer's Patent* (1849), P. C., cotton carding, 6 Moo. 468.

Reports on Appeals and other matters by four or more of the members of the said Judicial Committee."

Committee may make Rules.

By the 15th section of the same Act, the Committee is empowered to make, repeal and alter the Rules, Orders and Regulations in respect of the matters referred to them, provided always that such shall be of no force or effect until the same shall have been approved by Her Majesty in Council.

Jurisdiction of the Privy Council.

As an experiment, the jurisdiction of the Privy Council in the extension of Patents has proved extremely satisfactory. By resolutely disregarding technical rules[b] established in other branches of the Law, and directing their attention rather to the adjustment and satisfaction of the claims (frequently complex in the extreme) of each particular case, the Court possesses beyond a doubt facilities of administering justice peculiar to itself and superior in some respects to those of any other branch of the executive.[c] The careful scrutiny instituted into the merits of the invention, and the regard paid at once to the interests of the public and of individuals, present its jurisdiction on the whole in such satisfactory contrast to that occupied by the greater portion of Patent Law, as to suggest the propriety of extending its action to the limits proposed by the noble lord who originated it, by abolishing the present practice of disclaiming and substituting Confirmation of amended Letters-patent as originally proposed.

The Petitioner.

By the Statute[d] originating the extension of Patents, the parties empowered to become Petitioners were stated to be "any person who now hath, or shall hereafter obtain, any Letters-patent, as grantee, assignee or otherwise." To remove the doubts entertained as to the proper interpretation of this phrase,[e] the Statute

[b] *Lowe's Patent* (1846), naphthalized gas, 10 Jur. 363.
[c] *Re Noble's Patent* (1850), wool-carding, 7 Moo. 191.
[d] 5 & 6 Will. IV. c. 83, s. 4 (1835).
[e] *Re Southworth's Patent* (1837), P. C., Web. P. R. 487.

7 & 8 Vict. c. 69, s. 2, was passed, declaring that Her Majesty might, in certain specified cases, extend the term on the Petition of either an assignee or assignees, or the original Patentee or Patentees, or of an assignee or assignees and original Patentee or Patentees conjointly. By sect. 5, the Patentee and assignee,[f] or several such parties, may be joint petitioners.

By section 7, new Letters-patent, granted before the passing of the Act to assignees, are declared as valid as if granted subsequent to the passing of the Act; "provided always, that nothing herein contained shall give any validity or effect to any Letters-patent heretofore granted to any assignee or assignees, where any action or proceeding in *scire facias* or suit in equity shall have been commenced at any time before the passing of this Act, wherein the validity of such Letters-patent shall have been or may be questioned."

Who may petition.

Letters-patent have, since the institution of extensions, been renewed in favour of Patentees and assignees indifferently; it being the practice of the Committee to impose terms on the holders of the renewed Letters, where such a mode of proceeding seems required by the justice of the case. It has, however, been decided that the person who has the legal estate in the Letters-patent has the prior right to petition.[g] The Privy Council does not otherwise recognize any distinction between legal and equitable titles, and there seems no reason why an equitable assignee should not be the sole Petitioner.[h] To entitle an equitable assignee to appear with the legal assignee, his name must be included in the advertisements required by the act.

Noble's Patent.

The Petitioners for the extension of *Noble's Patent*[h]

[f] Turner on Patents, 49.

[g] *In re Pettit Smith's Patent* (1850), screw-propeller, 7 Moo. 133; *Re Wright's Patent* (15th May, 1824), pins, Exch. 1837, Web. P. R. 562.

[h] *Re Noble's Patent* (1850), wool-carding, P. C.; 15 L. T. 1; 7 Moo. 191.

were R., D. and L. The Patentee had, shortly after the grant, assigned to R. and D., and in 1842 an agreement was entered into by them to assign to L., but no legal assignment was executed. The advertisements of the notice of the Petition, and the intended application for a day to be fixed, contained only the names of R. and D. In *Bodmer's Patent*[j] the Petitioner was the executor of the surviving assignee of the Patentee. The Petitioners for the extension of *Berry's Patent*[k] were the capitalists who had obtained the introduction of the invention, and worked the Patent at a loss of nearly 10,000*l*., their outlay having exceeded 17,000*l*. The invention was well known in France, and was of considerable commercial value. Their lordships recommended its extension for six years.

Company may obtain extension of a Patent.

The Judicial Committee will not consider a company ineligible for the renewal of a Patent grant. In the case of *Cook and Wheatstone's Patent*,[l] the extension was refused on the ground only of the Patentees having been sufficiently remunerated, Lord Langdale remarking, that "if the company's speculation had been clearly made out to be a losing concern, it would perhaps have been matter for consideration whether there was not good ground for renewal." In the case of *Pettit Smith's Patent*,[m] the Petition was presented by the Patentee, and the trustees and secretary of the Ship Propeller Company. The renewed Letters-patent were granted to two of the petitioning trustees.

The importer of an invention is entitled to apply for an extension of the term, but the Judicial Committee will look with jealousy into the merits of the Invention

[j] (1849), cotton-carding, 6 Moo. 468.

[k] *In re Berry's Patent* (1850), wheat-cleansing machine, 7 Moo. 187.

[l] (Feb. 10, 1851), electric telegraph, 38 Lond. Journ. 223.

[m] (1850), improved propeller for steam and other vessels, 7 Moo. 133.

imported. In a recent case,[n] the application by the trustees of a joint stock company, as assignees, was refused, the invention (asphalte) having been in common use in France, and no great risk or expenditure incurred by the Patentee or his assignees in introducing it into public use. An objection was there taken by Jervis, C. J., on the ground of the number of the persons who would be beneficially interested in the renewal.

Contents of the Petition.

The Petition should state the position and title of the Petitioners, the novelty and the utility of the invention, the purposes to which it may be applied, the circumstances which have prevented the inventor from carrying his invention into full effect, the expenditure of large capital in its completion, and the absence of remuneration to the Patentee or the Petitioners.

Advertisements.

The party intending to petition is required to give notice in the advertisements before mentioned of the day on which he intends to apply for a time[o] to be fixed for the hearing of his Petition, which day shall not be less than four weeks from the date of the publication of the last of the advertisements to be inserted in the London Gazette, and that *caveats* must be entered on or before such day. Special notice seems to be required in the case of those particularly interested.[p]

Notice to parties interested in the opposition.

The object being simply to give those interested in the extension an opportunity of opposing, the Privy Council have very reasonably held that, in the event of the applicant (the Patentee) being resident abroad, and not himself carrying on the manufacture of his invention, adver-

[n] *In re Claridge's Patent* (1851), P. C., 7 Moo. 395. See also *Russell's Patent*, 2 Moo. 496; *Hardy's Patent* (1849), railway axles, 6 Moo. 441; *Bodmer's Patent*, ibid. 468.

[o] The notice of the intention to apply for an extension, and of the day on which application will be made to fix the hearing of the petition, are now included in one advertisement. (Web. P. R. 559, n.)

[p] *Re Southworth's Patent* (1837), calico, &c. drying machinery, Web. P. R. 486, extended for five years.

tisements in the neighbourhood of the licencees was a sufficient compliance with the requisition of the Act.[q] The Attorney-General on these occasions represents the government and the public generally.[r] On an application, at the hearing, by the Lords of the Admiralty for leave to enter a *caveat*, on the ground that they wished a condition of great importance to the public to be inserted in the grant, the Judicial Committee refused to comply with that request, or to postpone the hearing.[s]

Notice—advertisement.

In the case of *Mackintosh's Patent*,[t] the Petition was lodged 16th January, 1836, and on the usual application being shortly afterwards made for an early day to be fixed for the hearing, their Lordships intimated that as the English Patent did not expire until 17th June, 1837, the profits accruing in the meantime might materially affect the question of extension, and ordered the application to stand over for the present. In February, 1837, the application was renewed, the hearing was fixed for the 22nd April, but was before that date abandoned by the Petitioner. A question arose on the renewal of the application in 1837 as to the sufficiency of the notices given to the parties opposing the extension. Their Lordships declined giving any opinion, but intimated that the best plan would be to fix as late a day as convenient for the hearing, when the Petitioner should act as he should be advised as to proceeding on the old notices or issuing fresh. An application by the opposing party for the costs occasioned by the opposition on an affidavit of fact was granted.

[q] *Derosne's Patent* (1844), sugar, 4 Moo. 416; *Whytock's Patent* (1846), figured carpets, 28 Lond. Journ. 449.

[r] *In re Pettit Smith's Patent* (1850), screw-propeller, 7 Moo. 133; *In Re Wright's Patent* (1838), bleaching, 13 Lond. Journ. 371.

[s] *In re Pettit Smith's Patent* (1850), screw-propeller, 7 Moo. 133.

[t] (1837), waterproof substances, granted 17th June, 1823, Web. P. R. 738.

Practice—presentation.

The petition must be presented at the Council Office, Whitehall, within one week from the insertion of the last of the advertisements,[u] and must be accompanied with affidavits of advertisements having been inserted; the matters in the affidavits being open to be disputed at the hearing by the parties opposing.[v] By a late rule,[w] the applicant is required, not less than one week before the day fixed for hearing the application, to lodge at the Council Office four printed or written[x] copies of his Specification, for the use of the Judicial Committee.

Opposition to the application.

The opposition to an extension of Letters-patent is open to any person interested.[y] Parties intending to oppose must enter a *caveat* at the Council Office on or before the day indicated in the advertisements for that purpose, and having entered such *caveat*, will be entitled[z] to have from the Petitioner four weeks' notice of the time appointed for the hearing. All persons entering such *caveats* will be entitled[a] to be served with copies of the Petition, and no application to fix a time for hearing will be made without affidavit of such service. Parties served with Petitions must,[b] within a fortnight after such service, lodge at the Council notice of the grounds of their objections to the granting of the prayers of such Petitions. Parties may have copies[c] of all papers lodged in respect of any application under Stat. 5 & 6 Will. IV. c. 83, at their own expense.

[u] Rule III., 18th November, 1835, Council Office, Whitehall.

[v] Rule IV., 18th November, 1835.

[w] Dated Council Office, Whitehall, December 21st, 1835.

[x] All Specifications and Drawings being published by the Commissioners under the new system, the remaining part of this Rule is superseded.

[y] *In re Gibson's Patent, re Shlumberger's Patent* (1853), 1 Eq. R. 1; *Exparte O'Reily* (1790), L. C., 1 Ves. jun. 112.

[z] Rule II., Council Office, Whitehall, 18th November, 1835.

[a] Rule V., ibid.

[b] Rule VI., ibid.

[c] Rule VII., ibid.

Period of application for extension.

The period at which the steps should be taken for obtaining extension is a point to be attended to. In the case of *Mackintosh's Patent*[d] before alluded to, an application by the Patentee eighteen months before the expiration of his Patent was ordered to stand over as premature, while, in the case of *Faulkner's Patent*,[e] the refusal to appoint a day for hearing the Petition was accompanied with remarks upon the lateness of the application (within two months from the expiration of the Patent).

"Made and prosecuted with effect."

The proviso of the original Act stipulated,[f] that the application by Petition should be "made and prosecuted with effect" before the expiration of the term originally granted. The interpretation affixed to these words in the case of *Bodmer's Patent*,[g] where the delay arose from causes wholly beyond the Petitioner's control (the want of a *quorum* in the Judicial Committee), resulted in such hardships to the Patentee that an Act[h] was passed repealing the provision in that respect,[i] and enacting, that "it shall be lawful for the Judicial Committee of the Privy Council, in all cases where it shall appear to them that any application for an extension of the term granted by any Letters-patent, the Petition for which extension shall have been referred to them for their consideration, has not been prosecuted with effect before the expiration of the said term from any other causes than the neglect or default of the Petitioner to entertain such application and to report thereon as by the said recited Act provided, notwithstanding the term originally granted in such Letters-patent may have expired before the hear-

[d] (1836) 17 June, 1823, waterproof substances, Web. P. R. 739.
[e] (1849) 35 Lon. Journ. 64, per Lord Brougham.
[f] 5 & 6 Will. IV. c 83, s. 4.
[g] (1838) spinning machinery, Web. P. R. 740.
[h] Stat. 2 & 3 Vict. c. 67, s. 2.
[i] Stat. 5 & 6 Will. IV. c. 83, s. 4.

ing of such application; and it shall be lawful for Her Majesty, if she shall think fit, on the report of the said Judicial Committee, recommending an extension of the term of such Letters-patent, to grant such extension, or to grant new Letters-patent for the invention or inventions[l] specified in such original Letters-patent, for a term not exceeding seven years after the expiration of the term mentioned in the original Letters-patent: provided always, that no such extension or new Letters-patent shall be granted if a petition for the same shall not have been presented, as by the said recited Act directed, before the expiration of the term sought to be extended, nor, in case of petitions presented after the 30th day of November, 1839, unless such petition shall be presented six calendar months at the least before the expiration of such term, nor in any case unless sufficient reason shall be shown, to the satisfaction of the said Judicial Committee, for the omission to prosecute with effect the said application by Petition before the expiration of the said term."

Extension not a matter of course.

Great pains were taken by the Judicial Committee, at the earlier stage of their jurisdiction, to impress upon Patentees that the prolongation of Patents was to be regarded as anything but a matter of course,[m] and that the cases in which an extension of the term would be made must be exceptional. A strong case, either as regards merit or success in the Patentee, or importance to the welfare, safety or convenience of the public in the invention, must in general be made out. A combination of these qualities, and loss from the manufacture of the invention, are the points usually pressed by the applicant.[n] The uniform practice of the Court has been to

[l] See 2nd Set of Rules under 15 & 16 Vict. c. 83.

[m] See *Re Pettit Smith's Patent* (1850), screw-propeller, 7 Moo. 133.

[n] *Re Beard's Patent* (1835), pianoforte, Web. P. R. 559. The Letters-patent, extended for seven years, were as follows:—For Eng-

require the party applying, first, to show some invention; secondly, that the invention is of a nature to benefit the public; and, thirdly, that the inventor has not received an adequate reward.[o] The points considered by the Court on these occasions were thus stated by Lord Langdale, M. R., in the case of an application[p] opposed by the assignees of a rival Patent:—"First, the merits of the invention; secondly, the utility of the machinery which has been invented; and, lastly, whether the Patentee has received a sufficient remuneration for the merit which he has displayed.

Principles on which the Judicial Committee act.

The validity of Letters-patent being in dispute at the period of the application, the Judicial Committee will not enter upon that question, but in the absence of their repeal will assume them to be valid.[q] In the case of *Kay's Patent*[r] an extension was granted on the merits of the invention, pending a suit[s] putting the validity of the Letters-patent in question; Lord Brougham observing, "that if the Judicial Committee had seen that the Patent was manifestly and grossly illegal, they would not advise Her Majesty to grant an extension of it, though such extension would not benefit the party obtaining it, if the Patent in the first instance was invalid; but that if they postponed giving their decision until the results of the suits then pending were

Validity not determined on extension.

land, 22nd December, 1821; for Scotland, 6th April, 1822; and for Ireland, 14th December, 1822. Their Lordships refused to extend a second Patent granted to the same party in 1825.

[o] Per Lord Brougham, *Derosne's Patent*, sugar (1844), 4 Moo. 416.

[p] *In re Pinkus's Patent* (1848), atmospheric railway, 12 Jur. 233.

[q] *Heath's Patent*, (1853), P. C., steel, M. M. 131.

[r] *In re Kay's Patent* (1839), flax-spinning machine, 3 Moo. 24; Web. P. R. 572; *Pinkus's Patent*, atmospheric railway, 12 Jur. 233.

[s] *Kay* v. *Marshall* (1836), L. C., 1 M. & Cr. 373; (1838) C. B., 5 Bing. N. C. 492; (1839) M. R., 1 Beav. 535.

known, the Patent would in the meantime expire;[t] and being of opinion that upon the merits shown the Patentee ought to have some extension, their Lordships would advise such for a period of three years." The Patent was ultimately[u] declared invalid on the ground of want of novelty. "On an occasion of this kind," said Lord Langdale, M. R., in a case[x] in which extension was refused, "the Court has, in no very direct way, to consider whether the Patent is or is not valid at Law. Unless clearly invalid, so that it would be altogether nugatory to prolong the Patent, the Court has been rather inclined to assume that the Patent may be good, and so leave the question to any legal considerations that may arise between the parties who are interested in it."

Where validity of the Patent is doubtful.

Woodcroft's Patent.

This view of the Court is coincident with that expressed by Lord Brougham in the case of *Woodcroft's Patent*:[y]—"In all cases where there is a disputed right as to the Patent, and where the validity of the Patent may come into question, there are two things to be considered; the first is, whether the case to prove the invalidity of the Patent is so clear as to remove all ordinary doubt; the second, whether the case is so doubtful that the Court would rather retire from its consideration than decide it. In the former case they would not grant the extension, because they did not see the merits and because they would not put the opposing parties to the vexatious process of bringing their *scire facias* in the Law Courts. But where the matter is doubtful, where conflicting evidence and questions of

[t] See *Bodmer's Patent* (1838), cotton carding, 2 Moo. 471, and 2 & 3 Vict. c. 67.

[u] (1841) House of Lords, 8 Cl. & Fin. 245.

[x] (1848), *Pinkus's Patent*, atmospheric railway, 12 Jur. 233; 28 Lond. Journ. 448.

[y] (1846), screw-propeller, 28 Lon. Journ. 203.

Law arise, this Court will not refuse the discretionary power vested in it by Parliament merely because it was a case in which the validity of the Patent was questioned."

Woodcroft's Propeller.

In the case of *Woodcroft's* Propeller[z] the application was successful in the face of a powerful opposition (Ship Propeller Company, who had adopted Smith's Patent), principally from the merit of the invention. The Patentee had expended £1,200, and received only £460. Their Lordships granted an extension of the Patent for six years, and refused to put the Patentee under conditions, "the invention being a most ingenious application of mathematical principles to mechanical ends."

Expensive experiments.

The expense of experiments instituted by the Patentee, in addition to the interruption to his ordinary business, forms another item of considerable importance in certain classes of inventions.[a] In *Heath's Patent*[b] large sums had been expended in experiments, and as the articles manufactured at first were given away, to prove the excellence of the steel, the return had been very small—200*l.*, it was said, would cover all the receipts. The application was by the widow of the Patentee, and was opposed by the defendant to an action for infringement,[c] then pending. Scientific witnesses deposed to the improvement effected by the use of manganese in converting iron into steel, and persons conversant with the trade proved that, previously to the invention, the best cutlery could only be made with shear steel, as no means were known of welding cast steel with iron. The Committee, while cautiously abstaining from expressing any opinion as to

[z] (1846), screw, 28 Lond. Journ. 196, per Lord Brougham, P. C.

[a] *Southworth's Patent* (19th April, 1823), machinery for drying calicoes, linen, &c., Exch. (1837), Web. P. R. 487; *Lowe's Patent* (1846), naphthalized gas, 10 Jur. 363.

[b] (Feb. 8, 1853, P. C.), steel, M. M. 131.

[c] *Heath* v. *Smith* (1854), Ex. Ch., 18 Jur. 601.

the validity of the Patent, considered the invention one of great merit and fraught with considerable advantage to the public, and recommended its extension for seven years.

Loss from litigation.

The trouble and expense of litigation forms, also, a favourite item with the Judicial Committee, who look with great suspicion on an applicant who has compromised legal proceedings.[d] Their Lordships require generally to have a satisfactory explanation of the length of time during which no steps[e] have been taken against infringers. In the case of Smith's screw-propeller,[f] their Lordships' commiseration was excited, from the Patentee's "great misadventure in steering through the Courts of Law." There was no clear proof of any great amount of infringement, but the Patentee had taken proceedings against the wrong parties, and at a cost of 2,000*l.* had failed in his suit. The Ship Propeller Company, assignees of the Patent, had opposed the extension of a rival Patent.[g] The Admiralty had employed the invention extensively, and owed 25,000*l.* for its use, but they refused to pay the Patentee in consequence of the litigation and the claims of other parties to the originality of the invention. They adopted the somewhat singular course[h] of paying a large sum of money to a banker for the purpose of distribution among such persons as could substantiate a claim to it.[i] The invention was admitted to be of great merit and public utility. The Patent had, however, not been remunerative. Extended for five years.

Pinkus's Patent.

Piracy, through unavoidable exposure during the ex-

[d] *Re Simister's Patent* (1842), cloth for stays, 4 Moo. 164.

[e] *Re Pinkus's Patent* (1848), atmospheric railway, 12 Jur. 233.

[f] *Re Pettit Smith's Patent* (1850), screw-propeller, 7 Moo. 133.

[g] *Woodcroft's Patent* (1847), screw-propeller, 28 Lond. Journ. 196.

[h] Mentioned on the extension of *Carpenter's Patent*, screw-propeller,

[i] Sup. p. 174.

perimental construction of the Line, was put forward as a strong ground in the case of *Pinkus's* Atmospheric Railway, but disallowed from the absence of assertion of rights at Law.[k]

Insufficient remuneration.

The determination of the Patent is frequently, from the peculiar nature of the manufacture, the period at which the returns from the invention begin to remunerate the Patentee. In the case of *Hardy's Patent*,[l] the Patentee, after having lost largely by carrying on the manufacture, assigned to the Petitioners, who spent 36,000*l.* in establishing the manufacture. They realized very considerable profits, and at the period of application were, from their position in the trade, likely to command a very large sale of the Patent article. The invention being one of high merit and of great service to public safety, the Patent was extended in favour of the four Petitioners on condition of their securing to the original Patentee half the profits of their sales, including those for exportation. "It is true," the Court remarked, "they have made large profits, but at the same time there have been some risks." In *Derosne's* case,[m] the benefit resulting to the public (a reduction of 20 *per cent.* in price) weighed so strongly with their Lordships, that, even in the absence of any great amount of skill in the invention or risk in the manufacture to counterbalance considerable profits,[n] their Lordships were induced to grant an unconditional extension of the Patent for six years. The application in this case was unopposed.

Porter's anchor.

On the extension of Porter's anchor Patent,[o] it was stated that the loss in working the Patent up to that

[k] (1848) 12 Jur. 233.

[l] (1849), railway axles, 6 Moo. P. C. 441; 13 Jur. 177; *Re Swaine's Patent* (1837), mineral waters, Web. P. R. 561.

[m] (1844), sugar, 4 Moo. 416.

[n] The Patentee had expended 4,000*l.* in perfecting the invention. The profits from Licences amounted to 7,920*l.*

[o] July 19, 1852.

date had been no less than 15,000*l*. The petitioner was the assignee. The application was not opposed, and the extension was granted for six years. Some improvements effected by Trotman, the nephew of the applicant, were amalgamated with the original Patent.

The case[p] of *Carpenter's Patent* (dated 1840, screw-propeller) was somewhat peculiar. The Admiralty had used the invention extensively, but paid nothing for its use to the Patentee, although, as stated in the petition, the propeller was adopted in the Royal Navy, in consequence of the experiments conducted by Captain Carpenter before the Admiralty at his own expense, and had till the present time been in constant use in Her Majesty's service. The Attorney-General, on behalf of the Admiralty, opposed, but offered to withdraw his opposition, provided Captain Carpenter would consent to the introduction into the extension of a clause prohibiting him from making any claims on the Admiralty for the future use of his Patent, as it was stated was the usual course with other Patentees. Their Lordships granted the extension of the Patent unconditionally for a period of six years.

Patent not worked.

The length of time which has elapsed, and the efforts made by the Patentee in bringing the invention before the public, and reducing it to practical operation,[q] is also a point much dwelt upon at the hearing,[r] and one which must be satisfactorily explained. In *Patterson's* case[s] the application was refused, the invention not having

[p] Judicial Committee of the Privy Council, April, 1854; and see Debates, July, 1854. See also *In re Pettit Smith's Patent* (1850), screw-propeller, 7 Moo. 133; and *In re Woodcroft's Patent* (1846), screw-propeller, 28 Lond. Journ. 196.

[q] See supra, 98.

[r] *Re Pinkus's Patent* (1848), atmospheric railway, 12 Jur. 233.

[s] (Dat. 1835), hide-tanning by blackberry brambles (1849), 6 Moo. 469; 13 Jur. 593.

been prosecuted until a short time before the expiration of the Patent, owing to dissensions between the Patentee and the parties who were to assist in working it. In *Bell's* case,[t] the manufacture was unprofitable for the first ten years of the Patent, from a defect in the composition employed. An improved composition was then made use of, and the Patent showed signs of becoming remunerative. The Court, however, refused the application, notwithstanding great losses of the Patentee by fire and considerable expenses.

Loss from prejudice.

The difficulties experienced by the Patentee from prejudice against the introduction of his invention forms frequently a very strong argument in favour of his application.[u] In the case of Roberts's self-acting mule, the labor of the inventor, and the difficulties to be contended with, were very great. The machine[x] was devised to supersede manual labor in the mills. A year's incessant labor ended in its construction early in 1825. In July of that year a fire (supposed to be the work of an incendiary) destroyed the premises of the Patentee at a loss of 10,000*l.* beyond the insurance. The offices refused to insure again. From 1826 to 1831, there being no matters in dispute, few machines were required. In 1831, owing to extensive combinations among the head spinners, many machines were ordered, and the Patent in consequence became remunerative. The prejudice against

Great merit in the inventor.

[t] (1846), lucifer matches, 10 Jur. 363. Delay in the reduction of an invention into practical use constitutes, as was recently remarked by Lord Campbell, a case in which, 'if prejudice were permitted to exist in a Court of justice, it might be expected to exist against the Patentee.' *Crossley* v. *Potter* (1851), carpets, printed case, 51.

[u] *Cookworthy's Patent* (1719), porcelain, granted to Champion, assignee, Web. P. R. 39; *Stafford's Patent* (24th December, 1824), carriage springs, Web. P. R. 563; extended, 1838; *Jones's Patent* (1840), carriage wheels, Web. P. R. 577; see *Jones* v. *Pearce* (1832), Godson, 2nd ed., 190; Web. P. R. 124; *Wright's Patent* (1843), encaustic tile, 25 Lond. Journ. 466; Web. P. R. 737.

[x] Sup. p. 145.

its novelty was so strong as to remove it from the operation of what was apparently the interest of the manufacturers. The invention performed fifty per cent. more work, and that of a better kind than the old mule, yet the offers of the Patentee[y] were met with "We are as well off as our neighbours, we will not be the first to make the experiment." The application was unopposed, and was granted[z] unconditionally for seven years. A very recent case[a] met with an extension of five years, on the grounds that the Patentee had used every exertion in his power to introduce the invention, and had expended large sums in so doing; but by reason of the distrust with which the public viewed preparations of that nature, the inadequacy of the Patentee's pecuniary means, and his want of influence with public boards, he had been prevented from obtaining such a fair trial as would lead to the adoption by the public of his invention.

Ledsam v. *Russell.*

The case of *Ledsam* v. *Russell*[b] was important from the variety of jurisdictions resorted to and the unanimity of decisions at successive stages. The case was brought before the House of Lords on a writ of error, upon a judgment of the Exchequer Chamber[c] affirming a judgment of the Court of Exchequer.[d] The Patent, dated 26th February, 1825, was in 1835 assigned to *Russell*, and established after considerable litigation. On Petition by the assignee new Letters-patent, dated 26th February, 1839, were issued to him for six years, contingent upon his securing to the original Patentee an annuity of 500*l.*, and releasing him from a covenant to work for the assignee. In 1841 *Russell* filed a Bill against *Ledsam* and others for an injunction and account,

[y] (1851) Evid. 1311, Roberts.
[z] (1839) Web. P. R. 575; 13 Lond. Journ. 370.
[a] *Payne's Patent* (July 12, 1854), P. C., preserved meats.
[b] (1848), gas tubes; *Whitehouse's Patent*, 1 H. of Lds. Cas. 687.
[c] (1847), Exch., 16 M. & W. 633
[d] (1845), Exch., 14 M. & W. 574.

which was refused, the novelty and usefulness of the invention being contested. *Russell* then instituted an action,[e] and at a trial before Alderson, B., obtained a verdict, with points reserved, which were argued in Trinity Term, 1845, and decided in favour of the Patentee. The case was then carried to the Court of Exchequer Chamber, the grounds of error relied upon being—that the Act did not authorize the grant of extension to an assignee; that the declaration did not show that an application for renewal had been "prosecuted with effect" before the expiration of the original term; that the condition as to Whitehouse's annuity was not shown to have been performed; that the old Patent had expired before the grant of the new Patent was made, and that these Letters-patent granted a renewal on a condition subsequent, whereas the recommendation of the Privy Council was for a renewal on a condition precedent. A decision, affirming the judgment below with costs, established the following positions:—

That assignees might obtain a renewal of Letters-patent.

That the Statute did not authorize the Judicial Committee to impose terms; their authority being limited to reporting on matters as between the Petitioner and the public.[f]

[e] 24th June, 1844.

[f] "I can find," said Cottenham, L. C., in this case, "nothing in the Act of Parliament which authorizes the Judicial Committee of the Privy Council to impose any terms or make any recommendation to His Majesty with respect to the parties seeking for the grant of the new Letters-patent, except the fact of whether the Letters-patent shall be extended or not. What the Judicial Committee is to report upon is merely as to matters between the public and the party applying, whether the party applying has made out a case as against the public to have the old Letters-patent renewed. But as to imposing any conditions upon the Crown, which has otherwise the right to make the grant, there is nothing in the Act to restrain the Crown from exercising any discretion it pleases. If this objection could prevail it would be upon this ground, that the Crown had no right to make the new grant unless upon the terms recommended by the Judicial Committee; in

That there is nothing in the Statute to fetter the discretion of the Crown, except as to the limit of the period of renewal.

That an application for renewal is "prosecuted with effect" if the party applying *obtains the report of the Judicial Committee* before the expiration of the original Patent. The Crown is not restricted as the time in which it may act upon such report; and renewed Letters-patent are not void because dated after the expiration of the original Letters-patent.

Baxter's Patent.

Baxter's[s] colour-printing Patent was opposed by the apprentices of the Patentee, who alleged that they had become such on the faith of being able to practise the invention on the expiry of the Patent. It appeared, however, the instruction they had received was not exclusively in the use of the patented invention, and that some were since employed in delicate work, one at wages as high as 52*s.* a week. The invention was acknowledged to be of great merit and utility, and the Patentee was shown to have made nothing by the Patent. Their Lordships recommended its extension unconditionally for five years.

other words, that if terms were recommended by the Judicial Committee, the Crown must be bound by them. What the Act of Parliament meant the Judicial Committee should do, was merely to recommend that the Crown should grant an extension of the term or not; and if an extension was recommended to be granted, then it was to be kept within certain limits."

Lord Brougham, who drew the Act, entirely agreed with this exposition of it. "The Crown," his Lordship remarked (p. 703), "is not bound to grant the renewal of the Patent in the very terms that are stated in the report of the Lords of the Privy Council, or to see that the terms mentioned in that report have been complied with."

The Judicial Committee have established it as a rule to impose conditions on an assignee only where the inventor and Patentees have made nothing by the invention. (Per Lord Brougham (1849), *In re Bodmer's Patent*, carding cotton, 6 Moo. 468.

s *Re Baxter's Patent* (1849), combination of copperplate and wood cut, 13 Jur. 593.

The hearing.

Attorney-General heard on behalf of the Crown.

At the hearing, the petitioner and parties opposing may appear either by themselves or by counsel.[h] The Attorney-General[i] or other counsel will be heard on behalf of the Crown in opposition to the application for the extension of Letters-patent, in case it shall be thought fit to oppose the same on such behalf.[k] As a rule of practice their Lordships have decided, that where several *caveats* are entered, only two counsel will be heard on either side, unless the parties opposing do so on separate and independent grounds.[l]

Evidence.

The evidence usually adduced in favour of the novelty and utility[m] of the invention is, that of persons most conversant with its effects. Where the improvement has been of a sanitary character, medical and scientific men attest the improved qualities of the invention.[n]

In the case of mechanical inventions, persons conversant with the manufacture, or engaged in the trade, give evidence to the saving of time in labour or expense, or to the superiority of the workmanship effected by the employment of the principle of the Patentee.[o]

[h] A noble Lord, himself a leading member of the Judicial Committee, has on this point the following observations:—"The course which a Patentee ought to pursue, if there be no opposition to his claim of extension, is to employ no solicitor and no counsel, but to appear in person before the Judicial Committee, as my gallant and truly ingenious friend, Lord Dundonald (better known as Lord Cochrane), lately did. Their Lordships always favour such a course, the rather as they thus obtain the advantage of hearing the explanations required from the persons best able to give them. In opposing cases professional aid is requisite." (Lord Brougham, Men of Letters, &c., 1845, p. 379, n.)

[i] *Re Bodmer's Patent* (1849), cotton-carding, 6 Moo. 468; *Re Berry's Patent* (1850), wheat-cleansing machine, 7 Moo. 187.

[k] Further Rule, Council Office. Dec. 21, 1835.

[l] *Re Woodcroft's Patent* (1841), yarn-printing, 3 Moo. 171.

[m] *In re Bodmer's Patent* (1849), cotton-carding, 6 Moo. 468.

[n] *Swaine's Patent* (dat. 9th October, 1822), mineral waters (1837), Web. P. R. 561; *Lowe's Patent* (1845), naphthalized gas, 28 Lond. Journ. 448.

[o] *Southworth's Patent*, (1837), Web. P. R. 487.

Profit and loss.

The evidence as to the absence of remunerative return from the Patent is usually given by the Patentee or persons engaged in the manufacture or sale of the patent article.[p] The Committee is rigorous in examining the accounts, and any suspicion as to their genuineness, or any laxity apparent in the mode of conducting them, will prove fatal to the application.[q] The books, in fact, form frequently the most reliable information as to the history of the Patent, and the difficulties, embarrassments and rivalries contended with by the Patentee.

Downton's Patent.

In *Downton's Patent*[r] the numbers of the Patent article sold were, in 1825 (the date of the Patent) and subsequent years, 19, 33, 90, 92, 38, 44, 46, 63, 74, 84, 113 (in 1835), 73, 70, 69, 22 (in 1839). The diminished returns in the fifth year were attributed to the prevalence of piracy, and the falling off in 1835 to the death of the Patentee and the transfer of the Patent to his widow, the Petitioner.

Presumption in the absence of evidence.

The presumptions on which the Privy Council act in the absence of evidence are chiefly these. The fact of an invention when known not getting into general use is a presumption against its utility,[s] while that of an article having been extensively sold at a high price is *primâ facie* evidence of it.[t] Both are however capable of being rebutted by the circumstances of the case. An application on behalf of a patented knapsack was supported by very favourable reports from officers who had examined it. It was deposed by Mr. Angelo, that the

[p] *Re Lowe's Patent* (1846), naphthalized gas, 10 Jur. 363. Evidence was given by the manager of the gas company that they had paid the Patentee nothing for his gas.

[q] *Re Quarrill's Patent* (1840), lamps, Web. P. R. 740; *Re Noble's Patent* (1850), wool-carding, 7 Moo. 191.

[r] (1839), water-closets, Web. P. R. 567.

[s] *Re Simister's Patent* (1842), cloth for stays, 4 Moo. 164; *Re Pinkus's Patent* (1848), atmospheric railway, 12 Jur. 233.

[t] *Re Downton's Patent* (18th June, 1825), water-closets (1839), Web. P. R. 567.

fact of nine out of ten men in our infantry becoming flat-chested was to be attributed to the one in ordinary use. Some hundreds had been expended on it by the Patentee, but hitherto without return. The Committee, allowing their doubt as to its utility (arising from its not having been adopted by the Government) to be slightly founded, in the absence of evidence of its failure recommended its extension for five years.[u] In the case of *Woodcroft's Screw Propeller*,[x] Lord Brougham remarked,—"It is not enough to object that the Patent has been long in coming into operation, for the steam-engine and many other discoveries are open to the same observation."

Specification.

Insufficiency in the Specification, it should be remarked, is a point frequently urged,[y] and, in some instances, successfully, by the opponents of the application.[z]

Costs of opposition.

The costs incurred for a contemplated opposition, will, on the abandonment of the Petition, be ordered *ex parte*.[a] A *caveat* having been entered by Messrs. Ashton & Co., grounds of opposition were duly lodged

[u] *Re Berrington's Patent*, P. C., July 5th, 1852. See also, as to extensions on the ground of loss sustained by the manufacture, *Stafford's Patent* (1838), carriage springs, Web. P. R. 563; *Kollman's Patent* (1838), P. C., pianofortes, Web. P. R. 564.

[x] (1846) P. C., 28 Lond. Journ. 196.

[y] *Wright's Patent* (1838), bleaching, 13 Lond. Journ. 371.

[z] *Re Pinkus's Patent* (1848), atmospheric railway, 12 Jur. 233; but see *Re Heath's Patent* (1853, Feb. 8), steel, M. M. 151.

[a] *Re Hornby's Patent, Ex parte Ashton* (Letters-patent dated 26th September and 11th December, 1839), cotton, wool, &c., sizing for weaving (1853), L. C., 1 C. L. Rep. 519.

By Rule VIII., Council Office, Whitehall, 18th November, 1835, the Master of the High Court of Chancery, or other officer (now the Clerk to the Privy Council), to whom it may be referred to tax the costs incurred in the matter of any Petition presented under the said act, shall allow or disallow in his discretion all payments made to persons of science or skill examined as witnesses to matters of opinion chiefly. See Stat. 6 & 7 Vict. c. 38, s. 12.

at the Council Office. On 11th May, Petitioners informed Messrs. A. that 16th June was appointed for the hearing. Considerable expenses were incurred by Messrs. A. in preparations for opposing the extension. The Petition was subsequently abandoned. On affidavit of these facts, and that, on 15th June, notice of this motion had been duly served, an order was made directing a reference to the Registrar of the Judicial Committee to tax the costs of Messrs. A. incidental to the opposition, and payment of such taxed costs by the Petitioner.

Renewed Letters-patent.

Renewed Letters-patent are dated as of the day after the expiration of the term granted by the original Patent. They extend only over the district included under the original grant.[b] Letters-patent for Scotland previously to the late Act were in Latin. The renewed Letters-patent for that country (prepared in the Office of the Commissioners) are in English. In *Whytock's* case[c] the application was for the extension of English, Scotch and Irish Patents of various dates, the latter being dated some months after the enrolment of the English Specification. On the authority of *Brown* v. *Annandale*,[d] and *Saunders's* case,[e] it was contended the Irish Patent was void. The Committee, however, granted an extension for five years on the Petitioner submitting to grant a licence to a rival Patentee.

Scotch Patents.

Alteration of the subject matter in the new Letters-patent.

As might be expected from the nature of the case, various modifications of the original scheme of the Patentee are found to be beneficial after the test of some years actual practice. The Judicial Committee seem not disinclined to admit of considerable variations in the subject matter of the extended Letters-patent. In the case of

[b] 5 & 6 Will. IV. c. 83, s. 4; 2 & 3 Vict. c. 67; 7 & 8 Vict. c. 69, s. 4; 15 & 16 Vict. c. 83, s. 40.

[c] (1846), figured carpets, 28 Lond. Journ. 449.

[d] 1 Web. P. R. 433.

[e] Hind. 434.

Taylor's Patent,[f] their Lordships decided on dividing the invention, refusing the application as regarded the flat-bladed propeller, but granting an extension of the Patent in respect of the hollow trunk through which the screws were raised, as of that part Mr. Taylor appeared to be the original inventor. An application for renewed Letters-patent to combine the substance of two Patents held by the Petitioner has been refused, although it is to be remarked that in that case the profits had attained the large amount of 12,000*l.*[g]

Price of article prescribed.

In some instances the conditions on which the Patent is to be renewed is that the Patent article is to be sold at a prescribed price. In extensions by Act of Parliament before the Act 5 & 6 Will. IV. c. 83, such terms were frequently imposed.[h] In the case of *Hardy's Patent*[i] the renewed Letters-patent fixed the price of the axles relatively to the price of bar iron, as settled by the Staffordshire iron-masters at their quarterly meeting last preceding the contract for sale. The condition annexed to the extension of *Smith's Patent*[k] was that the Patentee should supply the invention to Her Majesty's service at such reasonable prices as should be settled for that purpose by the Lord High Admiral of the United Kingdom, or the Lords Commissioners of the Admiralty, and that the Admiralty should have the right of manufacturing the invention without licence from the Patentee.

Use of invention pending the grant of new Letters-patent.

Parties using the invention in the interval between the expiration of the old term and the grant of the new Letters-patent are not guilty of infringement. They are entitled to oppose the renewal, and are usually ex-

[f] Feb. 1852, M. M.

[g] *Smith's Patent* (21st June, 1847), cotton-spinning machinery, 30 Lond. Journ. 451. And see sup. p. 218, *Potter's Patent*.

[h] Hartley's Act, 17 Geo. III. c. 6, fire-proof buildings.

[i] *In re Hardy's Patent* (1849), railway axles, 6 Moo. P. C. 441; 13 Jur. 177.

[k] *In re Pettit Smith's Patent* (1850), screw-propeller, 7 Moo. 133.

Existing rights preserved.

cepted in the conditions from the restrictive operation of the new Letters-patent.[l] The provisoes in general are directed to secure the rights of persons in actual possession of the invention, on the principle originally stated, that a privilege of the nature of a Patent will not be conceded to the detriment of existing rights.

Bodmer's Patent.

Where the executor of the surviving assignee of a Patentee petitioned for an extension of the term of Letters-patent, and it was established that a valuable consideration had been given for the assignment, and that the assignee had sustained considerable loss, the Judicial Committee, in granting an extension of the term for five years, *refused to impose terms upon the Petitioner* in favour of the Patentee.[m]

Change in practice of issuing new Letters-patent.

Under the old practice the same trouble and expense was incurred in procuring the renewed as the original Letters-patent. To alter the Letters-patent the Great Seal had to be cut off, and the alterations having been made the Great Seal was again affixed as in the original sealing. The 40th section of the new Act, however, provides a very simple remedy for this evil by enacting, "that in the granting any such new Letters-patent Her Majesty's order in Council shall be a sufficient warrant and authority for the sealing of any new Letters-patent, and for the insertion in such new Letters-patent of any restrictions, conditions and provisions in the said order mentioned; and the Lord Chancellor, on the receipt of the said order in Council, shall cause Letters-patent, according to the tenor and effect of such order, to be made and sealed in the manner herein directed for Letters-patent issued under the Warrant of the Law Officer."

Power of the Crown.

On a proper case being made, the Crown may, at any time before the Great Seal is actually affixed, interfere to prevent the grant of such Letters-patent.[n]

[l] *Ledsam* v. *Russell* (1843), Exch., gas tubes, 11 M. & W. 647.
[m] *In re Bodmer's Patent* (1849), cotton-carding, 6 Moo. 468.
[n] *Re Schlumberger's Patent* (1853), silk weaving, 1 Eq. Rep. 36.

CHAPTER VIII.

SCIRE FACIAS TO REPEAL A PATENT.

Litigation of Patent rights.

PATENT right, involving the variety of considerations above adverted to, litigation connected with it is, as might be expected, especially arduous and expensive;[a] a circumstance attributable in the first place to the peculiar character of the tribunals,[b] and in the next to the

[a] The following, from the First Report of the Committee of the Society of Arts on the rights of inventors (1851), expresses the deficiencies then popularly complained of, in the means for the adjustment of Patent rights:—"The Committee are unanimously of opinion that for the satisfactory settlement of disputes arising out of inventions protected by Law, which demand specific scientific acquirements in the tribunal, the present judicial arrangements are insufficient, productive of enormous and unnecessary expense, and a source of anxiety and needless delay to the unfortunate possessors of the right. The great difficulty, expense and trouble of obtaining redress in case of infringement, is a premium inducing dishonest persons to run the risk of infringing on the rights of Patentees. It leads to vexatious lawsuits and to loss of money from the unfair competition of the infringer before he can be stopped."

[b] Before the passing of the Statute of Monopolies Patent rights were tried in the Star Chamber, that Court having, as Clarendon remarks (Hist. Reb. bk. iii.), "extended its jurisdiction from riots, perjury and the most notorious misdemeanors, to the assertion of all proclamations and orders of State, to the vindicating illegal commissions and grants of monopolies." (Co. 4 Inst. 62; Hall. Const. Hist. i. 73; Bacon's Works, ii. 290. No mention, however, is found of such decisions among the cases in L'Authoritie et Jurisdiction des Courts de la Majestie de la Roygne, 1637.) By that Act, however, (21 Jac. I., c. 3, s. 2,) it was enacted, that "Monopolies, Letters-patent, &c., and their force and validity, ought to be and shall be examined, heard, tried and determined by and according to the Common Law of this realm, and not otherwise." (Chitty's P. C. ch. 10, s. 2.)

The same difficulty is experienced in France, from the diversity

nature of the evidence it puts in requisition. With regard to the former, there seems every desire to give a fair trial to the system of Registration which has been recently introduced, and which in the sister subject of Designs has worked with very fair success, before creating a special tribunal for adjudicating on inventors' rights. Relief from the second evil must be looked for on a wider field, as involving the vexed question of trial by jury.[c] Although here presented in the strongest light, exceptional legislation in this respect is hardly to be expected, an almost superstitious veneration for this mode of trial having debarred the judges of the Superior Courts, in cases of a similar character, from a discretion freely entrusted to inferior magistrates.[d]

Radical changes in Patent Law.

Recent legislation with reference to Patents has on the whole effected so fundamental a change in legal procedure, that it may be questioned whether anything further than public convenience remains to be consulted in prescribing the course through which future practice is to run; the equitable powers placed at the disposal of

of tribunals, as Patents, from their involving matters of fact and not of Law, cannot be brought under the cognizance of the Cour de Cassation. (1851, Evid. 2511, Wolowski.)

[c] In *Lorell* v. *Hicks* (1836, Exch. Eq., economical baking apparatus, 2 You. & Coll. 46), Mr. Baron Alderson observed,—"Although I am not insensible of the disadvantage which a Court of Equity labours under in not having the benefit of oral examination, which I own I have long thought might, with great advantage, be given to it, to be exercised by it at its discretion, and applied to such parts of a case only as might be found after discussion to require it: yet when I compare the counterbalancing advantage of long and calm deliberation and of dispassionate inquiry, which a judge possesses, who can at leisure weigh all the circumstances, with the sudden and hasty decision of a jury at Nisi Prius, even though assisted by oral examination, I have no doubt upon the whole, in nice and complicated questions such as this, I should not do real justice to the parties by directing an issue."

[d] See Designs Acts, Stats. 5 & 6 Vict. c. 100, and 6 & 7 Vict. c. 65; *Kennedy* v. *Coombs* (1845), ink box, 26 Lond. Journ. 110.

Courts of Law,[e] and the increased efficiency given to Courts of Equity,[f] having removed the chief barriers to their independent and complete jurisdiction. *Scire facias* it seems needless to retain. Based on the importance of the physical possession of Letters-patent,[g] it is clearly incompatible with a system which deprives that possession of significance, and a practice[h] which has devised a mode of counteracting its effect. There seems, indeed, no valid reason why the power of repealing Letters-patent should not be added to those already bestowed on the Courts of Equity and Common Law. On the whole, for reasons we shall subsequently consider, Courts of Equity seem the better adapted of the two for dealing with property so peculiar in its nature as that which exists in patented inventions.

Scire facias unnecessary.

The theoretical defect in the proceeding we are about to consider arises out of the ambiguous part taken by the principal actor in it, the Attorney-General, and the depositary in that officer of discretionary power with reference to rights, on the hypothesis of Patents essentially conflicting. As the adviser of the Crown, on the one hand, he is supposed to contend for the maintenance of the Prerogative, while his duties as the general guardian of public rights necessarily involve a jealous opposition of that Prerogative on the other. In practice the action of the Executive is too circuitous and slow, and the limits of the constitutional powers involved very indis-

Defective in theory.

The Attorney-General.

In practice, ineffective.

[e] Stats. 12 & 13 Vict. c. 109, s. 39; 15 & 16 Vict. c. 83, s. 42.

[f] 1 Fonbl. Eq. 8, n.; Stat. 15 & 16 Vict. c. 86, s. 61. It is in contemplation still further to increase the powers of Courts of Equity by enabling them to give damages in cases in which by the present practice they may grant injunctions." Hansard, House of Lords, August 8, 1854.

[g] *Sir Robert Sidnie's* case, Dyer, 167 a; *Sir T. Wroth's* case, ib.; *Kemp* v. *Makewilliams*, Dyer, 195 a; Com. Dig. Pat. E. G.; *R.* v. *Newcastle-upon-Tyne*, 1 Sand. Ord. in Chan. 390.

[h] *R.* v. *Mill* (1850), C. B., instruments for marking, 1 L. M. & P. 695.

Power of the Law officer.

tinctly defined. On one theory the Attorney-General is entirely responsible for the institution of the proceedings, and even after his *fiat* has been granted, and *scire facias* has been sued out, retains as complete control over the action as he would in the case of an ordinary information, where there is no relator. As depending from the discretionary exercise of the Royal Prerogative, the Lord Chancellor has, on this supposition, no authority in the matter.[i] The alternative hypothesis would place corresponding powers in the Lord Chancellor in virtue of the connection of the Letters-patent with the Great Seal,[k] even in matters connected with the issue of the writ. The subsequent proceedings are all before him as if there be a demurrer, and it is only when there are issues in fact that the record is sent to the Court of Queen's Bench. It is said that in case of a demurrer and issues in fact, judgment on the whole is given in the Court of Queen's Bench.[l] In days when the Sovereign had personal interest in the repeal of Royal grants, a vigorous but irregular power existed to move the machinery requisite for the purpose. In attempting to employ *scire facias* as an engine in the present economy of the State, we are driven to compose on constitutional principles, a substitute for the Royal will; a power to put in motion and control this curious compound of various independent jurisdictions, the relations between which, never probably settled on very definite principles,[m] have from successive piecemeal emendations become peculiarly complex and confused. Practically this whole power is vested in the discretion of the Attorney-General; the virtual effect of the decision in *R.* v. *Mill*[n] being to transfer the whole question to the arbitration of that officer, on

[i] *R* v. *Prosser* (1848), M. R., iron tubes, 11 Beav. 306; 18 L. J., N. S., Ch. 55.

[k] *Cancellarius, a cancellando*, 4 Inst. 88; Hindm 380.

[l] Saunders, 6 a; *R.* v. *Neilson* (1842), L. C., iron, Web. P. R. 669.

[m] *Countess of Pembroke's* case, 42 Ass. fo. 262, pl. 22.

[n] (1850), C. B., seals, pens, &c., 1 L. M. & P. 695.

the contest between the prosecutor and the Patentee, as to the admissibility of the Disclaimer the latter may choose to propose after the institution of the action.

Royal grants at Common Law.

Annexed to every Crown grant by the Common Law is an implied condition,[o] that in the event of its being either contrary to Law,[p] void for uncertainty in its terms, obtained by deception[q] of the Crown, or injurious to the rights of other subjects, the grant thus made may be repealed by *quo warranto*[r] or *scire facias*, instituted

[o] "Although the privilege" (the use of the Prerogative of the Crown in *scire facias* upon the *fiat* of the Attorney-General) "is not enforceable by *mandamus*, it is so much of common right that in no case has it been refused to my knowledge. Indeed, in the somewhat analogous case of a Petition of Right, it has of late years been the practice at the Home Office to endorse '*Let right be done*,' as a matter of course, without ever referring the matter to the Attorney-General." Per Jervis, C. J. [Attorney-General from July, 1846, to July, 1850], *Eastern Archipelago Company* v. *R.* (1853), Ex. Ch., 1 C. L. Rep. 185. "By Stat. 11 & 12 Vict. c. 94, s. 26, no writ of *scire facias* is to issue without the *fiat* and leave of the Attorney-General; and although *mandamus* does not lie to compel that officer to grant his *fiat*, it appears that in the event of his improperly withholding it, he might be questioned in Parliament and punished." Per Campbell, C. J., Ibid. "The Attorney-General, who exercises the power of the Crown in this respect, has no option: he simply decides the question of a *primâ facie* right." Ibid., per Parke, B. It was contended, in this case, that the *fiat* of the Attorney-General for issuing the writ of *scire facias*, so far from being equivalent to a writing under the Great Seal or Sign Manual, was not evidence that such writing had issued, or any signification of the Queen's will at all.

[p] *R.* v. *Butler*, 3 Lev. 220; *Legat's* case, 10 Co. Rep. 113 b; *Magdalen College* case, 11 Co. Rep. 74 b. See authorities as to the powers of the Crown at Common Law cited in Hind. 378.

[q] That a grant may be avoided by concealment in the recital in an action by the grantee against a third party, appears from *Alcock* v. *Cook*, 3 Bing. 234.

[r] *Quo warranto*, it is said, is always founded on an usurpation, and supposes a party in actual, but not legal possession (*Peter* v. *Kendal*, 6 B. & C. 708); *scire facias* proceeds on the supposition that a body in legal possession of certain powers is acting in abuse of these powers. *Eastern Archipelago Company* v. *R.* (1853), Ex. Ch., 1 C. L. Rep. 152.

either by the Crown, or by a subject aggrieved using the Prerogative of the Crown[s] upon the *fiat* of the Attorney-General.

Scire facias.

By *scire facias* the fact of forfeiture and the sufficiency of the grant in point of Law are tried, and the Letters-patent, if invalid, revoked and cancelled by the Court. "It is laid down," says Lord Campbell, C. J., "by all writers of authority, that if Letters-patent under the Great Seal have been granted on any false representation by which they are void, or if after the grant there has been a breach of any condition subsequent whereby they are voidable, the Prerogative writ of *scire facias* to repeal them may be sued out either directly by the Crown or with the consent of the Crown, on the relation of an individual who may be the relator, and in subsequent proceedings it is wholly immaterial whether the *scire facias*, which in all cases must be in the name of the King, is issued with or without a relator."[t]

Unaffected by reserved powers of the Crown.

The reservation by the Crown in its grant of the power of summary revocation in no way impedes the action of *scire facias* for their repeal at the instance of a subject. "It would, as it seems to me," says Platt, B.,[u] "be a new doctrine to hold that the Crown, merely by reserving to itself certain powers in a grant to one subject, could take away from all other subjects those rights which by the Common Law are in their favor annexed to such grant. The dangerous effect of this is clear—a Patentee

[s] Chitty, P. C. 330; 1 Hawk. P. C. 627.

[t] *Eastern Archipelago Company* (1853), Q. B., 22 L. T. 33.

[u] (1853), Ex. Ch., *Eastern Archipelago Company* v. *R.*, 1 C. L. Rep. 171. In the Court below (Queen's Bench) it had been held (1853, 21 L. T. 33), by Coleridge and Erle, Js., that such a proviso in a Charter operated as a restraint upon the general right to repeal Letters-patent for a breach of their conditions by *scire facias* in the first instance, and that the Crown must revoke the grant under the Great Seal, or by writing under the Sign Manual, before a private person could prosecute a *scire facias*, even with the leave of the Attorney-General.

is induced to await the movement for rectifying his claims from the public, instead of himself taking steps."

Under the new Act

By Stat. 15 & 16 Vict. c. 83, s. 15, the writ of *scire facius* lies for the repeal of any Letters-patent issued under that Act, in the like cases as the same would lie for the repeal of Letters-patent which before that Act were issued under the Great Seal. The remedies for parties in Ireland by *scire facias* are (s. 29) to be as complete as though the Letters-patent had been granted to Ireland only. In any proceeding in Scotland to repeal any Letters-patent, service of all writs and summonses are to be made according to the existing forms and practice.

Coke.

Coke, in his Institutes, lays down the cases in which such action lies: *Firstly*, where the King by his Letters-patent doth grant by several Letters-patent one and the selfsame thing to several persons, the former Patentee shall have a *scire facias* to repeal the second Patent; *Secondly*, where the King granteth anything that is grantable upon a false suggestion, the King, by the Prerogative *jure regio*, may have a *scire facias* to repeal his own grant; *Thirdly*, where the King doth grant anything 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.[x]

Practice recent.

In the form now applicable to Patents for inventions, the employment of this process is of no long standing. On the trial of *Arkwright's Patent*[y] in 1785, Mr. Justice Buller observed:—"The proceeding of *scire facias* to repeal a Patent is somewhat new in our time. None such has occurred within my memory, though in former times they certainly were very frequent." It soon afterwards was brought into general use, and employed with such formidable effect, that until recently no Patent had

[x] 4 Inst. 88; 2 Rol. 191, l. 35; 2 Wms. Saund. 6th ed., 72, n.; Dyer, 197 b, 198 A; Com. Dig. F. 6.

[y] Spinning machinery, Dav. Pat. Cas. 144; Web. P. R. 74.

survived the ordeal.[z] Disclaimer, however, now furnishes the Patentee with an efficient weapon of defence. Although filed after issue joined it is admissible in evidence, need not be pleaded *puis darrein continuance*, but is to be read as part of the original Specification.[a]

The prosecutor.

A *scire facias*, it is said, may be sued by any person who is prejudiced by a Patent as well as by the Crown.[b] No matter whence the movement for its suppression, the Crown is bound to lend it its support. An illegal monopoly being, as was observed by Lord Langdale,[c] a public nuisance, the Crown, when informed of such grievance, and having the power and the duty to remove it, ought not to be disabled from directing the necessary proceedings to ascertain the truth, because the information was given by an alien or by a person who had no special or direct interest in the matter, or was endeavouring to promote the interest of some other person, or was actuated by some improper motive. Two persons cannot however, it appears, join in the prosecution, unless they have a joint interest.[d]

The writ as of right.

The right,[e] however, of the subject to the writ can

[z] Turner, 72.

[a] *R.* v. *Mill* (1850), instruments for marking, 1 L. M. & P. 695.

[b] *Brewster* v. *Weld* (1705), 3 Anne, rectory of *Aldgate*, 6 Mod. Ca. 334.

[c] *R.* v. *Prosser* (1848), M. R., 11 Beav. 317.

[d] *R.* v. *Neilson* (1842), L. C., iron, Web. P. R 673, n.; 3 M. & R. 460.

[e] In *scire facias* for the repeal of grants of lands, royalties and offices by the Crown, it is said to have been the practice to commence by a memorial to the Crown (2 Saund. 72), and that a warrant then issued to the Attorney-General, who thereupon granted, *ex debito justitiæ* (Web. P. R. 669, n.), his *fiat* for the issue of the writs. The practice has, however, fallen into desuetude (Hindm. 385), and never appears to have been usual in the case of Patents for inventions. *Sir Oliver Butler's* case, 1 Vent. 44; Dy. 276; Staundforde's Prerog. cap. 23; Bro. Abr. tit. *Repellance;* 1 Richardson's Pract. C. P. 391; *R.* v. *Aires*, 10 Mod. 354; *Earl of Kent's* case, H. 21, E. 3, fo. 47, pl. 68, T. 44, E. 3, fo. 16, pl. 3; Fitz. *Traverse*, pl. 41; Bro. *Petition*, pl. 11; *Challer's* case, M. 9, H. 4, fo. 4, pl. 17, and see authorities cited *Smith* v. *Upton* (1843), C. B., 6 M. & G. 252, n.

hardly be said to be a settled point,[f] considerable doubts existing both as to this and as to the effect of the special power of summary revocation reserved by the grant on the ordinary process for its repeal.[g] Unless the breach were of some substantial condition of the grant, it appears the Attorney-General would be justified in refusing it,[h] as he would be in a similar exercise of his discretion in refusing a writ of error in a criminal case. He might also stop the proceedings by means of a *nolle prosequi*.

Abuse of *scire facias*.

Of the mode in which Patentees have availed themselves of this process for the purpose of tormenting one another, we have instances in *R.* v. *Lister* and *R.* v. *Hadden*,[i] *R.* v. *Fussell* and *R.* v. *Daniell*,[k] and others.

The bond.

To guard against the perversion of the Prerogative to the purpose of mere vexatious annoyance, it has been the practice of late[l] to require the prosecutor in this action to enter into a bond with two sureties to secure to the defendant his costs in the event of the failure of the prosecution. The bond is executed at the Office of the Petty Bag or before a Master Extraordinary in Chancery, the prosecutor's solicitor certifying to the sufficiency of the sureties. It is, however, not to be deposited or filed in the Office of the Petty Bag unless the intended obligors,

[f] *Eastern Archipelago Company* v. *R.* (1853), Ex. Ch., 1 C. L. Rep. 145.

[g] *Cardigan* v. *Armitage*, per Bayley, J., 2 B. & C. 197; *Hodgson* v. *Field*, 7 East, 613.

[h] See per Lyndhurst, L. C., *R.* v. *Neilson* (1842), iron, Web. P. R. 672.

[i] (1826), Godson, 274.

[k] (1827), Ibid.

[l] The bond was first required in 1790, the amount being 500*l.*; but, since 1836, it has been increased in ordinary cases to 1000*l.* It rests, however, entirely in the discretion of the Law officer for the conditions under which liberty will be given to put the bond in suit. (General Orders, Aug. 1849, No. 18. See *R.* v. *Mill* before alluded to (1851), 11 Beav. 312; and form of the writ in Abbott's Forms, No. 88; Hind. 708.)

and the sums for which they are to give security, are named by the Attorney-General.[m]

Check upon the prosecutor.

Considerable care is taken in other respects to ensure the responsibility of the parties conducting the proceedings. The prosecutor's name or that of his attorney must be indorsed on the writ and copy,[n] and each attorney employed in the action must, before acting as such, enter at the Office of the Petty Bag his name and address, or some place where pleadings, notices, &c., may be left for him.[o] Any party changing or ceasing to employ his attorney in the course of an action, suit, or proceeding, is to cause an entry of such change or cessation of employment to be made and entered with the Clerk of the Petty Bag,[p] and to cause notice of such change or cessation of employment and of such entry to be served on every party to the action, suit or proceeding; and until such entry and notice shall have been made and served, the former attorney is to be deemed and taken for all purposes of the action, suit or proceeding, to be and remain the attorney of the party.[q]

The defendant.

The defendants must be the proprietors[r] of the Patent,[s] the object of the *scire facias* being the revocation of the privilege they collectively represent. The return of the original Letters-patent into Chancery for the purpose of cancellation being also contemplated in the proceeding, the person having the custody of that instrument should also be made defendant. If any of the parties so appearing on the "Register of Proprietors" have died or become bankrupt or insolvent, the executors, administrators and assignees must be made defendants,

m General Orders, Aug. 1849, No. 17.
n Stat. 11 & 12 Vict. c. 94, s. 26. See Abbott's Forms, Introd.
o Stat. 12 & 13 Vict. c. 109, s. 44.
p General Orders, 3rd August, 1849, No. 9.
q Ib. No. 10.
r Holroyd on Pat. 138.
s Hindm. 388, 398.

the interest vesting in them by operation of law.[t] Judgment against the Patentee after assignment of his whole interest or against a deceased Patentee will not it appears invalidate the Patent.[u]

Attorney-General's control over the action.

According to a practice recently introduced, the Attorney-General on petition will interpose to stay proceedings in case of the security for costs being insufficient, or to reform the writ where it contains improper suggestions.[x] A bill for an injunction being filed, the defendant, before the motion came on to be heard, commenced proceedings by *scire facias*; the Attorney-General refused to allow them to be proceeded with.[y] In *R.* v. *Bynner*,[z] the rule for setting aside the verdict for the Crown having been discharged on the ground that the Specification claimed too much, Sir F. Pollock, Attorney-General, stayed the proceedings, a Petition to amend the Patent by Disclaimer under Stat. 5 & 6 Will. IV. c. 83, s. 1, having been presented to him. The Attorney-General may enter a *nolle prosequi* on his own responsibility. The most that a Court of Equity will do will be to stay proceedings, to give that officer time for deliberation.[a] It has no authority to overrule his decision when formed.[b]

Bill for injunction on the file.

Writ issues out of Chancery.

Various reasons have been alleged for limiting the source whence the *scire facias* may issue to the Court of Chancery, the chief being that the writ is founded on some matter of record, and that that Court has the enrolment of the Patent.[c] Coke, however, cites an instance[d]

[t] Supra, 115, 116.

[u] Web. 22.

[x] *Smith* v. *Upton* (1843), C. B., 6 M. & G. 260, n.

[y] *Newall* v. *Smith* (1841), wire rope, not reported.

[z] (1846) lamps, 9 Q. B. 523.

[a] *R.* v. *Neilson* (1842), L. C., iron, Web. P. R. 665.

[b] *R.* v. *Prosser* (1848), M. R., iron tubes (Cutler's Patent), 11 Beav. 306.

[c] Year Book, 21 Edw. III. fol. 47, pl. 68; Bro. Abr. tit. Petition, pl. 11; Jenkins' Rep. p. 134; 3rd Cent. case 74; 14 Edw. IV. 1.

[d] Year Book, 3 Hen. IV. fol. 6, pl. 29; Hindm. 381.

in which a *scire facias* was sued in the King's Bench. Upon a recognizance acknowledged in Chancery, and a transcript of it sent to the Common Pleas, the Common Pleas cannot award a *scire facias* upon this recognizance, lest the conusor should be twice vexed: for the Chancery may issue another *scire facias*. But it is otherwise if a transcript be sent out of the Treasury, for another *scire facias* cannot be granted out of the Treasury.

Obtaining the Attorney-General's *fiat*.

The prosecutor or his solicitor, having prepared a draft of the writ,[e] must lay a fair copy of it before the Attorney-General, together with a statement of the facts on which it is founded, in order to obtain his fiat.[f] The fiat and a true copy of the writ, and of any drawings or plans to be annexed thereto (to be verified by affidavit),[g] are to be filed in the Petty Bag Office.

Permission of the Crown.

"The Attorney-General," said Mr. Justice Wightman in a recent case,[h] "on behalf of the Crown, authorizes the proceedings at the instance of a private prosecutor, which might and ought to have been brought by himself directly in the name of the Crown. The assent therefore of the Attorney-General is of the same effect as if he had himself, on behalf of the Crown, directed the proceeding."

Defendant may show cause.

The proceedings are not entirely *ex parte*. The defendant may be heard before the Attorney-General to show cause previous to his granting the *fiat*. A *caveat*

[e] Stat. 12 & 13 Vict. c. 109, s. 38. It was formerly the practice for the Clerk of the Petty Bag to prepare the writ from information furnished him by the prosecutor's solicitor. Hindm. 385. By stat. 12 & 13 Vict. c. 109, ss. 4 and 5, however, the Clerk of the Petty Bag is disqualified from acting as solicitor or attorney in the office of the Petty Bag on behalf of any person.

[f] Foster, *Sci. Fa.* 249; 2 Wms Saund. 71, n. 4.

[g] By Stat. 12 & 13 Vict. c. 109, s. 45, affidavits, affirmations and declarations to be used on the Common Law side of the Court of Chancery must be made before the Clerk of the Petty Bag or a Master Extraordinary in Chancery, and filed in the office of the Petty Bag.

[h] *R. v. Eastern Archipelago Company* (1853), Q. B., 21 L. T. 33.

entered at the chambers of that officer confers no other right than that to notice of any application for issuing the writ.[i]

Petty Bag Office. See below.

Common Law proceedings of the Court of Chancery, in matters similar to the repeal of Patents, have hitherto been conducted in the Office of the Petty Bag.[k] The practice of that Court is for the most part regulated by Statute 12 & 13 Victoria and the General Orders in Chancery of 29th Dec. 1848, and 3rd August, 1849. (See Appendix.) The principal Officer of the Court is the Master of the Rolls, who exercises functions analogous to those of a judge at chambers.[l] Solicitors of the Court of Chancery practise as its attornies.[m]

Relations of Chancery and the Queen's Bench.

Although empowered to sit as a Common Law Judge when holding pleas in *scire facias* to repeal Letters-patent in the Office of the Petty Bag, the Lord Chancellor was unable to summon a jury.[n] A peculiar affinity was, therefore, by a fiction of Law, supposed to exist between the Court of Chancery and the Court of Queen's Bench, for the purpose of obtaining decisions as to questions of fact or Law. They were for this object said to form "one and the same place," so that the Chancellor could deliver *propriâ manu* a record into the Queen's Bench, although to take the same record into the Common Pleas required a writ of *mittimus*.[o] All such distinction is now, however, abolished by the Statute investing all the Superior Courts with the powers possessed previously by the Court of Queen's Bench.[p]

[i] *R.* v. *Cutler* (1847), Q. B., tubular flues, 3 C. & K. 215.

[k] 4 Inst. 80. [l] 4 Inst. 82, 97; Hindm. on Pat. 377.

[m] Stat. 11 & 12 Vict. c. 94, s. 21, re-enacted by Stat. 12 & 13 Vict. c. 109, s. 24. Formerly the Six Clerks acted as the attornies of the Court. Statute 5 & 6 Vict. c. 103, s. 1 substituted for them the Clerks of the Petty Bag.

[n] See note to *Smith* v. *Upton* before referred to, 6 M. & G. 257.

[o] 2 Saund. 27; Dict. in C. P., per *Shardelow*, Justice, M. 10 Edw. III. fo. 59, pl. 62.

[p] Stat. 12 & 13 Vict. c. 109, s. 35.

Action of *scire facias.*
The writ.
Suggestions of the writ.

The action of *scire facias* for the repeal of Letters-patent is commenced by an original writ issuing out of the Office of the Petty Bag.[q] The writ sets out the petition of the Patentee and the grant of the Letters-patent, with the conditions it contained. It then proceeds to the suggestion of various grounds on which the Patent is void. These suggestions are substantially the same with the pleas in an action for infringement.[r] A suggestion, that the grant is prejudicial and inconvenient to the Queen's subjects in general, is so far insufficient in precision that evidence will not be allowed to be given under an issue taken on it.[s] The prosecutor may get rid of any suggestion in the writ by entering a *nolle prosequi*[t] as to it, either at the time of declaring or subsequently. The suggestions are followed by allegations as to their effect on the validity of the Patent.[u] After stating the defendants' claim to interest in the Letters-patent, the writ concludes with a command to the sheriff to summon each of them to appear in Chancery and show cause why the Patent should not be revoked.

Direction of the writ.

On the theory that the record on which the writ was founded remained at Westminster, the old practice was to direct the writ first issued to the sheriff of Middlesex,[v] and on the return of *nihil* by the sheriff to that writ, to issue a second, called a *testatum* writ, directed to the sheriff of the county in which the defendant resided. The writ may, however, now be directed in the first instance[w] to the sheriff of any county of England or

[q] Bro. Abr. *Scire Facias*, pl. 8.

[r] See Chapter IX. Hindm. 389.

[s] *R.* v. *Arkwright* (1785), spinning machinery, Dav. Pat. Cas. 79; Web. P. R. 74, per Buller, J.

[t] For Form of *Nolle Prosequi* as to some of the Suggestions after Declaration and before Plea, see Hindm. 718.

[u] For forms of *scire facias*, see Abbott's Forms of Writs on the Common Law Side of the Court of Chancery, Form 87; Hindm. 170.

[v] Hindm. 388.

[w] Foster on *Scire Facias*, 254; 12 & 13 Vict. c. 109, s. 29.

Wales in which the grantee or grantees resided at the date of the Letters-patent.

The writ, before issuing, is to be sealed with the Chancery Common Law Seal,[x] in the custody of the Clerk of the Petty Bag.[y] It may be issued and tested in term time or vacation,[z] and must be tested or dated on the day on which it is sealed;[a] after which it will be given to the prosecutor's solicitor, by whom it must be taken to the sheriff to be executed. Sealing the writ.

A summons is then sent to the defendant by the sheriff,[b] in pursuance of the writ, informing him that it has issued, and warning him to appear to it.[c] A copy of the writ and summons left at the defendant's last known dwelling or place of business is good service.[d] In case of the grantee or grantees not residing in the United Kingdom, it is sufficient to file the writ in the Petty Bag Office, and serve notice thereof in writing at the last known residence or place of business of such grantee or grantees.[e] Service.

[x] Stat. 12 & 13 Vict. c. 109, s. 14. The writ was formerly sealed with the Great Seal. Hindm. 390. By Stat. 12 & 13 Vict. c. 109, s 11, it is provided, that there shall be provided a seal, to be called "The Chancery Common Law Seal," of which all Courts, tribunals, judges, justices, officers and other persons shall take notice and receive impressions in evidence, in like manner as impressions of the Great Seal are received. By sects. 12 and 13, certificates of enrolment and office copies of documents sealed with such seal are to be admitted as *primâ facie* evidence of such enrolment and as true copies of such documents.

[y] New Orders in Chancery, 1849, No. 4.

[z] Stat. 12 & 13 Vict. c. 109, s. 26.

[a] New Orders in Chancery, 1849, No. 6.

[b] For Form of Sheriff's Warrant to his Bailiffs to summon the Defendant, see Hindm. 716; and notes to *Underhill* v. *Devereux* (1682), 2 Wms. Saund. 67 b—72 hh, containing a store of learning on the head of *scire facias* generally.

[c] Godson, 271; Tidd's Pr. 1158—1172.

[d] *Weatherhead* v. *Landles* (1836), 3 Scott, 407; 5 Scott, 189.

[e] Stat. 15 & 16 Vict. c. 83, s. 35.

Return of the sheriff.

Scire feci.

The sheriff, having summoned the defendant, returns *scire feci.*[f] In the event of his neglecting to make such return, a rule of Court, obtainable on application at the Petty Bag Office, will compel him to do so. Where the sheriff returns *scire feci*, the Court will not, it is said, inquire upon motion into the validity of the summons, but will leave the party moving to his action against the sheriff for a false return.[g] If the defendant be not summoned (it is not absolutely necessary that he should be),

Nihil.

the sheriff returns *nihil.*[h] Appeals by or on behalf of any defendant who has been summoned by the sheriff must be entered within eight days after the writ has been returned and filed.[i]

Return of the writ.

The writ is returnable into Chancery wherever the Court may be on the return day.[k] It may, however, be made returnable into any of the Superior Courts of Common Law,[l] it being enacted by 12 & 13 Vict. c. 109, s. 27, "that every writ, of any description whatsoever, hereafter to be issued out of the said Office of the Petty Bag, whether the same shall or may be returnable and returned on any day certain, to be in such writ mentioned (not being a Sunday, Good Friday or Christmas Day), whether such day shall be in term time or in vacation, or forthwith after the execution thereof; and every such writ which shall be made returnable or returned on any day in vacation, and which, according to

[f] Tidd's Pr. 1092.

[g] 2 Wms. Saund. 72 y, citing *Barr* v. *Satchwell*, K. B., 2 Geo. II., 2 Str. 813. See, however, *Pool* v. *Wills*, 2 T. R. 758; *Webb* v. *Harvey*, Ibid. 757.

[h] *R.* v. *Eston*, Dyer, 198, a.; Foster on *Scire Facias*, 256.

[i] Orders in Chancery, 3rd August, 1849, No. 19.

[k] *Ubicunque tunc fuerit.* For Form of Rule to return the writ, see Hindm. 390, 717; *R.* v. *Hare*, 5 Geo. I., 1 Strange, 146. But when made returnable wheresoever the Chancery should be in *Great Britain*, it was held bad. Ibid., and see *Sir C. Moore's case*, 1 Stra. 153.

[l] *Brewster* v. *Weld* (1705), Q. B., rectory of *Aldgate*, 6 Mod. 229; Jenkins' Rep. 134, 3rd Cent. pl. 74; Stat. 12 & 13 Vict. c. 109, s. 27.

any present law or usage or practice of or in the said Office of the Petty Bag, ought to be made returnable or to be returned on some day in term time, shall be of the like validity, force and effect, as if the day upon which the same writ shall or may be returned or made returnable was actually a day in term time: provided always, that in every case in which any particular period of time ought to elapse between the *teste* and return of any writ, such writ, if made returnable forthwith after the execution thereof, shall be returned immediately after the execution thereof and after such period shall have elapsed."

Appearance.

Within eight days after the return and filing of the writ the defendant must enter an appearance.[m] If the defendant does not appear, judgment by *nil dicit* may be signed against him, and the Patent will be avoided.[n] Provided, however, the writ has been duly returned, the more prudent course for the prosecutor, before proceeding to sign judgment against him by default of appearance, would be to give him notice of the writ; otherwise, if he could show to the Court that he had had no notice of the proceedings, the judgment would probably be set aside, and he would be let in to plead and defend the action.[o] Upon the return of the writ it is the practice to enter a rule to answer. It is the only rule necessary to compel the defendant to plead, as the defendant answers upon the writ.[p] It seems that judgment signed without entering such rule might be set aside.[q]

The declaration.

Immediately upon the appearance[r] of the defendant the prosecutor may deliver his declaration. The decla-

[m] General Orders in Chancery, 1849, No. 19.

[n] Vin. Abr. *Sci. Fa.* Prerog. X. 6; Bro. Abr. Patents, 20; *R.* v. *Toly*, Dyer, 197 b; *Hunt* v. *Coffin*, Ibid.; *R.* v. *Bluge*, Ibid.; *R.* v. *Eston*, Dyer, 198 a; *Penwarren* v. *Thomas*, Ibid.; *R.* v. *Amery*, 2 T. R. 515, 554, 567.

[o] Hindm. 392.

[p] For Form of Rule to answer, see Hindm. Pat. 718.

[q] *R.* v. *Newcastle-upon-Tyne*, 1 Saud. Ord. in Chanc. 390.

[r] Stat. 12 & 13 Vict. c. 109, s. 30.

ration[s] sets out the writ, the return of the sheriff, and the appearance of the defendant. It then proceeds to aver the various grounds of invalidity in the Patent, and concludes with a prayer for judgment by the Attorney-General, with a view to cancellation of the Patent.

Notice of objection.

With his declaration the prosecutor must deliver a notice of the objections[t] on which he means to rely at the trial. The notice being substantially the same with that given by a defendant in an action for infringement, the requisites of such notice will be found under that head in the Chapter on the Action for Infringement.

Time to plead.

The defendant has eight days from the delivery of the declaration to plead.[u] An extension of time may be obtained on application to the Master of the Rolls or one of the Judges of the Superior Courts.[x] If he fail to plead within such time, judgment may be signed against him by default.[y]

Pleas.

The defendant must plead or demur to all the suggestions[z] in the declaration. He may plead to some and demur to others. He may plead in abatement or in bar.[a] If there be several defendants they may sever in pleading, one demurring the other pleading. In such a case the Attorney-General may try which issue he pleases first.[b]

The defendant's pleas and demurrers may be prepared

[s] For Form of Declaration, see Abbott's Forms of Writs on the Common Law Side of the Court of Chancery, 97, Form 90; Hindm. on Pat. 717. According to *Blake* v. *Dodemead*, 13 Geo. I., 2 Stra. 776, it seems questionable whether there be any declaration on a *scire facias*. The plea, it was there argued, "is to the writ, and *narratio* and *breve* are in this case the same."

[t] Stat. 5 & 6 Will. IV. c. 83, s. 5.

[u] Foster's *Sci. Fa.* 259.

[x] Stat. 12 & 13 Vict. c. 109, s. 39; *R.* v. *Nickels*, Hindm. 396.

[y] Hindm. on Pat. 396.

[z] *Sir Oliver Butler's case*, 3 Lev. 221; 2 Tidd's Pr. 8th ed. 1144; Com. Dig. Patent, F. S.

[a] *R.* v. *Betts* (1850), Q. B., bottles, 19 L. J. (N. S.) Q. B. 531; 15 Q. B. 547; *R.* v. *Hare* (1719), 1 Stra. 146.

[b] *R.* v. *Hare*, 6 Geo. I., 1 Stra. 266.

by the defendant or his solicitor,[c] and are to be delivered to the prosecutor, and not to be filed as before in the Office of the Petty Bag.[d] Special pleas require to be signed by counsel. If the defendant plead several matters, the pleas will be set aside for irregularity.[e]

In *scire facias* against A. and B. for the repeal of a Patent granted to both, A. cannot plead in abatement that B. assigned all his share and interest in the Patent to A. before the writ was sued out, and has not since had any interest therein.[f] If in fact a party having no interest is joined in order that he may collusively prejudice another defendant, application should be made to the Court for remedy as against abuse of process.[g] In *R.* v. *Betts* an unreported case was cited by the Attorney-General from counsel's brief and notes in the cause, in which the writ stated, without any objection being taken on the point, that judgment had passed against one party, and called upon others to show why the Patent should not be vacated as to them and so far as their interests were concerned. "The Crown," said the Lord Chief Justice, "has a right to call upon those who obtained the Patent to show cause why it should not be cancelled. The suggestion is, that the Queen has been deceived—whom should the writ call upon but those who are supposed to be guilty of the deception?"[h] Abatement.

With regard to the more ordinary applications of the writ, it is laid down that a general allegation of non-tenure is no plea in a *scire facias* upon a fine,[i] or to have execution in a personal action; and generally, that

[c] Stat. 12 & 13 Vict. c. 109, s. 24.

[d] Ib. s. 31.

[e] *R.* v. *Nickels*, M. R., Hindm. 400, 430; *R.* v. *Archbishop of York*, Willes, 533.

[f] *R.* v. *Betts* (1850), bottles, 15 Q. B. 541.

[g] *S. C.*, per Lord Campbell, C. J., and Erle, J.

[h] *R.* v. *Betts* (1850), bottles, 15 Q. B. 541. The case was that of *R.* v. *Hamilton*, tried about three years before in the Queen's Bench.

[i] Com. Dig. *Abatement* (F. 14), and see Rast. Ent. 365.

if a writ abates by plea of matter of fact against one, it does not abate as to others. If in a *præcipe quod reddat* against two, one pleads non-tenure and the other takes the whole tenancy on himself, the writ will stand good as to that other, because there is a proper defendant.[j]

The prosecutor may of course demur to any of the defendant's pleas if they are insufficient in Law.[k] As the pleas generally simply traverse the suggestions of the writ, the common joinder in issue is usually the only replication required. The prosecutor's demurrer or replication may be prepared either by himself or his solicitor, and must be delivered to the defendant or his solicitor.[l]

Issue. The issue may be made up and delivered by either party or his attorney to the opposite party or his attorney. Formerly, as above stated, when there were issues of Law and fact in the Petty Bag Office, the whole record was sent into the Queen's Bench for determination, as there could not be a judgment of the Chancellor upon one part of the record, and a judgment of the Queen's Bench as to another part of the same record.[m] By Stat. 12 & 13 Vict. c. 109, the issue is in all cases to be sent into one of the Superior Courts of Common Law.

The record. The record of the issues must be made up and filed in the Office of the Petty Bag.[n] A transcript from the record containing the issues is then sealed with the Common Law Chancery seal, and delivered out to the prosecutor or his attorney, by whom it is taken to the Court of Common Law,[o] and there filed. In the case of the Queen's Bench, the filing takes place in the Crown Office. The transcript is a sufficient record to enable the Court of Common Law to give judgment.[p] Another

[j] 1 Bac. Abr. 20 (7th ed.), *Abatement* (L.) in marg.

[k] Hindm. on Pat. 401.

[l] 12 & 13 Vict. c. 109, s. 31.

[m] *Smith* v. *Upton* (1843), C. B., 6 M. & G. 258, n. (*a*).

[n] Stat. 12 & 13 Vict. c. 109, s. 33.

[o] Ib. s. 32.

[p] *Bynner* v. *R.* (1846), lamp, 9 Q. B. 551.

record, setting out the Chancery record, is then made out, and the cause is set down in the usual manner.[q]

Proceeding to trial.

Proceedings may be taken and trial had either in term time or vacation[r] in any one of Her Majesty's Superior Courts of Common Law. The name of the Court fixed on by the party applying to have the writ sealed[s] must be endorsed on the writ, and a memorandum thereof entered with the Clerk of the Petty Bag, before any further proceedings are taken in the action.[t] The Court may issue a commission to examine witnesses.[u]

Delay.

If the prosecutor be guilty of delay in carrying the cause to trial, he will, on application being made to the Court,[x] have to pay costs.[y] The Attorney-General's warrant for a *tales*,[z] obtainable as of course,[a] should be procured by each party. If no *tales* be prayed and the cause goes off for want of a jury, neither party is liable to pay costs. The defendant is not bound to make use of the warrant.[b]

Notice of trial.

Notice of trial must be given according to the practice

[q] Abbott's Forms, &c. 105; Stat. 15 & 16 Vict. c. 76, s. 102; Corner's Cro. Pr. 99—128.

[r] Stat. 12 & 13 Vict. c. 109, s. 27; *Ex parte King*, 1 Sand. Ord. in Chanc. 355.

[s] General Orders of Chancery, 3rd Aug. 1849, No. 13.

[t] Ibid. No. 14.

[u] As to the practice with respect to issues transmitted from Chancery to the Queen's Bench for trial, see Mr. Hardy's note in the Second Appendix to the Seventh Report (1846) of the Deputy Keeper of the Public Records, 277. See also *Bourdeaux* v. *Rowe* (1835), 1 Bing. N. C. 721; *Hargrave* v. *Hargrave* (1847), 4 C. B. 654.

[x] *R.* v. *Dyde*, 7 T. R. 661; *R.* v. *Macleod*, 2 East, 202; *R.* v. *Masters*, Parker, 51; *R.* v. *Banks*, 6 Mod. 247.

[y] Corner's Crown Pr. 141; *R.* v. *Bartrum*, 8 East, 269; *R.* v. *Waring*, 5 T. R. 454.

[z] 2 Hawk. c. 41, s. 18; *Varni* v. ———, 1 Lev. 223; Corner's Cro. Pr. 142.

[a] Hindm. 411.

[b] *R.* v. *Righton* (1765), K. B., 3 Burr. 1695.

of the Court[c] in which the issue is to be tried.[d] Notice to admit documents proposed to be used as evidence on the trial should be also given.

The trial.

The trial may be either at bar or Nisi Prius,[e] as the Court shall think fit, and either by special or common jury. Being on a record it must be tried in Middlesex.[f]

Right to begin.

The defendant is entitled to begin and give evidence in support of his Letters-patent.[g] The defendant cannot demur to the evidence for the Crown, unless by consent of the counsel for the Crown; if that be refused, the Court ought to direct the jury to find the special matter upon which the Law may afterwards be adjudged.[h]

Right to reply.

If evidence is adduced by the prosecutor impeaching the validity of the Letters-patent, the defendant is entitled to the reply.[i]

Evidence.

The remarks on the evidence in actions for infringement in the next chapter will be found to include that in cases of *scire facias*. The prosecutor must show that the Patent is void on some one of the grounds contained in the suggestions.[k]

Notice of objection no part of the record.

The notice of objections in *scire facias*, although part of the transcript sent from Chancery, is no part of the record in a Court of Common Law, so as to form parcel of the issues to be tried, nor can it be resorted to for the purpose of narrowing any of the issues to one claim.[l]

[c] Abbott's Forms, &c. 101.

[d] Stat. 12 & 13 Vict. c. 109, s. 24. For forms of *subpœna ad testificandum*, see Corner's Cro. Pr. App. 198.

[e] Stat. 12 & 13 Vict. c. 109, s. 32. See Stat. 17 & 18 Vict. c. 125, s. 1.

[f] 2 Chitty, P. C. 337.

[g] Stat. 15 & 16 Vict. c. 83, s. 41.

[h] *Baker's* case, 5 Co. 104 a; *Middleton* v. *Baker*, Cro. Eliz. 752; Co. Litt. 72 a; *Fitzharris* v. *Boiun*, 1 Lev. 87; Doct. Plac. 119.

[i] Stat. 15 & 16 Vict. c. 83, s. 41.

[k] *R.* v. *Cutler* (1847), Q. B., tubular flues, 3 C. & K. 215.

[l] *R.* v. *Mill* (1850), C. B., instruments for marking, 1 L. M. & P. 695.

A count in a *scire facias* contained suggestions of want of novelty and utility in a certain part of the invention. The objections filed with the declaration pointed out the sixth claim in the Specification as wanting novelty and being useless. The pleas traversed all the suggestions in the count. After issue joined, a disclaimer was entered by the defendant. It was held that the disclaimer was receivable in evidence, and that being received, the defendant was entitled to a verdict upon all the issues.[m]

Disclaimer receivable in evidence.

Effect of.

If issue be taken upon each of several suggestions in the writ, a verdict on any one of them entitles the Crown to judgment.[n] It was held that other issues being then immaterial, the judge may properly discharge the jury from returning a verdict upon them. If the jury cannot agree, the judge at Nisi Prius has power to discharge them.[o] If the jury think the case doubtful, they must find for the defendant.[p]

Verdict.

The Clerk of the Petty Bag, upon receiving the return of the transcript of the verdict of the jury and proceedings or judgment of any Court of Common Law upon any issue in law or in fact, is to file the same in the Petty Bag Office, and is to cause an entry to be made of such verdict and proceedings or judgment, and such transcript is to be annexed to the original record in the Petty Bag Office; and thereupon the judgment of the Court of Common Law is to be entered on or annexed to the same record, in conformity with the judgment of the Court from which the transcript is returned.[q]

Proceedings after verdict.

The Court in which the action is tried has power to Non-

[m] *R.* v. *Mill* (1850), instruments for marking, 10 C. B. 379.

[n] *R.* v. *Johnson* (1836), Exch. Ch., *Quo warranto* Office of Alderman of London, 5 A. & E. 488, *Eastern Archipelago Company* v. *R.* (1853), Exch. Ch., 1 C. L. Rep. 145.

[o] *Cook* v. *Caldecott* (1830), N. P. Trover, 4 C. & P. 315; but see *Tolson* v. *Kaye* (1843), 6 M. & G. 589.

[p] *R.* v. *Cutler* (1847), Q. B., tubular flues, 3 C. & K. 215.

[q] General Orders, No. 8, 3rd Aug., 1849.

grant a new trial[r] on payment of costs.[s] If the trial be had in vacation, motion for a new trial must be made within the first four days of term.[t] If a rule *nisi* be granted, but judgment has been regularly signed on the ground that notice of motion was not given pursuant to Reg. Gen. Mich. 12 Vict., the party obtaining the rule cannot be heard in support of it while the judgment stands.

Judgment for the Patentee.

If the Patentee be successful in the Court of Common Law, final judgment is entered up in that Court, nothing remaining to be done in the Court of Chancery.[u]

If judgment be given for the Crown, and the defect in the Patent prove such as the remedies provided by Stat. 5 & 6 Will. IV. c. 83, can repair, application should be made to the Court to suspend judgment.

Judgment.

If unsuccessful, the defendant may move in arrest of judgment,[x] or the prosecutor for judgment *non obstante veredicto*. Application should be made to the Master of the Rolls to stay the entry pending such motion.

It has been doubted whether the defendant is entitled to tender a bill of exceptions[y] in any case where the

[r] The first case of a new trial found in the books is that of *Wood* v. *Gunston* (1665), Styles, 462. See, as to misdirection, *Yarmouth* v. *Darrell*, 1 & 2 Jac. II., monopoly printing blank writs, 1 Vern. 77; *Wallington* v. *Dale* (1852), Exch., gelatine, 19 L. T. 187.

[s] Hullock on Costs, 396; *R.* v. *Arkwright* (1785), Dav. P. C. 141; *R.* v. *Wheeler* (1819), 2 B. & Ald. 345; *R.* v. *Bynner* (1846), 9 Q. B. 529; *R.* v. *Bewdley* (1712), 1 P. Wms. 207. This was after a trial at bar in the Crown Office of the Court of Queen's Bench.

[t] *R.* v. *Macleod* (1816), 3 Price, 203. A new trial was granted on the grounds that the verdict was against the direction of the Court.

[u] The King's Warrant before alluded to expressly reserved power after conviction to suspend the entry of any judgment to vacate the Patent.

[x] *Eastern Archipelago Company* v. *R.* (1853), Exch. Ch., 1 C. L. Rep. 145.

[y] Hindm. 413; and see the correspondence (1711) between the Lord Keeper and the Lord Chief Justice, there cited; *R.* v. *Archbishop of York*, Willes, Rep. 535, and cases there cited; *R.* v. *Cutler* (1847), Q. B., tubular flues, 3 C. & K. 215; 2 Inst. 427.

Queen is a party, the Crown not being expressly named[z] in the Statute which gives the Bill of Exceptions (13 Edw. I. c. 31, Statute of Westminster the Second).

Writ of error.

Error lies from the judgment of the Court of Chancery in the Petty Bag Office to the House of Lords,[a] and from the Court of Common Law to the Court of Exchequer Chamber.[b] When judgment is given in Chancery upon a demurrer, a writ of error, it is said,[c] lies to the Queen's Bench to revoke such judgment for errors of process or errors of fact, as error *coram nobis* lies for errors of process or in fact in judgments given in the Court of Queen's Bench.[d] It would appear, however, that writs of error upon judgments in Chancery for errors of fact or in process *may* be made returnable in Chancery. For errors in Law the appeal is direct from the Court of Chancery to the House of Lords.[e]

Writ of error on demurrer.

Cancellation of the Patent.

The contest for the jurisdiction and formalities[f] attendant on the revocation of Letters-patent invalidated by *scire facias* have been already alluded to.[g] In the case of *R.* v. *Steiner*,[h] after three formal citations, the defend-

[z] 2 Hawk. P. C. c. 46, § 20; *R.* v. *Vane*, 1 Sid. 85; Kel. 15; 1 Keb. 32; 1 Lev. 68; Foster, *Sci. Fa.*, bk. ii. c. 7.

[a] The fiat of the Secretary of State for the writ must be obtained, Abbott's Forms, 45. See note to *Smith* v. *Upton*, 6 M. & G. 257.

[b] *Bynner* v. *R.*, 9 Q. B. 523; *Eastern Archipelago Company* v. *R.* (1853), Exch. Ch., 1 C. L. Rep. 145.

[c] *Smith* v. *Upton* (1843), C. B., lamp, Bynner's Patent, 6 M. & G. 257. See cases on all these points cited, ibid. 258. See *Jefferson* v. *Dawson*, temp. Chas. II. 1 Siderf. 436, and notes to *Jeffreson* v. *Morton*, 2 Wms. Saunders, 6.

[d] *Countess of Pembroke's* case, 42 Ass. fo. 262, pl. 22; *Dewkes* v. *Peyton*, Style's Rep. 218.

[e] Bro. Abr. *Error*; Macqueen, Pr. House of Lords, 371.

[f] See Hindm. 313; *R.* v. *Toly*, Dyer, 1976; *R.* v. *Bluge*, ibid.

[g] Supra, p. 177, *Baron de Bode's* case, 8 Q. B. 208; *The Baron de Bode* v. *R.* (1649), 13 Q. B. 380; *Jeffreson* v. *Morton*, 2 Saund. 6 a, 27; and see Corner's Crown Practice, 252; Tidd's Practice, 9th ed. 1095; 1 Eq. Ca. Abr. 128; *R.* v. *Newton* (1845), Hindm. 426; 5 L. T. 261, cited 9 Q. B. 528.

[h] (1852) L. C., 18 L. T. 267.

ant not appearing, entry was made of his default, and an order made that the defendant should show cause on a day named why in default of the production of the Letters-patent the enrolment should not be vacated, and an attachment issue for the commitment of the defendant. The Patent was subsequently brought into Court. In *R.* v. *Bynner* interlocutory judgment was entered at the Crown Office and signed by one of the Masters on the Nisi Prius Record. The continuance and verdict, together with a judgment thereon drawn and settled by counsel, were entered by the attorney on the Queen's Bench Roll, and a transcript was then made and returned into Chancery.[f] In the case of *Nickel's Patent*,[g] the question of cancellation after judgment on *scire facias* came before the House of Lords, but the case being compromised, no decision was given.[h] The Petty Bag Amendment Act confers upon all the Courts of Common Law the power "to give judgment and execute judgment as the Court of Queen's Bench might have done," without at all stating what that power was. Filing being substituted for enrolment in the case of the Specification, and the Attorney-General's warrant filed in the Office of the Commissioners alone retaining the form of the grant, the practice in future will probably be somewhat similar to that of removing a bill from the file.

Costs. As a general rule the Crown neither pays nor receives costs.[i] If, however, in a *scire facias* to repeal a Patent, judgment be given for the defendant, the prosecutor will have to pay the costs of the action, according to the

[f] Corner's Crown Practice, 202.

[g] (1841) 1 Phil. 36.

[h] Corner's Cr. Pr. 202.

[i] Statutes 8 & 9 Will. III. c. 11, s. 3, and 3 & 4 Will. IV. c. 42, s. 34, which give costs of *scire facias*, are held to apply only to civil suits, where there are plaintiff and defendant.—Foster on *Scire Facias*, 276; *R.* v. *Miles* (1797), lamp, 7 T. R. 367.

terms of the bond. If after action commenced the defendant render his Patent valid by the entry of a disclaimer, he will be entitled to the costs of the action subsequently to such entry.[k]

Every attorney or party practising on the Common Law side of the Court of Chancery is entitled to the same charges as are allowed to attornies or parties for business of a similar nature in Her Majesty's Superior Courts of Common Law.[l] By section 37 of the Stat. 12 & 13 Vict. c. 109, it is enacted, that "in all cases where any party shall be entitled to the costs of any such issues or of any other proceedings or matters provided for by this Act in any of the said Courts, such costs shall be taxed and regulated by one of the Masters of the said Court respectively, who shall endorse his *allocatur* on the rule or order, as the case may be, or upon the *postea*, before the same shall be taken or returned into the Court of Chancery as aforesaid."

Of motions.

The costs of motions and interlocutory proceedings are often granted by the Court. In *R.* v. *Nickels*,[m] Lord Langdale, M. R., granted the costs of an application to set aside an irregular plea; and in *R.* v. *Crawfurd*,[n] Lord Lyndhurst, L. C., granted the prosecutor his costs of opposing a motion to rescind an order of the Master of the Rolls. The order of the Court of Chancery may be enforced as a rule of Court under Stat. 1 & 2 Vict. c. 110, s. 18.[o]

[k] *R.* v. *Mill* (1851), M. R., instruments for marking, 14 Beav. 315.
[l] Stat. 12 & 13 Vict. c. 109, s. 25.
[m] Hindm. on Pat. 430.
[n] Ib.
[o] Foster on *Scire Facias*, 89.

CHAPTER IX.

ACTION FOR INFRINGEMENT.

What infringement is.

WHAT has been already said as to the subject matter of a Patent may serve to show the principles which determine the acts constituting infringement on the right. The privilege consists in the monopoly of an article of commerce created or improved by the Patentee. Any act, therefore, which interferes or tends to interfere with this monopoly, is an infringement.

Sale is infringement.

Manufacture.

Actual sale of a counterfeit of the patented article is of course an infringement.[a] The manufacture of it for the purposes of trade in the mode prescribed by the Specification,[b] even although it be confined to a single instance, is also an infringement.[c] It seems difficult, therefore, to supply the grounds on which "exposure for sale," which presupposes its manufacture for the purposes of trade, should be excepted[d] from that category. The adoption of any one of the material improvements effected by the Patentee, where several such are included in the invention, is an infringement,[e] as also, it would appear from a remark of Tindal, C. J.,

[a] *Gibson* v. *Campbell* (1842), silk, 11 J. (N. S.), C. B. 177.

[b] *Huddart* v. *Grimshaw* (1803), rope, Web. P. R. 102; *Crossley* v. *Beverley* (1829), gas apparatus, 1 Russ. & Myl. 166, n.; Web. P. R. 119. See, however, *Delondre* v. *Shaw* (1828), sulphate of quinine, 2 Sim. 213.

[c] *Gillett* v. *Wilby* (1839), N. P., cab, 9 C. & P. 334.

[d] *Minter* v. *Williams* (1835), K. B., chair, 1 Carp. 647; 4 Ad. & El. 251.

[e] *Newton* v. *Grand Junction Railway Company* (1845), Ex., iron axles, 5 Ex. 331; *Sellers* v. *Dickinson* (1850), Ex., power-loom, 5 Ex. 312.

in *Gibson* v. *Brand*, is the ordering such goods to be made by the process of the Patentee.[g] A making, however, for private use, somewhat within the limits established in the decisions on Stat. 5 Eliz. c. 4, or for the purpose of amusement or scientific pursuits,[h] would seem to be excepted, the wrong done to the Patentee by an infringer consisting *quasi in tradendo*, or delivering over for sale.[i]

Making for private use.

Piracy of the invention, however, in the exact shape laid down in his Specification by the Patentee, is not the usual shape in which infringement on his rights occurs. More frequently it is that of a modification of the means prescribed, and necessarily involves for its determination a knowledge of *what constitutes the essence of the invention*.[k] This manifestly must depend upon the circumstances of each case. In some, a mere hint at the idea developed by the Patentee would enable a scientific and practical person to effect the desired end, by a variety of means; in others, the invention consists in an elaborate arrangement of details, and can scarcely be said to be founded on any single idea. In the former, the attention must be fixed on the principle, in the latter, on the material parts of the machine or substance produced, in determining the question of infringement.

Infringement by variation of the invention.

In a Patent for the means of stopping power-looms when the shuttle stopped in the shed, the principle of the invention was to transfer the momentum of the slay

Principle the essence.

[g] "The old rule clearly applies, *qui facit per alium, facit per se*" (1841), N. P., silk, 4 M. & G. 179; Web. P. R. 627. See also *Electric Telegraph Company* v. *Brett* (1851), 10 C. B. 838.

[h] *Jones* v. *Pearce* (1832), wheel, Web. P. R. 125.

[i] 8 Rep. 129; Vin. Abr. "Trade" (B.); Bac. Abr. "Master;" *Waggoner* v. *Fish* (1610), C. B., candles, 2 Brownl. 289; *Hobbs* v. *Young* (1690), K. B., cloth, Carthew, 162. See per Story, J., *Whittemore* v. *Cutter*, 1 Gall. 429.

[k] *Gamble* v. *Kurtz* (1846), C. B., sulphate of soda, muriatic acid, chlorine and chlorides, 3 C. B. 435; *Bramah* v. *Hardcastle* (1789), watercloset, 1 Carp. 168.

to a brake acting on the fly-wheel. This was held to be infringed by a machine where the same purpose was effected, by bringing the stop-rod finger into contact with a lever, which, pressing a brake on the fly-wheel, threw the driving strap off the driving shaft.[j] A Patent, the claim for which was the drawing a tube at a welding heat through dies without internal support, was held to be infringed by performing the like act by means of grooved rollers.[k] An invention was described as consisting of a mode of forming a wheel of one solid piece of wrought iron, by welding pieces of wrought iron together so as to form the rim, spokes and nave into one compact mass. The defendant used a wheel, forming the nave in the same way; but the mode of forming the rim was different. Held to be an infringement by the defendant, although in the Specification, after describing the whole structure, the invention was stated to consist of the centre, &c., being composed of iron welded into the solid mass "in manner hereinbefore described."[l]

Barber v. *Grace.* The Specification in the case of "improvements in the process of hosiery and other goods manufactured from lambswool," stated the invention to consist in submitting hosiery and other similar goods "to the finishing process of a press heated by steam, &c. in the manner hereinbefore mentioned." A description was then given with reference to a drawing, which represented a press consisting of a box heated by steam, up to which another box similarly heated was pressed by hydraulic pressure, steam, or other well known means. After describing the method of pressing the goods between the hot boxes, the Specification concluded by confining the inventor's process as above described. It was held, that the adoption of the

[j] *Sellers* v. *Dickinson* (1850), powerloom, 5 Ex. 312.

[k] *Russell* v. *Cowley* (1833), L. C., gas tubes, 1 Carp. 531. Compare this with *Huddart* v. *Grimshaw* (1803), rope, Web. P. R. 102, and *Hall* v. *Booth* (1822), lace, Web. P. R. 100; and see supra, p. 83.

[l] *Smith* v. *London and North Western Railway Company* (1853), Q. B., 2 E. & B. 69.

method of finishing hosiery goods by pressing them through heated rollers was no infringement of the Patent.[m]

An improvement is infringement.

The defendant's process being an improvement on the Patentee's makes it an infringement none the less.[n] The fact that until the introduction of the defendant's improvements the invention of the Patentee was incomplete, and that doubts exist as to its having been capable of being used for any purpose but for such improvements, would, it appears, affect the validity of the Patent rather than the question of infringement on it.[o]

Use of chemical or mechanical equivalents.

The employment of chemical or mechanical *equivalents* to effect the improvements introduced by the Patentee is an infringement, no matter how ingeniously the exterior of the production may be varied from that of the Patentee's manufacture.[p] In *Heath* v. *Unwin*[q] it was held by the judges in the Exchequer Chamber, that not only the use of carburet of manganese itself, but also of its elements, viz., oxide of manganese and carbon, when applied to the manufacture of steel, was an infringement on the Patent.

Infringement before the grant.

No action can be maintained for infringement committed before the Letters-patent were actually granted,

[m] *Barber* v. *Grace* (1848), Exch., 1 Exch. 339; 17 L. J. (N. S.), Exch. 122.

[n] *Neilson* v. *Harford* (1841), iron, Web. P. R. 310; *Hancock* v. *Somervell* (1851), caoutchouc, 39 Lond. Journ. 158.

[o] *Sellers* v. *Dickinson* (1850), powerloom, 5 Ex. 312; *Cochrane* v. *Brathwait* (1830), engine-boilers, 1 Carp. 493; *Walton* v. *Potter* (1841), caoutchouc, Web. P. R. 591.

[p] See per Gibbs, C. J., in *Bovill* v. *Moore* (1816), L. C., bobbin net, Dav. Pat. Ca. 405; and per Tindal, C. J., in *Walton* v. *Potter* (1841); Web. P. R. 594.

[q] Ex. Ch. (cast steel), 12 C. B. 522; 16 Jur. 996; *Galloway* v. *Bleaden* (1839), paddlewheel, Web. P. R. 523; *Crossley* v. *Potter* (1851), carpets, printed case, p. 61; *Heath* v. *Unwin* (1845), Ex., steel, 13 M. & W. 583; *Morgan* v. *Seaward* (1836), eccentric axis substituted for crank carrying a disc, Web. P. R. 171; *Hill* v. *Thompson* (1817), L. C. 3 Mer. 622; (1818), C. B. 8 Taunt. 393.

except in the case where a complete Specification has been deposited. Yet from the language employed by Campbell, C. J., in the recent case of *Heath* v. *Smith*, it would appear as if there might be an infringement even before the grant is made. "I wish it to be understood," said his Lordship on that occasion, "that if we had held this Patent to be valid, the five firms which used the process before the Patent was taken out would be liable to an action for infringement of it. There is nothing either in the Statute or in the Patent, or in the decisions, which would have exempted them from that liability."[s] The remarks may, however, with greater probability, be construed into a *reductio ad absurdum* of the alternative course to that taken by the decision, than taken as a statement of the results to be anticipated from it; the evidence of public user adduced being amply sufficient to destroy all claim to novelty in the invention.[t]

Trade-marks false analogy.

The subject of Trademarks is one of those before alluded to, as occupying adjacent ground to that of Patents.[u] As regards infringement, however, little advantage is derived from the connexion, their intrinsic difference being so great as to prevent any deduction being made from their similarity. A comparison of the decisions in *Minter* v. *Williams*[x] and *Blofield* v. *Payne*,[y] for instance, will show the extent to which the principles of the one have been imported into the other.[z]

[s] *Heath* v. *Smith* (1854), Q. B., cast steel made by carburet of manganese, 18 Jur. 603.

[t] See *Cornish* v. *Keene* (1835), per Tindal, C. J. (elastic fabrics), Web. P. R. 44; Stat. 15 & 16 Vict. c. 83, s. 9.

[u] Turner on Patents, 12, 110; 3 Steph. Com. 543.

[x] (1834) chair, Web. P. R. 137.

[y] (1833) K. B., metallic hone, 4 B. & Ad. 410.

[z] See Stat. 5 & 6 Will. IV. c. 83. Continental Governments are very careful to preserve clearly the line between privileged and unprivileged traders. The "Zeit," of Berlin, of date January 14, 1854, contains an announcement, that in the Bill for the protection of Trademarks then under consideration, all stamps were to be prohibited

Flavell v. *Harrison*[a] may be said to be upon the boundary of the two classes of rights. F., without taking out a Patent, manufactured and sold an article, which he termed "F.'s Patent Kitchener." His servant, having surreptitiously obtained lists of his customers and plans of the grate, constructed and sold it under the name of "F.'s Patent Kitchener." It was not, however, proved that he represented the goods sold by him as the actual manufacture of F. On a Bill filed by F. to restrain the defendant by injunction from using F.'s name, the Court refused to interfere summarily, on the ground that the Plaintiff had allowed four months to elapse without taking steps in the matter. The Bill was retained for six months, with liberty to bring an action in the mean time. The confusion thus existing is to be attributed to the defects above observed in the practice of obtaining the grant—Patents being constantly taken out for the mere purpose of puffing the sale of articles destitute of any qualifications entitling them to enter in the rank of "new inventions." *Flavell* v. *Harrison.*

In the mode of protecting their respective rights there is a wide difference between the position of a mere trader and the Patentee. The former may have recourse to a summary proceeding by criminal information for fraudulent representations connected with articles of sale. In Protection.

which contained any recommendation of the goods, "as, for instance, 'patent,' 'wasanted,' 'very bat' (*sic*)"! See, for some of the principal decisions as to Trademarks, *Ransome* v. *Bentall* (1834), Ch., ploughshares, 3 L. J., N. S., 161; *Holloway* v. *Holloway* (1850), Ch., pills, 13 Beav. 209; *Perry* v. *Truefitt* (1842), Ch., hair oil, 6 Beav. 66; *Barley* v. *Walford* (1846), silk goods, 9 Q. B. 197; *Crawshay* v. *Thompson* (1842), C. B., bar iron, 4 M. & G. 357; *Millington* v. *Fox* (1838), Ch., steel, 3 My. & Cr. 338; *Motley* v. *Dowman* (1837), Ch., tin plates, 3 My. & Cr. 1; *Taylor* v. *Taylor* (1854), V. C. W., Persian thread, 22 L. T. 271; *Burgess* v. *Burgess* (1853), L. J., fish sauce, 21 L. T. 53; *Knott* v. *Morgan* (1836), M. R., omnibus, 2 Keen, 213.

[a] (1853) V. C. W., stove, 17 Jur. 368; *Edelsten* v. *Vick* (1853), V. C. W., pins, Eq. R. 413.

a case recently before Lord Campbell,[c] the sale by the defendants of a spurious article under the labels of Messrs. A. having been proved, the jury found them guilty of a conspiracy to defraud; his Lordship sentenced them to imprisonment, with hard labour, for one year. A similar case of fraud, tried before Mr. Justice Erle in the summer assizes of 1853, met with a sentence of imprisonment, with hard labour, for two years,[d] the indictment being for obtaining money under false pretences.

Remedies for infringement of the right.

Infringement of Patent right, as a misdemeanor for which no special punishment[e] was appointed either by the Common or Statute Law, was originaliy cognizable in the Court of Star Chamber, under its general jurisdiction for the repression of "*cozenage*."[f] Its repression was summary and severe.[g] In an Ordinance of the year 1650[h] it was enacted, with reference to a Patent for boiling liquors, that if any persons should "make use of the said invention in the making of salt, brewing or boiling of liquor, or any other occupation, and proof be thereof made by the oath of two or more witnesses, to be taken before two or more justices of the peace within the county, city, borough, town corporate or privileged place, within the Commonwealth of England or Ireland, where the

[c] *R.* v. *Gray and Goslin*, Alsopp's ale, tried at the Guildhall Sittings, May 17th, 1854; 23 L. T. pt. 2, p. 77.

[d] See 23 L. T. pt. 2, p. 91. The subject in this case was Everett's premier blacking.

[e] "The punishment of this is arbitrary, as in our Realme, so likewise by the Civill Law, as appeareth by the twentieth Title of the 17th booke of the Digests, and *Wefenbeccius* parat. upon the same." Star-chamber Cases (10), printed for John Grove at Furnival's Inn Gate, 1630.

[f] "'Cozenage' is an offence whereby any thing is done guilfully in or out of contracts which cannot fitly bee termed by any speciall name. West. part 2, Symbol. Tract." *Ib.*

[g] In the case of apprentices or servants of the Patentee attempting to reap the fruits of his ingenuity, they were to be treated as "first rogues and then whipped." Com. Jour. May 4, 1614.

[h] Scobell's Acts and Ordinances, 149 (A. D. 1650).

fact shall be done, which said justices of the peace have hereby power, and are upon complaint required to administer, that then such vessels and works shall be broken and pulled down by warrant of such justices of the peace; and the said George Manby, his executors, administrators and assigns, shall and may bring in his or their action of debt against any person or persons, bodies politique or corporate, offending herein, within any Court of Record, for the penalty of ten pounds lawful English money for setting up of such works, and twenty shillings for every day's using or continuing any vessel or work by the said George Manby invented as aforesaid."

Remedy of *Patentee by* action for damages.

Until very recently the remedy of the Patentee in case of infringement was dilatory and expensive, involving the double procedure of an action at Law for the damages sustained from the invasion, and a suit in Equity for an injunction to restrain the illegal use of the invention and an account of the profits already made by the infringer from such use.[i] Even so the redress afforded seldom proved equal to the injury sustained by the Patentee.[j] It formed, however, his only means of protection, and could not with any degree of safety be dispensed with if the fact of infringement were brought to his notice.[k] The improvements introduced by the recent enactments in Law and Equity are, it will be seen, very considerable.

Damage.

An action for damages in general will lie, although no

[i] Chitty, P. C. ch. x. § 2; Mitford's Chan. Pleadings, 124.

[j] On the occasion of his introducing the Patent Law Amendment Bill, 1835, in the House of Lords, Lord Brougham observed, that of his own knowledge, "stock purses were not unfrequently made by those who pirated an invention of the kind, to harass the inventor with actions in Courts of Law and Equity, and driving him to despair, to carry off the fruits of his skill and labour." (28 Hansard, 475.) The cost of defending *Muntz'* (ship-sheathing) Patent is stated to have exceeded 10,000*l*. As to the loss from irresponsible infringers, see supra, p. 82.

[k] See supra, p. 217, Hindm.

Intention.

specific damage is alleged,[1] and although the infringement has not been intentional on the part of the defendant,[m] if *any* damage have been sustained by the plaintiff.[n] In *Heath* v. *Unwin*, the Court seemed to think it material to inquire into the intention of the defendant. The evidence in that case, however, negatived any such intention.

Parties to the action.
Plaintiff.

The party whose legal interest has been affected is the proper Plaintiff in an action for infringement. The right of action, however, not being assignable, an assignee can sue only for infringements committed subsequently to the assignment.[o] A proprietor under the Patent may sue solely for the injury done to his interest under it. The assignees of Letters-patent, in respect of which a Disclaimer has been enrolled by a grantee not at the time possessing the entire interest in the Patent, may maintain an action for infringement.[p] A Patentee and Licencee may be co-plaintiffs, as having an entire joint damage, although their interests are several.[q] A mere Licencee, however, not being able, covenants should be in the deed of licence enabling him to sue in the inserted name of the Patentee for the damages he has sustained.

[1] *Rochdale Canal Company* v. *King* (1849), Ex. Ch., 18 L. J., Q. B., 293; *Rodgers* v. *Nowill* (1847), C. B., cutlery, 17 L. J. (N. S.), C. B., 52; 5 C. B. 109; 6 Hare, 325; *Sykes* v. *Sykes* (1824), K. B., shot-belt, &c., 3 B. & C. 541.

[m] See Turner on Patents, 73, 108; *Heath* v. *Unwin* (steel), 13 M. & W. 593; 14 L. J. (N. S.), Ex., 153 (1847), 15 Sim. 552; 16 Jur. 996; 22 L. J. (N. S.), C. P., 7.

[n] Per Wilde, C. J., *Stead* v. *Anderson* (1847), wood-paving, 16 L. J. (N. S.), C. P., 251.

[o] Brown on Parties to Actions, 213. As to misjoinder or non-joinder of plaintiffs, see Stat. 15 & 16 Vict. c. 76, ss. 34—36; Archb. N. Pr. 23; 1 Saund. 291 f, g.

[p] *Spilsbury* v. *Clough* (1842), chloride of lime, 2 Gale & Dav. 17; 6 Jur. 579; Web. P. R. 255; *Bovill* v. *Moore* (1816), C. B., bobbin net, Dav. Pat. Ca. 361; 2 Marsh. 211.

[q] *Coryton* v. *Lithebye*, 22 Car. II. (1670), 2 Saun. 115. See 2 Vin. 55, pl. 46.

Defendant.

The defendant must be the person infringing the Patent. Foreigners in this country infringing on Patents granted by the Crown according to the Law of this country are equally liable with British subjects to actions for such infringement.[r] If several persons commit a joint infringement, the plaintiff may sue all or any of them at his election. The person physically using the invention, and not the person giving instructions and plans which include its use, is the party to be sued,—the contractor, for instance, and not the architect, in the case of a contrivance employed in housebuilding.[s] No objection can be taken on the score of misjoinder or non-joinder of defendants. In the former case the party misjoined will of course be entitled to a verdict.[t] An application to compel the plaintiff to give security for costs must, in ordinary cases, be made before issue joined.[u]

Foreigners in this country.

Security for costs.

Death of plaintiffs or defendants.

If there be two or more plaintiffs or defendants, and one or more of them should die, if the cause of action survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the action does not thereby become abated; but such death being suggested on the record, the action may proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants.[x] In the case of the death of a sole plaintiff, the suit may be continued by his legal representative;[y] in that of a sole defendant, where the action survives, by service on the executor or administrator of a copy of the writ, and suggestion of the death of such defendant.[z] The death of either

[r] *Caldwell* v. *Vanvlissingen* (1851), V. C. T., screw-propeller, 9 Hare, 415.

[s] *Denicy* v. *Blore* (1851), N. P., Jervis, C. J., fireplace flues, 38 Lond. Journ. 224.

[t] Archb. N. Pr. 27.

[u] General Rules, Hil. Term, 1853, No. 22.

[x] Stat. 15 & 16 Vict. c. 76, s. 136; Archb. New Pr. 303.

[y] Stat. 15 & 16 Vict. c. 76, s. 137.

[z] Ibid. s. 138.

party between verdict and judgment is not to be alleged for error,[u] so as such judgment be entered within two terms after such verdict. In the event of the death of any party between interlocutory and final judgment, the suit may be continued by the personal representatives by a writ of revivor.[x] Marriage of a feme sole does not cause the action to abate.[y] The bankruptcy or insolvency of the Plaintiff is not pleadable in bar to the action, unless the assignees shall decline to continue and give security of costs upon a judge's order to be obtained for that purpose, within such reasonable time as a judge may order, but the proceedings may be staved until such election is made; and in case the assignees neglect or refuse to continue the action and give such security within the time limited by the order, the defendant may, within eight days after such neglect or refusal, plead the bankruptcy.[z] The defendant or person against whom the suit may be so continued may apply by summons to compel the plaintiff or his representative to proceed with the action within such time as the judge shall order; and in default of such proceeding may enter a suggestion of such default and of the representative character of the person by or against whom the action may be proceeded with, and have judgment for the costs of the action and suggestion.[a]

Proceedings on the part of the defendant.

Declaration.

The Declaration is in case.[b] It recites the grant of the Letters-patent, the filing of the Specification,[c] the acquisition of the plaintiff's title, and the infringement of the Patent right by the defendant. It is not necessary to aver that any conditions imposed by the Judicial Com-

[u] Stat. 15 & 16 Vict. c. 76, s. 139.

[x] Ibid. s. 140.

[y] Ibid. ss. 141, 142.

[z] Ibid. s. 142.

[a] Stat. 17 & 18 Vict. c. 125, s. 92.

[b] 3 Stephen's Com. 524.

[c] *Muntz* v. *Foster* (1843), Exch., ship sheathing, 7 Scott, N. R. 471.

mittee of the Privy Council have been complied with.[d] The breaches should be alleged in the words of the Letters-patent.[e] Where a Specification claimed nine several improvements, and the Declaration alleged that the defendant had counterfeited the said 'invention,' it was held that that amounted to charging the using or counterfeiting of the said nine improvements.[f] No venue is to be changed without a special order of the Court, unless by consent of the parties.[g] The venue.

By the Common Law Procedure Act, 15 & 16 Vict. c. 76, the form of declaration, in case of infringement of a Patent, is prescribed[h] to "commence as follows, or to the like effect":—

[*Venue.*] A. B. by E. F. his attorney [*or* in person, *as the case may be*], sues C. D. for [*here state the cause of action*].

The statement of cause of action prescribed in the schedule of the Act, c. 76, is as follows:— Statement of cause of action.

That the plaintiff was the first and true inventor of a certain new manufacture, that is to say, of "certain improvements in the manufacture of sulphuric acid," and thereupon her majesty Queen Victoria, by Letters-patent under the Great Seal of England, granted the plaintiff the sole privilege to make, use, exercise and vend the said invention within England for the term of fourteen years from the day of , A.D., subject to a condition that the plaintiff should, within six calendar months next after the date of the said Letters-patent, cause to be enrolled in the High Court of Chancery an instrument in writing under his hand and seal, particularly describing and

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[d] *Ledsam* v. *Russell* (1848), gas tubes, 1 H. of L. Cas. 687.

[e] *Minter* v. *Williams* (1834), K. B., 4 A. & E. 251. As to declaration on an extended Patent, see *Russell* v. *Ledsam* (1843), Exch., 11 M. & W. 647.

[f] *Electric Telegraph Company* v. *Brett* (1851), 10 C. B. 838.

[g] No. 18, Rules of Practice, Hilary Term (1853). See *Cameron* v. *Gray* (1795), 6 T. R. 363; 1 Carp. 173, where a rule was refused to change the venue to Northampton; and *R.* v. *Huine* (1789), L. C., 2 Cox, 235; *Brunton* v. *White* (1825), 7 D. & R. 103; Chitty's Forms, 170.

[h] Sect. 59.

ascertaining the nature of his said invention, and in what manner the same was to be and might be performed, and the plaintiff did within the time prescribed fulfil the said condition, and the defendant during the said term did infringe the said Patent right.

The Declaration is to conclude as follows:—

And the plaintiff claims £ [*or if the action is brought to recover specific goods,*[f] the plaintiff claims a return of the said goods or their value, and £ for their detention.]

Inspection.

Previously to framing the declaration it may frequently be desirable for the plaintiff to inspect the defendant's machinery or place of manufacture. Hitherto such inspection has chiefly been granted by a Court of Equity in aid of a trial at Law. Until very recently all such orders by a Court of Equity had been by consent.[g]

Courts of Common Law may grant injunction, inspection, or account in case of infringement.

An improvement is introduced into the practice of Courts of Common Law by the Patent Law Amendment Act, 1852, the importance of which it is not easy to overrate. By the 42nd section of that Act it is 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, it shall be lawful for the Court in which such action is pending, if the Court be then sitting, or if the Court be not sitting, then for a judge of such Court, on the application of the plaintiff or defendant respectively, to make such order for an injunction, inspection or account, and to give such direction respecting such action, injunction, inspection and account, and the proceedings thereon respectively, as to such Court or judge may seem fit.[h] A Scotch case[i] seems to have carried the doctrine of inspection to its extreme. There, as in *Hud-*

[f] Stat. 17 & 18 Vict. c. 125, s. 78.

[g] See 7 Jarman by Sweet, 550; *Russell* v. *Cowley*, Web. P. C. 457.

[h] See Stat. 17 & 18 Vict. c. 125, s. 79; 18 Jur. pt. 2, 337.

[i] *Russell* v. *Crichton* (1837), decisions of the Court of Sessions, vol. 15, 1271.

dart v. *Grimshaw*, it was alleged that the process, as practised in the works of the defendant, was one not known. An inspection was, however, given of the works of both parties to their opponents. An order for inspection of the machinery of the plaintiff or defendant, in an action for infringement, may now, by the provisions of the Patent Law Amendment Act, 1852, be made by a Court of Common Law. A rule nisi for such order will be granted on motion.[k] Application for it may be made at any time after action brought, even before declaration. It is not of course, and must be supported by an affidavit that it is material to the case.[l] The affidavit must also swear that the machine is in the possession of the opposite party, and is believed to be an infringement. The machinery inspected must be at work. A second inspection will not, in ordinary cases, be granted.[m] Disobedience to the order is a contempt of the Court; it cannot, however, be executed by force. In Equity such disobedience operates only on the person as a foundation for taking the bill *pro confesso*, if necessary.[n] The "inspection" here mentioned does not extend to the books of the opposite party.[o] Production and inspection of documents, in cases in which such inspection would have been granted in Equity, may be obtained under the provisions of the Common Law Procedure Acts of 1852 and 1854.[p]

[k] Per Pollock, C. B., *Shaw* v. *Bank of England* (1852), Ex., paging machine, 1 B. C. Ca. 123; 20 L. T. 115; and see *Crossley* v. *Beverley* (1833), L. C., gas-meter, 1 Carp. 531; *Harrison* v. *Spire* (1853), Ex., loom, 22 L. T. 92.

[l] *Amies* v. *Kelsey* (1852), B. C., braid machine, 16 Jur. 1047; 22 L. J. (N. S.), Ex., 36; 20 L. T., Ex., 76, 227; see also *Brown* v. *Brown*, decisions of the Court of Sessions, 2nd Series, vol. 2, 1356.

[m] *Shaw* v. *Bank of England* (1852), 1 B. C. Ca. 123; 20 L. T. 115.

[n] *East India Company* v. *Kynaston* (1821), L. C., 3 Bligh, 153.

[o] *Vidi* v. *Smith* (1854), Q. B., aneroid barometer, 23 L. T. 231.

[p] Stats. 15 & 16 Vict. c. 99, s. 6, and 17 & 18 Vict. c. 125, s. 46.

Injunction under the Common Law Procedure Act.

By Stat. 17 & 18 Vict. c. 125,[q] general equitable powers are conferred on Courts of Law in all cases in which the plaintiff could file a bill and move for an injunction. Notice of the plaintiff's intention to that effect having been indorsed on the writ and copy, the plaintiff may, in default of appearance by the defendant, besides proceeding to judgment and execution for damages and costs, apply for and obtain a writ of injunction. Judgment may be given that the writ of injunction do or do not issue, as justice may require; and in case of disobedience, the writ of injunction may be enforced by attachment by the Court or a judge.[r] The writ of injunction may be obtained at any stage in the cause at which it becomes necessary, on application by the plaintiff *ex parte*, either before or after judgment. On such application the writ may be granted or refused, on such terms as to its duration, or an account, security or otherwise as may seem reasonable and just. The order of a judge issuing such writ may be discharged, varied or set aside by the Court.[s]

The rule *nisi* for an injunction and an account under this section is a four days' rule, of which notice must be given to the defendant.[t] In a case recently before the Court of Exchequer, the plaintiff having recovered a verdict, an order for an injunction was obtained and made a rule of Court. Upon the defendant continuing the infringement after personal service of the order on him, a rule was made absolute for an attachment.[u]

Holland v. *Fox.*

In a recent case,[x] on an application after a verdict with damages, but before final judgment, Mr. Justice

q Stat. 17 & 18 Vict. c. 125, ss. 79, 80.

r Ibid. s. 81.

s Ibid. s. 82.

t *In re Howard* v. *Brown*, Q. B., Jan. 24, 1853.

u *Clayton* v. *Percy* (1854), 48 Leg. Obs. 150.

x *Holland* v. *Fox* (1854), umbrellas, 23 L. T. 228. See Form of Prayer in Bill for Injunction, Appendix.

Erle, in accordance with section 42, although refusing to grant an inspection of books without any sufficient reason being shown to suspect the accuracy of the account ordered, granted an order in the following form:—

That the defendant should within ten days render to the plaintiff, his attorney or agent, on oath, a full and particular account of all umbrella and parasol frames made and manufactured by him, his workmen and agents, with ribs and stretchers of tubes or hollows, denominated by the defendants troughlike elastic steel, or other metal, in imitation of the invention of the plaintiff, and for which Letters-patent were granted to him dated 7th May, 1840, showing in such account the quantity or number so made, sold or disposed of by the defendant, his workmen, agents and others by his authority or connivance; and that the defendant shall pay to the plaintiff, his attorney or agent, all moneys received or agreed to be received and paid by reason of such manufacture and sale, and that defendant should pay to the plaintiff on all frames which may remain in stock or unsold at the date hereof, such sum or sums of money as may be equal to the sums received or agreed to be received in respect of like frames sold or disposed of.

On a motion to set aside[y] the order thus obtained, Lord Campbell, in delivering the judgment of the Court to make a modification of the rule absolute, made the following remarks: "It is proper to consider what has been the practice of Courts of Equity with reference to this part of their jurisdiction. The plaintiff has failed to show that after a verdict has been obtained the Court of Equity had received a bill against the defendant without any fresh infringement of the Patent being alleged, or that it had ordered accounts to be kept, as now prayed. The Court thinks that the result of the proposed proceedings would not afford a just measure of the loss sustained by the plaintiff or of the profits acquired by the defendant, profits of which he must be considered a trustee for the plaintiff. The only account which equity would grant under such circumstances would be in the shape of an interlocutory order to keep

[y] Q. B., 15 June, 1854.

an account of the articles sold pending the suit; and, under such circumstances, that account of the profits would be taken as the basis of the decree, supposing the decree ultimately to be made against the defendant. This Court does not think the Legislature has used any language authorizing it to grant the application in its present form. All the loss sustained by the plaintiff would be considered as compensated by the sum, however small, which the verdict awarded as damages."

In the exercise of these and other equitable powers of injunction and account the Court has declared its intention of adopting the precedents established by Courts of Equity in the cases above mentioned.[z] It is naturally very cautious in granting such inspection. In *Crofts* v. *Peach*,[a] the Court refused to compel the plaintiff to produce a specimen of the patent lace, to enable the defendant to prepare his defence of the action. "The effect of this application," said Tindal, C. J., "is to ascertain the evidence which the Plaintiff will produce at the trial. The defendants may plead that the invention is not new, if that is the fact. The Specification gives the necessary information."

Crofts v. Peach.

Particulars.

Formerly, in an action for infringement, the defendant could plead only the general issue.[b] To provide against the surprise which was constantly occurring from the ignorance in which parties were left as to the real point intended to be urged against them at the trial, it is now required[c] that the plaintiff in an action for infringement shall deliver with his declaration particulars of the breaches he complains of. Similarly, the defendant to

[z] See 18 Jur. pt. 2, p. 337; Stat. 17 & 18 Vict. c. 125, ss. 79—82.

[a] (1836) C. B., lace, 2 Hodges, 110.

[b] *Losh* v. *Hague* (1838), railway wheel, Web. P. R. 203.

[c] Stat. 5 & 6 Will. IV. c. 83, s. 5. For the nature of the particulars in the analogous case of set-off in actions of debt, see Archb. N. Pr. 56.

the action, or the prosecutor in the case of *scire facias*, must deliver with his pleas or declaration respectively the particulars of the objections he is prepared to urge to the validity of the Patent. No evidence is admissible in these respects on the trial which is not contained in such particulars.

Particulars of infringement.

A plaintiff cannot be compelled to give particulars of infringement, showing in effect on what grounds and principles he means to argue that the defendant has infringed his Patent. When the dates between which the instances of infringement are said to have taken place are given, and the defendant must know the articles made and sold by him within that time which can be said to be infringements of the Patent, the Plaintiff will not be compelled to give the particular instances of infringement.[d]

Particulars of objection.

Similar remarks apply to the defendant's notice of objections. If description of the invention in books and writings is to be objected to the Patent, the notice of the particulars must give the names of the books. An objection that the Specification does not particularly describe the nature of the invention, is sufficiently precise; one to the effect that the Patentee has not caused any Specification to be enrolled, is insufficient, for ambiguity. That the Patentee has not stated the most beneficial method of practising his invention is sufficient, as also is the objection that he has not distinguished in his Specification between what is old and what is new.[e] If any particular part of the invention is to be attacked for want of novelty it must be specified.[f] A notice that the invention had been used by the plaintiff himself, by A., B., C. "and D., and by candlemakers generally

[d] *Talbot* v. *Laroche* (1854), C. B., talbotype, 23 L. T. 145.

[e] Per Tindal, C. J., *Jones* v. *Berger* (1843), C. B., rice starch, 5 M. & G. 208.

[f] *Betts* v. *Walker* (1849), Q. B., 14 Jur. 647; *Bodmer* v. *Butterworth* (1844), Q. B., 2 L. T. 368.

in the vicinity," is sufficient, although the defendant is bound at the trial to prove a user by some one at least of the persons named, or a general user in London and its vicinity, in support of the particulars of objection.[q] The plaintiff's particulars of infringement cannot be called in aid of the defective particulars of objection.[r]

"Place and manner."

The stipulations in the Patent Law Amendment Act, with reference to these particulars, is,[s] that they shall 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." The *names* of the parties using the invention are not required,[t] but the notice must, it appears, identify the street or factory where it has been used, either by name or by description. To state it has been used "at various places, and amongst other places at S. B. and London," is not sufficiently precise.[u] Parke, B., is said on one occasion[x] to have ordered the names of certain firms which had been dealing in the Patent article to be given. The words "elsewhere" and "others," &c., are frequently struck out, to reduce the notice to greater precision, their insertion tending often to mislead rather than assist. A summons for particulars and order thereupon may be obtained by a defendant before appearance, and may be made, if the judge think fit, without any affidavit.[y]

Names of parties.

Object of the particulars.

The object of the particulars being not to limit the range of action in the party delivering them, but to limit the expense by confining the parties on trial to well-defined issues, the extent of the information to be afforded

[q] Per Alderson, B., *Palmer* v. *Wagstaff* (1853), Exch., candles, 1 C. L. Rep. 448.

[r] *Palmer* v. *Cooper* (1854), candles, 9 Ex. 231.

[s] Stat. 15 & 16 Vict. c. 83, s. 41.

[t] *R.* v. *Walton* (1842), 2 Q. B. 969; see *Fisher* v. *Dewick* (1838), 4 Bing. N. C. 706; Web. P. R. 265—6; *S. C.* 593.

[u] *Holland* v. *Fox* (1853), Q. B., umbrellas, 1 C. L. Rep. 440.

[x] *Hancock* v. *Moulton* (1852), waterproof goods, 20 L. T. 102.

[y] General Rules, No. 20, Hilary Term, 1853.

by them should, it has been said, be that to which a plaintiff would be entitled on a bill in equity for discovery.[z] It is difficult, as was observed by Mr. Justice Maule,[a] to define the exact degree of particularity which ought to be required in the notice. It should in general be more explicit than the pleas,[b] although there is nothing to prevent matters being so fully expanded on the record (as is the practice in the Courts of Scotland), as to guard sufficiently against surprise. It should, however, not amount to a disclosure of the evidence on which either party relies.[c] It ought, perhaps, not to exceed what the knowledge of the party objecting may be presumed to enable him to give.[d] If, from previous proceedings, the party for whose benefit the particulars were to be furnished has had the means of adequate information with respect to the infringement, the Court will refuse the particulars.[e] The notice should, it appears, specify the pleas to which the objections are intended to apply.[f]

Amount of precision requisite.

If the particulars are insufficient, the party to whom they are delivered may take out a summons, or move for a rule to show cause why better particulars should not be delivered. Either party may obtain leave, on appli-

Amendment of particulars.

[z] See *Attorney-General* v. *Corporation of London*, 2 M'N. & G. 247.

[a] *Bentley* v. *Keighley* (1844), C. B., carding engine, 7 M. & G. 652.

[b] *Heath* v. *Unwin* (cast steel), 10 M. & W. 684; *Jones* v. *Berger* (1843), C. B., starch, 5 M. & G. 215; 6 Sc. N. R. 210; *Neilson* v. *Harford* (1841), iron, 8 M. & W. 806; Web. P. R. 264; *Russell* v. *Ledsam* (1813), 11 M. & W. 647: see, however, *Betts* v. *Walker* (1849), Q. B., jars, &c., 14 Jur. 647.

[c] *Leaf* v. *Topham* (1845), Ex., elastic fabrics, 14 M. & W. 146, per Parke, B.; *Russell* v. *Ledsam* (1843), Ex., 11 M. & W. 649, per Alderson, B.

[d] Per Maule, J., *Bentley* v. *Keighley*, supra.

[e] *Electric Telegraph Company* v. *Nott* (1847), C. B., 4 M. G. & S. 462.

[f] *Walton* v. *Bateman* (1842), Web. P. R. 268, n., per Cresswell, J.

cation to any judge at chambers,[n] to add to his objections at any time before the trial. Where the defendant had omitted to deliver his notice of his objections with his pleas, an order was made that the pleas should be considered as pleaded *de novo*, and the objections added, as if delivered with the pleas.[o] A defendant is allowed the same time for pleading after the delivery of particulars under a judge's order which he had at the return of the summons, unless otherwise provided for by such order.[p]

The defendant is not bound to urge before the jury all the objections in his notice, that being merely intended to apprise him of the extent to which he must be prepared at the trial.[q] Neither can he, on the other hand, avail himself of them at the trial to raise any defence on which issue is not joined in the pleadings.[r] The objections, as before stated, form no part of the record.[s]

The defence.

The defence consists in endeavouring to rebut the averments in the declaration, either by denying the validity of the grant to the plaintiff, or by denying the acts laid as infringements. The defendant is allowed to plead several pleas, in order to raise the question of the validity of the Patent in every form. They must, however, be such as are necessary and issuable.[t] On an application for leave to plead several matters[u] by way of traverse, an affidavit by the defendant's attorney that he

Rule to plead several matters.

[n] Stat. 15 & 16 Vict. c. 83, s. 41. For practice under Stat. 5 & 6 Will. IV. c. 83, s. 5, see per Tindal, C. J., *Bulnois* v. *Mackenzie* (1837), cab, Web. P. R. 260.

[o] *Losh* v. *Hague* (1838), railway wheel, Web. P. R. 203.

[p] General Rules, Hilary Term (1853), No. 21.

[q] *Losh* v. *Hague* (1838), railway wheel, Web. P. R. 203.

[r] *Gillett* v. *Wilby* (1839), cab, 9 C. B. 334; Web. P. R. 270.

[s] *R.* v. *Mill*, 20 L. J. (N. S.), C. B. 16; 10 C. B. 379.

[t] Hind. 280; *Beddels* v. *Massey* (1844), elastic fabrics, C. B., 2 D. & L. 322; *Nickels* v. *Ross* (1849), braid, 8 C. B., 679; *Bunnett* v. *Smith* (1844), Ex., 13 M. & W. 552.

[u] As to pleading several pleas, see Chitty's Pleading, 24, n. (*p*).

is advised and believes that the defendant has just ground to traverse the several matters proposed to be traversed by the proposed plea, is sufficient.[x]

Form of plea.

No formal defence is by the present practice required. Pleas are to commence[y] as follows, or to the like effect:—

The defendant by his attorney [*or* in person, *as the case may be*], says that [*here state first defence*].

And for a second [&c.] plea the defendant says [*here state second, &c., defence*].

Or if pleaded to part only, then as follows, or to the like effect:—

And for a second [&c.] plea to [*stating to what it is pleaded*] the defendant says that, &c.

No formal conclusion is necessary.

Non concessit.

Non concessit must be pleaded to compel the plaintiff to prove the grant of the Letters-patent. *Non concessit* and a traverse of the Specification may both be pleaded.[z] The plaintiff at trial, having put in the Letters-patent and Specification, and having shown novelty, is entitled to a verdict on the issue joined by such plea.[a]

Invention not new.

With respect to a Patent in which a Disclaimer as to part has been entered under 5 & 6 Will. IV. c. 83, the defendant will not be allowed to plead that the whole invention was not new, and also that the undisclaimed part was not new.[b] A plea that the said invention was not at the time of making the said Letters-patent a new manufacture within this realm, is bad for duplicity.[c]

[x] *Platt* v. *Elce* (1853), apparatus for preparing cotton for spinning, 22 L. J. (N. S.), Ex., 192, and see cases there cited.

[y] 15 & 16 Vict. c. 76, s. 47.

[z] *Platt* v. *Elce* (1853), Ex., cotton spinning machinery, 20 L. T. 226.

[a] *Nickels* v. *Ross* (1849), braid, 8 C. B. 679.

[b] *Clark* v. *Kenrick* (1843), Ex., glazed cast iron hollow wire, 12 M. & W. 219.

[c] *Spilsbury* v. *Clough* (1842), chloride of lime, 6 Jur. 579.

Semble, it would have been good had the words of the Statute been followed.

Patentee not the inventor. Communication from abroad.

To a declaration alleging that the plaintiff was the inventor, the defendant pleaded (after setting out the Specification, which recited that the Queen had granted to the plaintiff a Patent for improvements in machinery for covering fibres applicable to the manufacture of braid and other fabrics, communicated to him by a foreigner residing abroad), that before the granting of the Patent the plaintiff reported to Her Majesty, that in consequence of a communication made to him by a certain foreigner residing abroad, he, the plaintiff, was in possession of an invention of improvement in machinery for covering fibres applicable in the manufacture of braids and other fabrics; that Her Majesty, believing and confiding in the truth, and acting upon the suggestion so made by the plaintiff as aforesaid, and in consideration thereof, granted the Letters-patent in the declaration mentioned, and that such representation was false, whereby the Letters-patent were null and void. The plaintiff was held entitled to a verdict on the issue, without any proof of the communication.[d]

True and first inventor.

Pleas denying that the plaintiff was the true and first inventor, and that the manufacture is new, do not bind the plaintiff to the description of the invention as given in the Specification, so as to preclude him from giving evidence to show that the invention does not consist, as might be inferred from the Specification, in the use of several new matters, but in the new combination of several old matters.[e]

Invention of no use.

A plea that the invention is not of such use to the public as to make it a sufficient consideration for the grant of Letters-patent, is bad as being too general.[f]

Invention not duly specified.

It is very material to plead that the Patentee has not

[d] *Nickels* v. *Ross* (1849), braid, C. B., 8 M. G. & S. 679.
[e] *Bateman* v. *Gray* (1853), valves and plugs, 1 C. L. Rep. 512.
[f] *Betts* v. *Walker* (1849), bottles, jars, &c., Q. B., 14 Jur. 647.

specified. In *Bateman* v. *Gray*[g] it would, it appears, if pleaded, have proved fatal to the Patentee.[h] The following plea has been very recently disallowed: "That the plaintiff, having petitioned for Letters-patent, represented to the Solicitor-General, to whom the matter was referred, that the invention consisted of matters mentioned in a paper-writing" (set out in the plea) "exhibited to the Solicitor-General, who, confiding therein, reported that the Letters-patent might be granted; that, after the grant of the Letters-patent, the plaintiff enrolled his Specification in certain terms falsely describing his invention; and that so much of his invention as was stated in the Specification was not part of the invention in the paper-writing and Letters-patent mentioned, and was not part of the invention for which the Letters-patent were granted."[i]

Muntz v. Foster.

In *Muntz* v. *Foster*,[k] the declaration, after setting out the Letters-patent, with the usual proviso for making them void in case of the non-enrolment of a Specification within six calendar months, alleged that the plaintiff did, in pursuance of the proviso, by an instrument in writing under his hand and seal, particularly describe and ascertain the nature of his said invention, and in what manner the same was to be and might be performed; and afterwards, and within six calendar months next after the date of the Letters-patent, cause the said instrument in writing to be enrolled in Chancery. The plea averred that the plaintiff caused to be enrolled in Chancery, within six calendar months after the date of the Letters-patent, to wit, on, &c., a certain instrument in writiug, in the words and to the effect following (setting it out); and that the plaintiff caused to be enrolled in Chancery, within six months

[g] (1853) valves and plugs, 1 C. L. Rep. 515.

[h] *Betts* v. *Walker* (1849), Q. B., 14 Jur. 647.

[i] *Hancock* v. *Noyes* (1854), caoutchouc, 23 L. J. 110, Exch. See *Hancock* v. *Smith* (1854), 23 L. T. 93.

[k] (1843) metal sheathing for ships, 6 M. & G. 734.

from the date of the Letters-patent, no instrument in writing other than and except the said instrument in writing thereinbefore set forth and contained, whereby and by reason of the premises the said Letters-patent in the declaration mentioned ceased and determined, and became and were and still are of no force and effect; concluding with a verification. On special demurrer the plea was held bad, on the ground that it was an argumentative traverse of the enrolment alleged in the declaration.

The subject-matter and claims.

Nature of the invention.

The subject-matter of the Patent and the claims of the Patentee are proved by the terms of the Specification taken as a whole.[m] The description of the invention is to be looked for in the Specification, and not in the Patent.[n] The Specification is to be read in connection with the Patent, and with a view to support it.[o] Working drawings and models used in the actual manufacture are also frequently introduced. Such evidence, however, it must be considered, has a tendency to contract the claims of the Patentee in the event of their being entirely confined to one mode of developing the inventor's discovery.[p] On a recent trial, in which the Patentee claimed generally the manufacture of woven fabrics by means of his machine, the drawing produced was that of a coach-lace loom only. The opinion of the Court was very decided that the evidence restricted the claims of the

[m] *Newton* v. *Grand Junction Railway Company* (1846), railway axles, 5 Exch. 331.

[n] *Arkwright* v. *Nightingale* (1785), C. B., spinning machinery, 1 Carp. 38.

[o] "I consider the Patent and Specification so connected together as to make part of each other, and that to learn what the Patent is I may read the Specification and consider it as incorporated with the Patent." Per Grose, J., *Hornblower* v. *Boulton* (1799), steam-engine, Dav. P. C. 230; *Houschill Company* v. *Neilson* (1843), iron, Web. P. R. 679; *Hill* v. *Thompson* (1817), L. C., iron, 1 Carp. 369.

[p] Per Pollock, C. B., *Crossley* v. *Potter* (1851), weaving machine, printed case, p. 51.

Patentee to this branch of the manufacture. "If ever," it was observed, "prejudice did exist in a Court of Justice, it might exist against a man who pretends that he has made an invention and never applied it for ten years to the subject of carpets."[q]

Sufficiency of the Specification.

The terms of the Specification must be interpreted according to the state of knowledge at the time.[r] The term "other substances" must be understood as substances *ejusdem generis* in use at the time, and which practical men would employ.[s] If the Specification in its fair construction excludes the use of a particular instrument or process, it will be presumed that the Patentee does not claim its use.[t] The Specification should be read consistently with the fair import of language, to make the claim co-extensive with the actual discovery.[u]

If the sufficiency of the Specification be not denied by his pleas, the defendant must be taken to have admitted it, and is not consequently entitled to avail himself at the trial of the fact of the Specification being defective.[x]

Proof.

The sufficiency of the Specification as a means of imparting the invention to the public is proved by Patent agents and others, who state that the directions it contains are sufficient to enable persons to arrive at the result.

Drawings.

A drawing or figure is not required to the sufficiency of a Specification, if the invention can be made clear without it;[y] but if it enable a workman to avail

[q] Per Pollock, C. B., *Crossley* v. *Potter* (1851), weaving machine, printed case, p. 51.

[r] *Crossley* v. *Beverley* (1830), K. B., gasmeter, Web. P. R. 106.

[s] *Crossley* v. *Beverley* (1829), K. B., gas apparatus, 1 Carp. 480.

[t] *Russell* v. *Cowley* (1833), L. C., gas tubes, 1 Carp. 531, 597; *Beard* v. *Egerton* (1847), photograph, 2 C. & K. 667.

[u] *Haworth* v. *Hardcastle* (1833), C. B., calico-drying machine; *Bainbridge* v. *Wigley* (1810), K. B., flageolet, 1 Carp. 270; *Mcfaarlane* v. *Price* (1816), umbrella, 1 Stark. 199.

[x] *Bateman* v. *Gray* (1853), Exch., plugs and valves, 1 C. L. Rep. 512. See, however, *Turner* v. *Winter* (1787), per Buller, J., 1 T. R. 602; Roscoe, Evid. 6th ed. 350.

[y] *Boulton* v. *Bull* (1795), C. B., steam engine, 1 Carp. 117.

himself of the benefit of the invention, it may alone be as good a Specification as any written description.[z] The drawings and Specification may afford mutual assistance, by explaining any ambiguity either separately might create. In *Lowe* v. *Penn*,[a] the drawings were rather defective, but the Specification clear. It was proved that the screw-propeller could be constructed from the joint information.

Not guilty.

The plea of Not guilty amounts, under the present practice, to a denial only of the acts alleged as breaches in the declaration, and does not attempt to assail the validity of the Patent. Upon an issue of Not guilty, the question of whether there was a fraudulent evasion of the Patent does not arise.[b]

Allowance of pleas.

Where Letters-patent are granted to different parties for substantially, though not in every particular, the same invention, and the Letters-patent latest in date contain a proviso that they shall not give any privilege to use or imitate any invention already patented, and that all other persons entitled may continue to use inventions previously patented, a person using the first patented invention cannot, in addition to the pleas of not guilty and that the invention was not new, plead specially to an action brought for an infringement of the second patented invention a plea setting out the above proviso, and alleging that the defendant had used the previously patented invention, such plea amounting to a plea of not guilty, and meaning that the defendant had used the first, and therefore not the second.[c]

Bentley v. *Keighley*.

In a case where the invention included six distinct

[z] *Brunton* v. *Hawkes* (1821), K. B., chain cable, 1 Carp. 410; *Bloxam* v. *Elsee* (1825), K. B., paper, 1 Carp. 434.

[a] (1848) N. P., Lord Denman, screw-propeller, 32 Lond. Journ. 140. See *Crompton* v. *Ibbotson* (1828), N. P., paper, 1 Carp. 458.

[b] *Stead* v. *Anderson* (1847), wood-paving, 16 L. J. (N. S.), C. P., 250.

[c] *Holmes* v. *London and North Western Railway Company* (1852), C. B., 19 L. T. 158.

improvements on an old machine, the defendants were allowed to plead that two parts of the invention were not, nor was either of them, a new manufacture within the Statute of *James*. But the Court refused to allow them to plead, that as to *a part* one A. B. was the first and true inventor, and that before the grant of the Patent A. B. and others publicly used and exercised in England *a part* of the said invention.[d]

Insertion of drawings in the pleas.

The defendant will not be allowed to annex copies of drawings to a plea setting out the Specification. Drawings annexed to the plaintiff's Specification being copied into the pleas, the Court granted a rule calling on the defendant to show cause why such pleas should not be struck out, or why such drawings should not be struck out as surplusage, and as contrary to the rules of pleading. The rule was afterwards enlarged, but arrangements having been entered into between the parties, which rendered the trial of the cause unnecessary, it never came on for argument.[e]

Disclaimer.

In an action by an assignee the declaration alleged, that, after assignment, the grantee of the Patent, pursuant to Stat. 5 & 6 Will. IV. c. 83, entered with the Clerk of the Patents a disclaimer of part of the title of the invention. The defendant pleaded, that, before the making of the disclaimer, the grantee had assigned the Patent to the plaintiff, and at the time of making the disclaimer was not a person who could lawfully enter such disclaimer; without this, that, pursuant to the Statute, he entered the disclaimer. It was held, that under this traverse the only issue raised was whether, in point of fact, a *disclaimer* was entered by the grantee.[f]

[d] *Bentley* v. *Keighley* (1844), C. B., cotton-carding machine, 6 M. & G. 1039.

[e] *Sealy* v. *Browne* (1845), B. C., per Williams, J., 14 L. J. (N. S.), Q. B., 169.

[f] *Wallington* v. *Dale* (1851), gelatine, 6 Ex. 284. As to plea that the infringement was before Disclaimer, see *Perry* v. *Skinner* (1837), Ex., pens, 2 M. & W. 471.

Power to deliver written interrogatories.

Written interrogatories as to matters on which discovery is sought may, by order of the Court or a judge, be delivered by either plaintiff or defendant to the opposite party, provided such party would be liable to be examined as a witness upon such matters. The answers to such interrogatories must be made in writing on affidavit within ten days of such delivery, unless the time for answering be extended by the Court or a judge. In the case of a body corporate any officer of such body may be required to answer. Neglect or refusal to answer is a contempt of Court.[p]

Affidavits of the party proposing to interrogate.

The application for such order must be made upon an affidavit of the party proposing to interrogate, and his attorney or agent, or, in the case of a body corporate, of their attorney or agent, stating the deponent's belief that the party proposing to interrogate will derive material benefit in the cause from the discovery which he seeks, that there is good cause of action or defence upon the merits, and, in the case of application by the defendant, that the discovery is not sought for the purposes of delay. The Court may, under certain circumstances, dispense with the affidavit of the plaintiff or defendant.[q]

Oral examination.

If the party interrogated fail, without having good cause, to answer sufficiently, the Court or a judge may order such party to be orally examined, and produce documents, before a judge or master, as to such points as they or he may direct.[r] Such judge or master, if required, to report specially, if need be, to the Court the conduct or absence of any witness or other person.[s] The costs of the rule and examination are in the discretion of the Court.[t] The depositions taken on such examination are to be returned to the office of the master of the Court.[u]

Postponement of trial, *scire facias* pending.

Notice of trial by proviso having been given in an

[p] Stat. 17 & 18 Vict. c. 125, s. 51.
[q] Ibid. s. 52.
[r] Ibid. ss. 53, 54.
[s] Ibid. s. 56.
[t] Ibid. s. 57.
[u] Ibid. s. 55.

action brought by an assignee, in which action the validity of the Patent was put in issue, the Court, at the instance of the plaintiff, postponed the trial on the ground that in a *scire facias* brought by the defendant a rule was pending in the Court of Queen's Bench for entering a verdict for the Patentee.[x] But the Court will not, except under very peculiar circumstances, order the trial of an action brought to try the validity of a Patent to be postponed till *scire facias* brought to repeal the Patent has been disposed of.[y] The adjournment of the trial is, however, by a recent Act, placed entirely at the discretion of the Court or judge.[z]

Arbitration.

A leading feature in the new Common Law Procedure Act is the decision of matters in question by arbitration. At any time after the issuing of the writ, if it be made appear to the satisfaction of the Court or a judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, the Court or judge may either decide the matter in a summary way or order such matter wholly or in part to be referred to an arbitrator to be appointed by the parties or to an officer of the Court, or, in country causes, to the judge of any County Court; the decision or order of such Court or judge, or the award or certificate of such referee, to be enforceable by the same process as the finding of a jury on the matter referred.[a] By section 4, power is given to the Court or judge, in the event of the allowance or disallowance of any items in such account depending on a question of Law fit to be decided by the Court, or upon a question of fact fit to be decided by a jury or by a judge acting under the provisions of sec-

[x] *Smith* v. *Upton* (1843), C. B., Bynner's Patent, 6 M. & G. 251.

[y] *Muntz* v. *Foster* (1843), C. B., metal ship-sheathing, 6 M. & G. 734; 7 Scott, N. R. 471; 1 D. & L. 737.

[z] Stat. 17 & 18 Vict. c. 125, s. 19.

[a] Ibid. s. 3.

tion 1, to direct a case to be stated or an issue or issues to be tried, the decision of the Court and the finding of the jury or judge to be taken and acted upon by the arbitrator as conclusive.

Powers of arbitrator.

The mode of proceeding and powers of the arbitrator are similar to those previously existing upon a reference made by consent under a rule of Court or judge's order.[b] The award is to be made within three months from the date of the reference, unless the parties or the Court enlarge the time.[c] It may be stated in the form of a special case for the opinion of the Court.[d] Applications to set aside the award made on a compulsory reference must be made within the first seven days of the term following its publication.[e] It may, by the authority of a judge, on such terms as he may prescribe, be enforced at any time after seven days from the time of publication, notwithstanding the period for setting it aside has not elapsed.[f] If, after all parties have agreed to submit to arbitration, any one should commence an action, the Court or judge may stay proceedings.[g] If either party refuse or neglect to appoint according to the terms of the document authorizing the reference, a judge of any of the Superior Courts of Law or Equity at Westminster may appoint an arbitrator, umpire or third arbitrator, as the case may be, with powers such as he would have had if appointed by consent of all parties.[h] If the reference be to two arbitrators, one to be appointed by either party, and one fail to appoint for seven clear days after the other shall have appointed, the award of the one arbitrator so appointed shall be binding on both parties, subject however to the revocation of the powers to such arbitrator, on such terms as shall seem just.[i] If the reference be to two arbitrators, they may choose an um-

[b] Stat. 17 & 18 Vict. c. 125, s. 7.
[c] Ibid. s. 15.
[d] Ibid. s. 5.
[e] Ibid. s. 9.
[f] Ibid. s. 10.
[g] Ibid. s. 11.
[h] Ibid. s. 12.
[i] Ibid. s. 13.

pire.[k] Unless otherwise provided by the parties, every agreement for or submission to arbitration may be made a rule of Court.[l]

Costs of the day.

A rule for the costs of the day for not proceeding to trial, pursuant to the notice, or not countermanding in sufficient time, may be drawn upon affidavit without motion.[m] The defendant may move for this rule, although he has given notice of trial by proviso.[n]

The jury.

Cases for infringement have hitherto usually been tried by a special jury. The mode of summoning and empanelling juries is prescribed by the Common Law Procedure Act of 1852.[o]

Changes in practice.

Trial by the Court.

The statute above mentioned has however, among other very considerable changes in practice, introduced an alteration in the mode of trial, by allowing the parties to any cause, by consent in writing, to dispense with the employment of a jury and to leave the decision of any issue in fact and the assessment of damages to the Court,[p] the Court, upon a rule to show cause or a judge on summons, thinking fit to allow such trial.

By section 6, the judge, in the performance of such functions, is empowered to direct a reference at the time of trial, if the matters in question involve accounts which cannot conveniently be settled by him; and, by section 8, to send back the matters referred for the re-consideration of the referee.

In how far this provision will be effective in substituting the decision of an intelligent judge for that of a jury, too frequently incompetent to grapple with the merits of the matter in dispute,[q] must rest with the par-

[k] Stat. 17 & 18 Vict. c. 125, s. 14. [l] Ibid. s. 17.

[m] Stat. 15 & 16 Vict. c. 76, s. 99.

[n] *Blow* v. *Wyatt* (1838), Ex., 4 M. & W. 407.

[o] Stat. 15 & 16 Vict. c. 76, ss. 104—115.

[p] Stat. 17 & 18 Vict. c. 125, s. 1.

[q] See *Gamble* v. *Kurtz* (1846), sulphate of soda, muriatic acid, &c. 3 C. B. 425; *Lovell* v. *Hicks* (1836), baking apparatus, 2 Yo. & Coll. 472; *Beard* v. *Egerton* (1846), photograph, 3 C. B. 97.

ties themselves, the clause not being compulsory and requiring the agreement in writing of both parties.[y] With regard to the respective efficiency of the modes of trial, few persons can entertain a doubt. The remarks of Mr. Godson[z] in deprecation of the appointment of a Court of Commissioners for the decision of Patent cases, however far they fall short of establishing the proposition he contends for, are very just, as pointing out the far greater capability for the task in a judge than in a jury: "The judges possessing," as he remarks, "as a part of their education, a knowledge of the first principles of every science. Science is, however, a part only, and not the greater part, of the qualifications requisite for the decision of these questions. Practical acquaintance with the whole range of manufacturing art is the great requisite, and these neither judge nor jury can be expected to possess."

Godson.

Unfitness of a jury.

It is unreasonable to expect that a jury[a] can be obtained competent to express an opinion as to the novelty or improvements of inventions such as (to take the first instances that may occur) formed the subject of *Beard* v. *Egerton*,[b] *Gamble* v. *Kurtz*,[c] *Heath* v. *Unwin*.[d] Neither judge nor jury can, by the evidence capable of being produced at the trial, gain a thorough acquaintance with

[y] In the County Courts it is to be observed that the normal case is the trial by the judge, but either party having the power to demand a jury. By a return printed by order of the House of Commons in 1848, it appeared that out of a total of 267,447 causes tried in the County Courts in the preceding year, only 800 were tried before a jury, and that in those verdicts were in 427 instances obtained by the party requiring the jury.

[z] Godson on Patents, 230.

[a] "With respect to the statement of the jury, it would be a most dangerous precedent to take the explanatory language of the foreman as having the effect of a legal judgment." Per Shadwell, V. C., *Rubery* v. *Barrs* (1845), umbrella tips, 27 Lond. Journ. 374.

[b] (1846) photographs, 3 C. B. 97.

[c] (1846) sulphate of soda, muriatic acid, &c., 3 C. B. 425.

[d] (1854) Exch. Ch., cast steel, 3 C. & K. 522.

all the circumstances of the manufacture; and as the object of their employment is to ascertain a fact, it seems difficult to understand how any division of the labour can attain the end. So many and so subtle are the elements that enter into the great majority of the cases connected with Patent right, that the matter is safe only when left to the arbitration of persons practically conversant with the commercial bearings of the case.

Speeches to the jury.

The regulations of the Common Law Procedure Act, 1854, with regard to the addresses to the jury, are as follows:—The party who begins may, if at the close of his case his opponent does not give notice of his intention to adduce evidence, address the jury a second time, for the purpose of summing up the evidence; and the party on the other side may open the case, and also sum up the evidence, if any. The right of reply to remain the same as before.[e]

Trial.

The defendant cannot at the trial go beyond his pleas, or adduce evidence not included in his notice of objections.[f] There are, however, some objections which may be raised at the trial without notice; as, for instance, that the act complained of is no infringement of the Patent.[g]

Witness may look at a drawing to refresh his memory.

A witness may refresh his memory by reference to a drawing, when asked if he has such a recollection of a machine he made as to be able to say that the drawing correctly represented it.[h] He cannot be asked whether he did not learn from a person under whom the plaintiff claimed title something respecting the contents of a deed.[i]

[e] Stat. 17 & 18 Vict. c. 125, s. 18.

[f] *Macnamara* v. *Hulse* (1842), Q. B., wood pavement, 1 Car. & Marsh, 471.

[g] *Nickels* v. *Ross*, per Tindal, C. J. (1849), braid, 8 C. B. 679; Hindm. 438.

[h] *R.* v. *Hadden* (1826), C. B., woolspinning machine, 1 C. & P. 184; 1 Carp. 447.

[i] *Bloram* v. *Elsee* (1825), paper, Ry. & Moo. N. P. C. 187; 1 C. & P. 563.

Competency of witnesses.

By the second section of Stat. 14 & 15 Vict. c. 99 (section 1 having repealed 6 & 7 Vict. c. 85), it is enacted, that "on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action or other proceeding in any Court of Justice, or before any person having by law or by consent of parties authority to hear, receive and examine evidence, the parties thereto and the persons in whose behalf any such suit, action or other proceeding may be brought or defended, are made competent and compellable to give evidence, either *vivâ voce* or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said suit, action or other proceeding.

Scientific evidence.

Notwithstanding the precision which might not unreasonably be expected from persons conversant with the mechanism and chemistry of manufactures, the evidence on very important points is often perfectly irreconcileable. "The jury," said the learned Chief Baron, on an occasion of this kind, "must not be astonished at the apparently contradictory nature of the evidence of the scientific gentlemen, as those gentlemen had their own way of looking at these matters." His lordship, however, congratulated the jury on having had an opportunity of witnessing the operation of both models, and seeing pieces of wood cut by them: "they could, therefore, judge for themselves, and that was always the best way, where it could possibly be done."[d] Much of this uncertainty is no doubt owing to the nature of invention; but more, in many instances, to the peculiar views entertained by the professional persons under examination. As Mr. Turner observes,[e] Columbus's egg might very significantly be displayed before the jury-box on the investigation of Patent cases.

Non concessit. Evidence of the grant.

If *non concessit* be pleaded, the plaintiff must give evidence of the grant by the production of the original

[d] *Hamilton* v. *Cochran* (1848), key saw, 33 Lond. Journ. 136.

[e] Turner on Patents, 4.

Letters-patent. In the case of Patents granted before October 1, 1852, the proof may be by an exemplification or *constat* of the enrolment of it in Chancery under the Great Seal.[f] The Commissioner's Seal is also, by the late Act, taken notice of judicially, as sufficient evidence that the document is what it purports to be. In the case of Patents subsequently granted, the proof, in the absence of the Letters-patent, must be by a new Patent, procurable at the office of the Commissioners.[g]

Under the new practice copies of Specifications, disclaimers and memoranda of alterations and drawings, printed by the Queen's printer, are *primâ facie* evidence of the existence and contents of the documents to which they purport to relate.[h] By Stat. 12 & 13 Vict. c. 109, s. 12, a certificate of the Clerk of the Petty Bag Office, sealed with the Chancery Common Law Seal, is made "*primâ facie* evidence that the Specification, deed, instrument or document therein mentioned, was duly enrolled in the Petty Bag Office on the day mentioned in such certificate." Office copies, sealed with the Chancery Common Law Seal, are evidence "for the purpose of proving the contents of such record or other document, as also proving such record or other document to be a record or document of or belonging to the said Court of Chancery, but not further or otherwise."[i] The due enrolment of Specifications, &c., in the Enrolment Office in Chancery is proved by the certificate of the Clerk of the Enrolment Office endorsed on those documents, and sealed with the seal of the Chancery Enrolment Office.[k] Copies of the enrolments, drawings, &c.,[l] stamped with

Proof of Petty Bag Office enrolment.

[f] Tidd's Pract. 3rd ed. 690; Gilb. Law Ev. 14; *Edin's* case, 6 Co. Rep. 156; Plowd. 252.

[g] See on this head Stats. 3 & 4 Edw. VI. amended by 13 Eliz. c. 6, s. 2; *Page's* case, 5 Rep. 53 b; Co. Litt. 225 b; Hindm. 591.

[h] Stat. 15 & 16 Vict. c. 83, s. 22.

[i] Stat. 12 & 13 Vict. c. 109, s. 13.

[k] Ibid. s. 18.

[l] Ibid. s. 19.

the seal of the Chancery Enrolment Office, are evidence to prove the contents of such documents and the date of their deposit.

Enrolment in the Rolls Chapel.

Copies of enrolments in the Rolls Chapel Office, examined and certified by the Deputy Keeper of Records or one of the Assistant Record Keepers, and purporting to be sealed with the seal of the Record Office, are evidence, without further or other proof, in every case in which the original record could have been received as evidence.[n] The due enrolment of Specifications, &c., which have not been transferred to the Office for filing Specifications in Chancery, may, under the provisions of Stat. 14 & 15 Vict. c. 99, s. 14, be proved by copies and extracts signed and certified by the officer to whose custody the original is entrusted, "at a charge not exceeding fourpence for every folio of ninety words."[o]

Until this, Specifications are provable only by the production of the documents themselves—entry of disclaimer provable by the production of the original copy entered.

Register unsafe guide.

Evidence of the title of the plaintiff is supplied by a copy of the entry in the "Register of Proprietors," certified under the Seal of the Commissioners. Registration of the deed of assignment, therefore, must precede any steps taken for infringement by the assignee. As at present kept, the Register is, however, an unsafe guide for ascertaining the parties interested in the Patent. No provision is made with reference to the time within which wills must be registered, or the footing on which they stand, to prove registered conveyances.[p] There are no formalities attendant on the presentation of a deed for registration.[q] The whole deed is entered verbatim.

[n] Stat. 1 & 2 Vict. c. 94, s. 13.

[o] The charge in the Great Seal Patent Office is two pence per folio.

[p] Sugden on Vendors and Purchasers, 204.

[q] The following was the form in which this oath was required to be taken before the Registrar or a Master in Chancery, on registering the memorials of deeds and conveyances in Middlesex:—"You swear that

Burden of proof.

As a general maxim, the burden of proof is upon the party impeaching the validity of the Patent, the prosecutor in a *scire facias* or the defendant in an action for infringement. On the question of novelty, therefore, in the invention, he is bound to prove user by the positive evidence of persons who can testify to the public use and exercise of the invention,[r] or the identity in all the material particulars of the articles claimed by the Patentee in his Specification with those contained in other Patents.[s] If originality in the inventor only be disputed, he must show the source whence the information could have been drawn.[t]

Novelty.

Time does not cure a title defective in respect of novelty.

The novelty of the subject-matter is impeachable during the whole duration of the Patent, the length of enjoyment[u] under it forming no additional security to the title. A proposal to relieve the Patentee from this state of suspense was made by the noble lord who introduced the Patent Law Amendment Bill of 1845,[x] to the effect that, after a certain time had elapsed, and a certain number of advertisements had been inserted in the public papers, giving an account of the Specification and referring to a place in London or in the town at which was the residence of the Patentee, where models and drawings could be inspected by the public for one month during the time of the advertisements, and for one month afterwards, there should be a limitation of the right of a third party to try the question of the validity of the Patent on the score of its originality; so that after eighteen months from the making of the Specification, in

you saw this Memorial signed, sealed and delivered, and that the deed to which it refers was duly executed by the parties thereto." Rigge, 74. Wills were required to be registered within five years.

[r] *Heath* v. *Smith* (1854), Q. B., cast steel, 18 Jur. 603.

[s] *Bush* v. *Fox* (1854), Exch. Ch., caissons, 22 L. T. 349.

[t] *Nickels* v. *Ross* (1849), C. B., braid, 8 M. G. & S. 679.

[u] *Newall* v. *Wilson* (1852), L. J., wire rope, 2 Ch. Ca. 283.

[x] (1835) 28 Hansard, 677.

no suit or action on the subject of the invention should any evidence of the want of originality be admissible.

Bush v. Fox.

In the case of a Patent[y] for "Improvement in the Means of Working under Water," the Specification claimed the mode of constructing the interior of a caisson in such a manner that workpeople might be supplied with compressed air, and be able to raise materials, excavate and construct foundations under water. It was proved, that as to the manner of using the compressed air, the invention was not new; that a machine similar to the plaintiffs, the interior of which was *not* constructed with air chambers, as the interior of the plaintiff's was, had already been invented; that nevertheless that *machine* and the plaintiff's were *substantially the same*, but that the *purposes* to which the two inventions were applied were *different*, the one being applied to working in mines and on land, and the plaintiff's in laying foundations under water. Held, that the evidence did not support the novelty of the invention.

Evidence of novelty.

The only evidence the plaintiff can give on this issue is that of persons who are conversant with the manufacture, and would in all probability have heard of the invention had it existed, being ignorant of it.[z] Its value depends of course entirely on the character of the witnesses, and cannot at best amount to establishing the non-existence of the invention prior to the grant. Fifty witnesses, as was remarked by Gibbs, C. J.,[a] proving that they never saw the invention before would be of no avail, if one were called who had seen and practised it.

Heath's Patent consisted in cast steel, made in an improved manner by the use of carburet of manganese,

[y] *Bush* v. *Fox* (1854), Exch. caisson, 23 L. T. 349.

[z] *Cornish* v. *Keene* (1835), elastic fabrics, Web. P. R. 44; *Carpenter* v. *Smith* (1841), lock, Web. P. R. 530; *Tennant's* case (1798), bleaching liquid, Web. P. R. 125, n.; *Galloway* v. *Bleaden* (1839), paddlewheel, Web. P. R. 521, per Tindal, C. J.

[a] *R.* v. *Arkwright* (1785), spinning machinery, Dav. Pat. Ca. 350.

either in its complete state or of its constituents, so as to form carburet of manganese before the iron was in a state of fusion. At least five houses in the trade, for eight or ten years before and at the date of the grant, manufactured the patented article, by introducing carburet of manganese into the crucible with the iron, as directed in the Specification, one to the extent of one hundred tons, and others eight or ten tons annually.[b]

Heath v. *Smith.*

The solution of a *quære* by Mr. Justice Erle in *Heath* v. *Smith* involves fundamental principles of Patent Law. It was as to whether, viz. a Patent for improvements in a manufacture would be valid if one person had previously perfected the article and sold it to the public, though he kept the process secret. His Lordship appears to have expressed himself on the side of the invalidity of the Patent. Assuming, however, the doctrine above[c] referred to, as laid down in *Williams* v. *Williams*[d] by Lord Eldon, and in *Neilson* v. *Harford*[e] by Tindal, C. J., the Patent is clearly good, as enabling the whole public within a definite time to improve the manufacture in question. The secret still being with the Patentee, there is still the same good consideration in the divulging of the method by which the excellence of the material is attained. The risk of its discovery by rival manufacturers[f] is sufficient, in almost all cases, to prevent such a mode of proceeding by the discoverer of an important improvement in manufactures.[g] The question is, solely, was the public in possession of the inventor's discovery. The manufacture and deposit of an article, such as a penholder of novel construction, in a warehouse for sale,

[b] *Heath* v. *Unwin* (1852), Ex. Ch., 12 C. B. 522; 16 Jur. 996.

[c] Supra, p. 41.

[d] (1817) L. C., 3 Mer. 157.

[e] (1841) Web. P. R. 341.

[f] *Hancock* v. *Somervell* (1851), waterproofings, 39 Lond. Journ. 158.

[g] *Heath* v. *Smith* (1854), Q. B., cast steel, 18 Jur. 603.

even although no sale actually take place, is a publication of the invention.[g]

Use of machinery.

The execution by machinery of work hitherto performed by hand is usually conclusive as to the novelty of the invention. In a case recently before Lord Campbell, C. J., the utility of the Patent (Donisthorpe's) was established by its success;[h] it being proved that the invention had revolutionized the trade to such an extent, that, whereas before its date all wool had been carded or combed by hand, that operation had since been almost exclusively performed by machinery.

New manufacture.

A Patent cannot be supported for the application of a process already known producing a known result, unless the object to which the process is applied is different to the object to which it was formerly applied. Whether the object is different is a question for the jury.[i]

Novelty ruling.

In *Templeton* v. *Macfarlane*[j] it appeared that one of the processes was old. The judge directed the jury that, if one of them was new, the Patent could be supported for the combination of them, and would be invalid only if there had been a public use of both before the date of the Patent. The House of Lords, on appeal, dealing with this as a general proposition, pronounced the direction as erroneous and the Patent void.

Proofs of foreign Patents.

A clause providing that user abroad should vitiate the grant in this country was inserted in the Patent Law Amendment Bill of 1852. It was, however, struck out by the Select Committee in the Commons. The words of the Act are, "that no Letters-patent for or in respect of any invention for which any such Patent or like privilege as aforesaid shall have been obtained in any foreign country, and which shall be granted in the said United Kingdom after the expiration of the term for which such Patent or privilege was granted or was in force, shall be

g *Mullins* v. *Hart* (1852), N. P., Jervis, C. J., 3 C. & K. 297.
h *Lister* v. *Todd* (1852), N. P., 40 Lond. Journ. 235.
i *Steiner* v. *Heald* (1853), Ex. Ch., garancine, 17 Jur. 875.
j (1848) 1 H. of Lords Ca. 595, silk and cotton fabrics.

of any validity." This limitation, at variance with the general principle of the Law of Patents, will probably remain inoperative, except for the purpose of creating embarrassment to the Patentee in this country. In Prussia,[k] for instance, Specifications are studiously kept secret, and proof of their contents can therefore not be obtained. In the words of Mr. Webster,[l] "the practical difficulties it creates are very great. The moment an action for infringement is brought, there will be a pretence of user abroad, a commission will issue, and the plaintiff will be delayed under that pretence."

Sufficiency of description in the Specification is for the jury.

It is for the jury to say whether the Specification contains a reasonably sufficient description of the invention.[m]

A claim for a Patent for improvements in the mode of doing something by a known process is sufficient to entitle the claimant to a Patent for his improvements when applied, either to the process as known at the time of the claim or to the same process altered and improved by discoveries not known at the time of the claim, so long as it remains identical with regard to improvements claimed and their application.[n]

Discrepancy between Letters-patent and the Specification.

The objection that the Patent is void, inasmuch as the Specification describes a different and more extensive invention than that for which the Letters-patent are granted, may be taken, either on a plea that the Patentee did not particularly describe the nature of his invention, or on a plea that the invention described was not the invention for which the Letters-patent were granted. The relation of the title to the Patent has been above[o] dis-

[k] (1851) Evid. Weddinge, 2176. The Commissioners of Patents' Journal contains a list of the Titles of all Patents granted in Prussia and the Zollverein, officially communicated. See, as to the view taken of foreign judgments by Courts in this country, *Martin* v. *Nicolls* (1830), V. C., 3 Sim. 461; *Vallée* v. *Dumergue* (1849), Exch., 18 L. J. 398.

[l] Evid. 1851, No. 2783.

[m] *Wallington* v. *Dale* (1852), gelatine, 7 Exch. 888.

[n] *Electric Telegraph Company* v. *Brett* and *Little* (1851), 10 C. B. 838.

[o] *Croll* v. *Edge* (1850), C. B., gas, 14 Jur. 453.

cussed. In the absence of fraud, the title, being larger than the Specification, will not invalidate the Patent.[e]

The infringement.

It is said that the question of fact, whether the Patent is infringed, is for the jury,[f] the legal question of what constitutes an infringement depending on the construction of the Specification by the Court; and the Court will say to a jury, "The question for your consideration is, whether the principle is the same: whether the effect obtained by stopping the apertures is the same means, whether the means differ in shape or not, is not material."[g] The burden of proof on this issue rests with the plaintiff.[h]

Proof necessarily difficult.

The proof of infringement is necessarily difficult. Its detection is often no easy task; the ingenuity of the infringer in the variation of his machinery, or the disguise of his occupation, rivalling in many instances that displayed by the inventor himself.[i] In *Hall* v. *Jarvis*[k] the infringer had obtained admission into the plaintiff's workroom through his servant,[l] had taken a plan of the

[e] *Nickels* v. *Haslam* (1844), C. B., braid, 3 L. T. 76.

[f] *Bramah* v. *Hardcastle* (1789), K. B., water-closet, 1 Carp. 168.

[g] *Cochrane* v. *Braithwaite* (1830), L. C., steaming in boilers, 1 Carp. 492. See also per Tindal, C. J., *Walton* v. *Potter* (1841), Web. P. R. 591.

[h] Hindm. on Pat. 433.

[i] The *ruses* resorted to by the injured Patentee are frequently not inferior in refinement. The following account of the detection of an infringement on Morris's silk and cotton net Patent, 1764 (see *Morris* v. *Bransom* (1776), N. P., lace, 1 Carp. 30), is from Henson's History of Framework Knitters. The Patentee, "observing that the windows of Bransom's shop (at the top of the house) fronted the fields, he took notice that in the heat of the summer the workmen laboured with them open, and, on the Castle Hill, Morris and his witnesses took their station with a powerful telescope early in the morning, when Bransom usually worked the most diligently, lest his frames should be discovered by their noise. He by this means saw Bransom diligently employed in using the tickler machine, and immediately entered an action against him."

[k] (1822) lacegassing machine, Web. P. R. 100.

[l] Piracy by such agency is visited in France with peculiar severity.

machine and constructed one exactly similar. The difficulty was how to use it in the way of trade,[m] the peculiarity of the work executed by the machine rendering its secret use impracticable. He proposed to enter into partnership with a bleacher, that, under cover of practising that trade, and sending some little lace to be gassed by the Patentee, he might render his machine profitably available in the lace trade.

Evidence of infringement.

In his Patent for "improvements in the manufacture of candles, and in apparatus for applying light," the Patentee in his first Specification claimed, first, the mode of manufacturing candles by the application of peculiarly formed plaited wicks; secondly, the mode of manufacturing candles by the application of two or more plaited wicks, so disposed that the ends always turned outwards; and, thirdly, the mode of applying lenses to lamps, in order to concentrate and conduct a portion or portions of the rays of light to a distance.[n] The plaintiff afterwards entered a disclaimer as to the first and third parts of his invention, and sued the defendant for an infringement of the second part. At the trial the plaintiff produced a candle purchased of the defendant, the wicks of which were so plaited that the ends always turned outwards. It was held, that the Patent was not for the candle itself, *but for the mode of manufacturing it*;[o] and that the mere production of a candle made by the defendant, in which the wicks were so plaited that the ends always turned outwards, was no evidence of an infringement of the plaintiff's Patent.

By the Law of 5 July, 1844, Titre V., Art. 43, if the infringer be a workman or servant in the establishment of the Patentee, or have obtained the knowledge of the invention by means of such servant or workman, an imprisonment of from one to six months is added to the usual punishment by fine.

[m] *Sellers* v. *Dickinson* (1845), power-loom, 5 Exch. 312; (1851) Evid. 1450.

[n] *Palmer* v. *Wagstaff* (1854), 9 Exch. 94.

[o] Compare *Huddart* v. *Grimshaw* (1803), K. B., cables, Carp. 200; and see supra, 138.

Presumptive evidence.

The similarity of an article manufactured by a defendant to that made under a Patent is presumptive evidence of infringement—in a case in which it was contended that, where a mode of manufacture was secret, it would be a hardship to compel parties deriving great advantage from it to come forward and divulge it.[l] This, however, can be most satisfactorily met. If the defendant had made a valuable discovery, entirely independent of the plaintiffs, he was entitled to a Patent for securing the profits of it. Improvements by the infringer in adopting the invention render it an infringement none the less.[m] To prove the identity of principle in two contrivances, mechanics may be called as witnesses.[n]

In *Heath* v. *Unwin*[o] it was held, that the *modus operandi* given by the Patentee in his Specification was *only one instance* of how it might be used, and *did not limit the Patent;* that the defendant's process was only a neater and cheaper *modus operandi*, and that in that process he had used the carburet of manganese, and had directly infringed the Patent.

Mode of making.

In the absence of direct evidence also, especially where the manufacture of the article is studiously concealed, the jury may infer that a manufacture sold by a defendant is an infringement of a Patent, from any peculiar character common to the Patent and to the article made or sold by the defendant, coupled with other circumstances. "I should state," said Lord Ellenborough, in *Huddart* v. *Grimshaw*, "that this is certainly *primâ facie* evidence of its having been made by that method. When one sees it agree in all its qualities, when it is produced

[l] *Huddart* v. *Grimshaw.*

[m] *Electric Telegraph Company* v. *Brett* (1851), 10 C. B. 838; and see *Heath* v. *Unwin*, Exch. (1852), cast steel made with carburet of manganese, 19 L. T. 272.

[n] *Webster* v. *Uther* (1824), Godson on Pat. 232. See per Story, J., in *Odiorne* v. *Winkley*, 2 Gallison, Rep. 51; Curtis on Pat. 263.

[o] (1852) Ex. Ch. (cast steel), 19 L. T. 272; (1845) 13 M. & W. 583.

with a rope actually made upon Mr. Huddart's plan, it is *primâ facie* evidence, until the contrary is shown, that it was made upon his method; and therefore, as against him, as it should seem, supposing this Patent in full force and a valid one, it is reasonably fair evidence, in the absence of contrary evidence, to presume that it was made in that way."[p]

A Specification described the improvements effected by the Patentee as consisting in "the use of carburet of manganese in any process whereby iron is converted into cast steel." The course followed by the Patentee was "by introducing into a crucible bars of steel broken into fragments, mixtures of cast and malleable iron, or malleable iron and carbonaceous matter, along with from one to three per cent. of their weight of carburet of manganese." The defendant produced the same result, a superior and more valuable description of cast steel, as certainly and more cheaply by substituting for the carburet of manganese oxide of manganese and coal tar, which, being put into the crucible with the iron, according to the evidence of chemists would form "carburet of manganese" before the iron was in a state of fusion, and consequently before any combination therewith could take place. It was held, on a bill of exceptions, that the judge was wrong in telling the jury that there was no evidence of infringement.[q]

Judge's ruling. Province of the jury. Law and fact.

As a general rule, questions of Law, including the construction of written instruments, are for the judge, matters of fact for the jury, to decide. The meaning, however, attached to particular words in the Specification may, especially where it is of a local or customary character, be matter of fact for the jury. In *Hill* v. *Thompson*,[r] Lord Eldon intimates that the intelligibility of the Specification is entirely for the jury. In *Lowell*

[p] (1803) K. B., rope, 1 Carp. 231.
[q] *Heath* v. *Unwin* (1854), Ex. Ch., 3 C. & K. 522.
[r] (1817) iron, 3 Mer. 630.

v. *Lewis*[c] it was ruled by Mr. Justice Story, that it was matter for the consideration of the Court whether the invention was described with reasonable certainty. In *Hornblower* v. *Boulton*,[d] the sufficiency of the directions in the Specification as to the construction of the machine was said to be purely a question for the consideration of the latter, and one as to which the Court would not subsequently interfere with its decision.

Direction.

The following remarks made by the learned Chief Baron in a case frequently before referred to[e] are well worthy of attention. The learned judge at the trial had directed the jury that, in order to find infringement, they must find that some part of the Patent, that is, some new and material part of it, had been used by the defendants. If a judge, when a Patent case is before him, is to read a lecture on the natural philosophy which belongs to the Patent, and to be strictly correct in every remark he makes, I am afraid few Patent cases would stand. No doubt he is to construe the Specification and tell the jury what the Patent is for, but it is for them to say whether the facts brought before them do or do not amount to an infringement.

Question for the jury. Judge's direction.

On a plea denying the novelty of an invention, it appeared, from the evidence of witnesses for the defendant, that for eight or ten years before the grant of the Patent three firms had manufactured steel in the manner described in the Patent, and had used and sold the steel so manufactured in the way of their trade and without concealment. The judge directed the jury that, if they believed the witnesses for the defendant, the Patent was void. Held, that there was no other question for the

[c] (1817) pump, 1 Mason, 190.

[d] (1799) Ex. Ch., steam engine, Watts', per Lawrence, J., *Webster* v. *Uther* (1824), gun lock, Godson, 232; *Barton* v. *Hall* (1827), ibid. *Barber* v. *Grace* (1848), Exch., hosiery, woollen, 1 Exch. 339; 17 L. J. Exch. 122.

[e] *Newton* v. *Grand Junction Railway* (1847), iron axles, 5 Exch. 335.

jury, and that there was such a public use of the invention as invalidated the Patent.[f]

In *Barton* v. *Hall*[g] the judge directed a nonsuit, taking upon himself to decide that the pistons which were alleged to be infringements were not the same invention as that described in the Specification of the plaintiffs.

It is an erroneous direction to charge that the evidence of prior public use, to invalidate the Patent, must show that "the use must continue to the time when the Patent was granted, not to the very exact period, but that it must have been known and used as a useful thing at the time."[h] On an issue arising from a plea that the invention was not an invention of a manner of new manufacture, the direction that, if the jury believed the evidence, the invention was not any manner of new manufacture, and the action could not be maintained, is right, if the plaintiff's claim to novelty in the construction of his machine be not supported by the evidence.[i] Misdirection.

In *Allen* v. *Rawson*,[j] two portions of the invention claimed by the Patentee (Williams) were disputed, as founded on the suggestions made by others. The learned judge, Erle, J., told the jury that, in his opinion, these suggestions were mere subordinate improvements accessory to the main principle of the invention, and tending to carry it out more conveniently, and, therefore, such as the Patentee had a right to adopt and embody in his Specification; and he left it to the jury to say whether *Williams* was the inventor of that which he claimed. The jury returned a verdict for the plaintiff's assignees of the Patent. In discharging a rule obtained for a new trial on *Bloxam* v. *Elsee.*

[f] *Heath* v. *Smith* (1854), Q. B., cast steel, 18 Jur. 601.

[g] (1827) metallic pistons, Godson, 233.

[h] *Houschill Company* v. *Neilson* (1843), H. of Lords, iron, 9 Cl. & Fin. 788.

[i] *Bush* v. *Fox* (1854), Exch., caissons, 22 L. T. 349, per Pollock, C. B.

[j] (1845) C. B., woollen fabrics, 1 C. B. 551.

the ground of misdirection by the judge, Maule, J.,[k] remarked, "A judge undoubtedly has no right to state his own assumptions of fact to the jury as matters of law, but he has a right to give his opinion, and it is his duty to do so; and unless the jury is misled by what he says, there is no reason for granting a new trial." With reference to the direction he had given, Erle, J., remarked, it "was not laying down any principle of law, but merely making a very direct statement upon the facts."

Verdict.

Objections to the verdict on the ground of mistake in the panel must be taken before verdict. The effect of an unqualified person serving on the jury is to render the proceeding a mis-trial, and necessitates a *venire de novo*.[l]

Interpretation by the Court.

Frequently the effect of the finding of the jury upon the question of infringement has to be determined by the Court. In *Sellers* v. *Dickinson*[m] the Specification claimed a "novel arrangement of mechanism, designed for the purpose of instantaneously stopping the whole of the working parts of the loom whenever the shuttle stops in the shed." The jury found specially, that the plaintiff's arrangement of machinery for stopping looms by means of the action of the clutchbox, in combination with the action of the break, was new and useful; also that the plaintiff's arrangement of machinery for bringing the break into connection with the fly-wheel was new and useful, and that the defendant's arrangement of machinery for the latter purpose was substantially the same as the plaintiff's. The Court of Exchequer held upon these findings, first, that the Specification was good; secondly, that the defendant had infringed the Patent. In *Nickels* v. *Ross*[n] the finding of the jury, that the plaintiff's machine was new, but that the use of a hollow

Special finding.

[k] Page 576.

[l] *Ashburnham* v. *Michael* (1851), 16 A. & E., N. S., 620.

[m] (1850) power-looms, 5 Exch. 312.

[n] (1849) C. B., braid, 8 M. G. & S. 679.

revolving spindle was *not* new, was held not to negative the novelty of the plaintiff's invention, inasmuch as his claim was not for the hollow spindle *generally*, but *fixed*.

As may be expected, in many instances it requires the greatest nicety to distinguish points of Law from points of fact—the province of the Judge from that of the jury—a difficulty which, it is to be hoped, the recent enactments will go far to remove in Patent trials.

Steiner v. *Heald*.

Prior to the date of Plaintiff's Patent, madder dye had been obtained from fresh madder by the application of hot water, but there still remained in the dye vats a residuum called "spent madder," which was known to contain some colouring matter, but which had never been extracted from it. The "spent madder" was consequently thrown away as useless. Some time prior to the plaintiff's Patent, a process was discovered which, by the application of hot water and acid to fresh madder, produced a dye called garancine, which possessed different properties to the old madder dye. This process extracted the whole colouring matter from the fresh madder. The plaintiff by his Patent claimed the application of his process to "spent madder," whereby he obtained garancine, and the "spent madder" thereby became of much value. Held, in error, that as "spent madder" might be in its nature and properties the same as or different from "fresh madder," it did not follow *as matter of law* that the plaintiff's Patent was void, but that it was a question of fact for the jury whether the plaintiff's invention was a new manufacture of garancine.[o] And that the learned judge (Pollock, C. B.) was wrong in treating the conclusion to be drawn from the evidence as *matter of law*, and that the exception was well pointed in treating it as a matter of fact, which should have been left to the jury, with such remarks, of course, as the learned judge might think proper to make for their assistance.

[o] *Steiner* v. *Heald*, Exch. Ch. (1851), garancine, 6 Exch. 607.

Presumption. Special findings.

The jury proceed on the assumption that plans and models submitted to them are correct.[n] In many cases their verdict consists in a series of special findings. They may find that the use of certain mechanical contrivances is not new, but that the plaintiff's mode of connecting or combining them is new. In a case before alluded to, the Defendant having pleaded, 1. Not guilty; 2. A traverse that the plaintiff was the inventor; 3. A traverse that the invention was new, the Plaintiff at trial put in his Specification, which claimed three well-known things. He proved by his own evidence that the invention which he really claimed, and which he thought he had described in his Specification, was the combination of the three things. It was held, that the Specification was evidence for the jury, but not conclusive, and that they were justified in finding that the invention consisted in the combination.[o]

The jury may find that the invention is no manner of new manufacture, if the evidence show that the articles claimed by the plaintiff in his Patent and those contained in other Patents are the same in the material particulars, although they differ in the mode, place and manner of their being employed.[p] A finding by the jury that there is infringement necessarily imports novelty in the invention.[q] The jury may find that the Patent is valid, but that the defendant has not infringed the Patent.[r] A finding that the only novelty in a railway turntable invented by the Plaintiff consisted in the *suspending rods* (all the rest of the machine having been described in the Specification of a Patent previously granted to another

[n] *Gamble* v. *Kurtz* (1846), C. B., soda, sulphate, muriatic acid, 29 Lond. Journ. 57.

[o] *Bateman* v. *Gray* (1853), Exch., plugs, valves, &c., 1 C. L. Rep. 512.

[p] *Bush* v. *Fox* (1854), Exch. Ch., caissons, 22 L. T. 349.

[q] *Newton* v. *Grand Junction Railway Company* (1847), Exch., iron axles, 5 Exch. 335.

[r] *Hyde* v. *Trent* (1854), cocoa-nut fibre, 45 Lond. Journ. 135.

person), was held to amount to a verdict on a plea taking issue on the sufficiency of the Specification.[s]

The fact of a *scire facias* pending is a ground for refusing a nonsuit on an objection to the validity of the Patent.[t] Nonsuit.

The damages given in most cases of infringement, until recently, were nominal,[u] the object of the Patentee in his action at Law being simply to establish his Patent, as a first step to receiving the assistance of equity towards his pecuniary reimbursement for the loss suffered from the infringement. In some, however, the damages have been exemplary. In *Lewis* v. *Marling*[x] they were assessed at 200*l.*; in *Newton* v. *Grand Junction Railway Company*[y] they amounted to 1,000*l.* In the United States it seems the custom to award large damages.[z] Damages.

The judge before whom any action for infringement in any of her Majesty's Superior Courts of Record at Westminster or in Dublin is tried, may certify on the record that the validity of the Letters-patent in the declaration mentioned came in question; and the record with such certificate being given in evidence in any suit or action for infringing the said Letters-patent, or in any proceeding by *scire facias* to repeal the Letters-patent, shall entitle the Patentee to full costs. Judge may certify that the validity of the Patent came in question. Full costs.

[s] *Holmes* v. *London and North Western Railway Company* (1852), C. B., 3 C. & K. 831.

[t] *Haworth* v. *Hardcastle* (1834), calico-drying machine, 1 Bing. N. C. 182.

[u] Usually for forty shillings at least, a less sum not entitling, under 3 & 4 Vict. c. 24, to the costs in the action.

[x] (1829) K. B., plush, 1 Carp. 475.

[y] (1845) Exch., railway axles, 5 Exch. 331; 27 Loud. Journ. 221.

[z] *M'Cormick* v. *Seymour* (1851), reaping machine, damages 3,575 dollars; *Emerson* v. *Hogg* (1845), submerged wheel propeller, 26 Lond. Journ., damages 17,606 dollars. By an Act of Congress of 1836 (cap. 357, ss. 13 and 14) the jury was required to assess the actual damages sustained by the Patentee, which were then trebled by the Court. A similar provision was made in the Act of 1800 (cap. 25). See per Story, J., *Whittemore* v. *Cutter* (1813), cotton cards, 1 Gall. 483, and *Lowell* v. *Lewis* (1817), pump, 1 Mas. 182.

title the Plaintiff in any such suit or action, or the Defendant in such proceeding by *scire facias*, on obtaining a decree, decretal order or final judgment, to his full costs, charges and expenses, taxed as between attorney and client, unless the judge making such decree or order, or the judge trying such action or proceeding, shall certify that the Plaintiff or Defendant respectively ought not to have such full costs.[a] If after a verdict with contingent damages, on the argument of the demurrer the Court hold the declaration to be insufficient, the plaintiff is not entitled to deduct the costs of the trial from the defendant's costs on the demurrer.[b] In taxing the costs in any action for infringement in any of her Majesty's Superior Courts at Westminster or in Dublin, regard is to be had to the particulars delivered in such, and the plaintiff and defendant respectively shall not be allowed any costs in respect of any particular, unless certified by the judge before whom the trial was had to have been proved by such plaintiff or defendant respectively, without regard to the general costs of the cause.[c]

Particulars to be regarded in taxation of costs.

Treble costs.

The provisions of Stat. 5 & 6 Will. IV. c. 83, s. 3, gave the parties in the like cases treble costs, "to be taxed at three times the taxed costs." The peculiar nature of the evidence required and the technical rules regulating taxation of costs seem to have devised treble costs, in the case of Patents, with the view of thus reimbursing the Patentee his actual expenses. The rule was, however, abused. Mr. Godson mentions an instance in which a successful Patentee commenced no less than forty actions. As to suing *in formâ pauperis*, see *Rubery* v. *Morris*.[d]

[a] Stat. 15 & 16 Vict. c. 83, s. 43. See *Gillett* v. *Wilby* (1839), cab, 9 C. & P. 334.

[b] *Partridge* v. *Gardner* (1849), 18 L. J., Exch. 415, and affirmed (1851), 6 Ex. 621, overruling *Bird* v. *Higginson* (1836), K. B., 5 A. & E. 83.

[c] Stat. 15 & 16 Vict. c. 83, s. 43.

[d] 1 Russ. & Myl. 415. See Tidd's Practice, and Chitty's Archbold Pr. tit. Treble Costs; *Gillett* v. *Wilby* (1839), cab, 9 C. & P. 334.

Costs of scientific evidence.

Costs of experiments, models and scientific evidence are disallowed in taxation when made for the purpose of affording evidence on a point in dispute new to scientific men.[e] In *Moor* v. *Adam*[f] and *Willis* v. *Peckham*,[g] scientific and professional men, not being medical men, were declared disentitled to compensation for loss of time.

Production of record of former trial.

After a verdict in a successful action[h] for infringement, the Plaintiff produced the record of a former trial, in which the Patent had been affirmed, and claimed treble costs. Held, that the evidence of such former trial was admissible, and that the proper course was to produce such record after the trial, and not before it.

Indorsement on the postea.

A Court of Equity regards the indorsement on the *postea* of the facts found by the jury as much as the verdict, the whole inquiry being merely for the information of the Court of Equity.[i]

Bill of exceptions must state what the direction was.

When exceptions are taken to the direction of a judge, it is not enough to state in the bill of exceptions that he declined to direct the jury in the way suggested, without showing what his direction was.[k] If, upon a bill of exceptions to the Judge's charge, the superior Court see that there was a misdirection calculated to mislead the jury, the Court has no discretion, but must allow the exception and grant a new trial, even although the verdict be right. Not so, however, in the case of a motion for a new trial on the ground of misdirection.

New trial, even if verdict right.

Motion for a new trial.

In all cases of rules to enter a verdict or nonsuit upon a point reserved at the trial, if the rule to show cause be

[e] *Severn* v. *Olive* (1821), sugar boiling by heated oil, 3 Br. & B. 72.

[f] (1816), K. B., 5 M. & S. 156.

[g] (1820) 1 Br. & B. 515.

[h] Per Campbell, C. J., *Newall* v. *Wilkins* (1851), N. P., wire rope, 17 L. T. 20.

[i] Per Cottenham, L. C., *Kay* v. *Marshall* (1841), flax spinning, 8 Cl. & Fin. 241.

[k] *M'Alpine* v. *Mangnall* (1846), C. B., weaving machinery, 3 C. B. 496.

refused, or granted and then discharged, or made absolute, the party decided against may appeal.[a] In all cases of motions for a new trial on the ground that the judge has not ruled according to Law, if the rule to show cause be refused, or, if granted, be then discharged or made absolute, the party decided against may appeal, provided any one of the judges dissent from the rule being refused, or, when granted, being discharged or made absolute, as the case may be; or provided the Court in its discretion think fit that no appeal should be allowed.[b] Notice of appeal must be given within four days of the decision complained of, or such further time as may be allowed by the Court or a judge.[c] The appeal is to be upon a case to be stated by the parties, in which is to be set forth so much of the pleadings, evidence and the ruling or judgment objected to as is necessary to raise the question for the decision of the Court of Appeal.[d]

Notice of appeal.

Proceedings in the Court of Appeal.

The Exchequer Chamber and House of Lords are the Courts of Appeal.[e] Where the appeal is from the refusal of the Court below to grant a rule to show cause, and the Court of Appeal grants such rule, the rule is to be argued and disposed of in the Court of Appeal.[f] The judgment of the Court of Appeal is to be such as should have been given in the Court below, and further proceedings in the action are to be taken upon it as if that judgment had been given by the Court in which the record originated.[g] The Courts of Appeal may adjudge payment of costs, order restitution, and award process.[h]

Appeal. House of Lords.

The House of Lords will not allow parties to raise objections on appeal which they did not raise in the Court below.[i]

[a] Stat. 17 & 18 Vict. c. 125, s. 34.
[b] Ibid. s. 35.
[c] Ibid. s. 37.
[d] Ibid. s. 39.
[e] Ibid. s. 36.
[f] Ibid. s. 40.
[g] Ibid. s. 41.
[h] Ibid. s. 42.
[i] *Kay* v. *Marshall* (1841), flax spinning, 8 Cl. & Fin. 244.

The questions arising out of licences differ but little from those connected with contracts in general.[k] During the continuance of the licence the Plaintiff may sue at any time for the breaches in any former year, but if the licence be at an end he must include in one action the whole *gravamen* he would probably sustain therefrom.[l] With respect to estoppel,[m] the before-mentioned analogy, drawn from the relation of landlord to tenant in a lease, has been adopted as the standard of reference by Courts of Law in deciding matters at issue between the proprietors of Patent right and the Licencee. In a case before Lord Kenyon[n] it was held, that a Patentee having conveyed away his interest under the Patent, and subsequently infringed the Patent right, was estopped from denying that he had a good title to convey. In *Hayne* v. *Maltby*[o] the Defendant was held not to be estopped by covenants to use the invention in a particular manner, and not to use any other, from pleading in bar to the action that the invention was not new or that the Patentee was not the inventor. In deciding the case with reference to this analogy, Mr. Justice Buller observed, "The facts disclosed by the pleas are equivalent to an eviction of the tenant. A tenant enjoys the land leased until he is evicted, but Licencees, in the event of large infringement

Licences. Contracts. Estoppel. Analogy of a lease.

[k] Turner on Pat. 70.

[l] *Clossman* v. *Lacoste* (1854), Q. B., 23 L. T. 91.

[m] So called, according to Lord Coke, "because a man's own act or acceptance stoppeth or closeth up his mouth to allege or plead the truth raised by implication." Among the rules laid down respecting estoppels are these: "Every estoppel that concludeth a man to allege the truth must be certain to every intent, and not be taken by argument or inference;" also, "every estoppel ought to be a precise affirmation of that which maketh the estoppel, and not to be spoken impersonally." Co. Litt. 325 b; Ib. 352 a; Com. Dig. "Estoppel" (A 2); *Willoughby* v. *Brook* (1600), Cro. Eliz. 756; *Rainsford* v. *Smith* (1560), Dyer, 196 a; *Taylor* v. *Zamira* (1816), C. B., 6 Taunt. 524.

[n] *Oldham* v. *Langmead* (1789), 3 T. R. 439.

[o] (1789) K. B., point not, 3 T. R. 438; Dav. Pat. Cas. 156.

by the trade, find that they are paying valuable consideration for the grant which all the world use without it, so that in fact it is by analogy equivalent to eviction. In the common action for use and occupation, the tenant is not allowed to dispute his landlord's title."

By recitals.

In *Bowman* v. *Taylor*[o] the defendants were held to be estopped by recitals in the deed of licence from disputing that the Plaintiff was the inventor, the invention was new, and that the Specification had been duly enrolled. But where issue is taken upon facts stated in a plea, which facts the Defendant is estopped in point of Law from pleading in bar, a judge cannot refuse to hear evidence upon that issue, but the Defendant is entitled to have his evidence submitted to the jury.[p] Where, however a motion for an injunction against an equitable assignee of the whole interest of a Licencee is ordered to stand over, with liberty to the Plaintiff to bring an action, the equitable Licencee will not be required in Equity to admit the validity of the Patent or the fact of his being a Licencee.[q]

Determination of the licence.

In deciding the question of the determination of a licence by breach of the covenants the same analogy guides the Court. In *Warwick* v. *Hooper*[r] the Plaintiffs were the assignees of the Patent. The Defendant accepted a licence upon certain terms; amongst others, to pay rent or royalty to the amount of 2,000*l.* a year, to be made up at the end of each year in the manner stated in the licence, the Plaintiffs reserving to them-

[o] (1834) K. B., powerloom, 4 L. J., N. S., 58; 2 Ad. & E. 278; 1 Carp. 655: see also *Bowman* v. *Rostron* (1835), K. B., 2 Ad. & E. 295; and *Lainson* v. *Tremere* (1834), K. B., 1 Ad. & E. 792; 3 N. & M. 603.

[p] *Bowman* v. *Rostron* (1834), K. B, 4 L. J., N. S., 59.

[q] *Pidding* v. *Franks* (1849), L. C., coffee and cocoa, 18 L. J., N. S., 295.

[r] (1850) powerloom, 3 M'N. & G. 67. With regard to the relation of express to implied covenants, see *Line* v. *Stephenson* (1838), C. B., 5 Bing. N. C. 183; 7 L. J., N. S., 263.

selves the power, in default of such payment, of determining the licence. The Defendant made default. The Plaintiffs notwithstanding allowed him for several years to use the Patent, and received from him a less annual sum than that stipulated. At length they determined the licence, having subsequently to the expiration of the previous year received from the Defendant payment on the footing of the reduced rent. By so doing, the Plaintiffs were held to have elected not to treat the previous breach as a forfeiture of the licence. "The principle," observed the Lord Chancellor, "upon which this position depends has been frequently recognized and adopted in cases between landlord and tenant; as where a tenant has committed a breach of covenant in a lease which the landlord by a proviso in the lease was authorized to treat as a forfeiture, and the landlord, with full knowledge of the breach of covenant, has afterwards treated the term as continuing, and received rent under the lease which had grown due for a period of time commencing subsequently to his knowledge of the cause for forfeiture. In such cases the receipt and acceptance of such rent under such circumstances has been held to be a conclusive election on the part of the landlord not to treat the breach of covenant as a forfeiture, and to preclude him from afterwards avoiding the lease by reason of the previous breach of covenant. I cannot perceive any distinction between the present case and the case of a landlord and tenant under a lease."

In *Bower* v. *Hodges*[a] the declaration stated, that by deed, A., the Patentee of certain machinery for making pipes, granted B. and his assigns the exclusive licence to manufacture iron pipes, yielding a royalty of so much for every ton of pipes made or sold by B. or his assigns, "to be paid" within twenty-one days of the end of each quarter, B. covenanting for himself and his assigns to render an account in writing within seven days

[a] (1853) C. B., 22 L. J., N. S., 194.

of the end of each quarter of the amount manufactured, and to pay within twenty-one days the sum which should appear due on the face of the account; that B. transferred his interest in the licence to the plaintiff, who transferred it to M. and R., in trust for the defendants, who were to carry on business as the W. I. T. Company; that the defendants covenanted with the plaintiff to perform the covenants made by B. to A. in the first deed; that the W. I. T. Company made quantities of iron tubes in pursuance of the licence, whereby royalties became due to the plaintiff. Breaches alleged, that the Defendant did not pay the royalties and did not render an account. It was held, that the covenant to render an account was only auxiliary to and did not control the preceding covenant to be implied from the words "to be paid." The declaration was on general demurrer held good, although it did not directly aver that any iron pipes were made by B. or his assigns.

Cutler v. *Bower.*

In the recent case of *Cutler* v. *Bower*, in the Queen's Bench, the question of estoppel, in the case of a Licencee, was also much discussed; but, an objection taken to the pleas of the Defendant prevailing, remained undecided. Some other points of interest connected with the covenants were however decided. The circumstances were these:—By indenture of the 11th October, 1842, reciting the grant of Letters-patent to the Plaintiff, and a deed of the 23rd July, 1842, by which Plaintiff granted to Defendant the sole licence to make and vend the Patent invention, subject to the payment of a royalty, with a proviso keeping the royalty at an average of 16*l.* 13*s.* 4*d.* per month; and also reciting that Defendant had agreed with plaintiff for the purchase of one-half of the Patent, subject to the deed of the 23rd July, 1842, but with the benefit to Defendant of one-half of the royalty thereby reserved, Plaintiff, in consideration of 2,200*l.*, assigned to a trustee for Defendant the Letters-patent and the matters intended to be assigned as therein mentioned.

The action was brought upon the covenant to pay the sum of 2,200*l.* by instalments. The defence attempted to be set up by the pleas was failure of consideration, on the ground that the Patent was invalid, and the Defendant therefore not bound by his covenant to pay purchase-money for a Patent which it was said turned out to be worthless. "It appears to me," said Lord Denman, C. J., in delivering the judgment of the Court, "that there are two decisive objections to this defence. The first is, that there not having been any eviction, the consideration does not wholly fail, for the defendant was at all events bound by the indenture of the 23rd July to pay 16*l.* 13*s.* 4*d.* a month for royalty to the plaintiff, whether the Patent were valid or not, as he would be estopped in an action upon that deed from denying the validity of the Patent; and by the deed upon which the action is brought he becomes entitled to half that royalty;' and, in the next place, the proposed defence would only be available in case the covenant upon which the action is brought was a dependent covenant, to be performed only if some condition is observed by the other party; but in this case the covenants of the plaintiff relating to the Patent, and that of the defendant for the payment of the purchase-money, are wholly independent of each other, and each party may recover against the other for a breach of their respective covenants. There is no plea of fraud[u] or eviction, and it appears to us that upon this deed and these pleadings the invalidity of the Patent, as stated in the pleas, affords no ground of defence at Law to an action upon the covenant in question, which may be considered in effect as a mere covenant in gross for the payment of money."[u]

Haddan v. Smith.

In *Haddan* v. *Smith*[x] the plaintiff granted a licence to

[t] (1848) Q. B., tubular flues, 12 Jur. 723.

[u] See *Lovell* v. *Hicks* (1837), Eq. Exch., baking apparatus, 2 Yo. & Coll. 481.

[x] (1847), V. C. railway wheel, 16 Sim. 44.

S. to use the invention on payment of a certain royalty for every wheel made, with a proviso that the licence was to be void in the event of S. taking a partner. This provision was, however, dispensed with on the occasion of S. taking W. into partnership. The Plaintiff filed a bill against S. & W. for an account on the footing of the licence, and for an injunction to restrain the Defendants from using the invention in case they should dispute his right to the payments reserved by the licence, on the ground that the licence had become void. A general demurrer to the bill on account of inconsistency in the relief prayed, the account being sought on the ground that the licence was good, and the injunction, on the ground that it was void, was overruled, the question raised by the bill being held to be, not whether the licence was void, but whether a contract made by the Plaintiff and one of the Defendants was binding on the other Defendant also.

Patent void. Payments under the licence.

In the case of *Taylor* v. *Hare*[y] it was held, that in the event of the Patent proving void, the Licencee was not entitled to receive back the moneys paid under the licence. It rested, however, much on the *bonâ fide* nature of the proceedings as far as the Defendant, the Patentee, was concerned, and the advantage the Plaintiff had derived from the use of the invention. "There never has been a case, and there never will be," observed Mr. Justice Heath, "in which a Plaintiff, having received benefit from a thing which has afterwards been recovered from him, has been allowed to maintain an action for the consideration originally paid. It might as well be said, that if a man lease land, and the lessee pay rent and afterwards be evicted, that he shall recover back the rent, although he has taken the fruits of the land." "The Plaintiff," said Mr. Justice Chambre, "has had

[y] (1805) C. B., brewing copper, Dav. Pat. Cas. 310; 1 N. R. 260; *Hayne* v. *Maltby* (1789), K. B., point net, Dav. Pat. Cas. 156; 3 T. R. 438.

the enjoyment of what he stipulated for, and in this action the Court ought not to interfere unless there be something *ex æquo et bono* which shows that the defendant ought to refund."

Injunction.

Where parties mutually enter into various covenants, and further covenant that on breach of any one covenant by either of the parties covenanting, a certain sum shall be paid as liquidated damages for breach of the covenant, it is in the discretion of the Court to restrain breach of covenant. In *Smith* v. *Dickinson*[z] it was said, that if a party agree not to do some specified act under a "penalty" of 100*l*., such sum cannot be considered in the nature of liquidated damages.

Liquidated damages.

[z] (1804) C. B., 3 B. & P. 630. See, as to Licences in these respects, *Astley* v. *Welden* (1801), C. B., 2 B. & P. 346; *Barton* v. *Glover* (1815), Holt, N. P. C. 43; *Harrison* v. *Wright* (1811), K. B., 13 East, 343; *Coles* v. *Simms* (1854), L. J., 23 L. J., Ch., 258; 22 L. T. 277.

CHAPTER X.

REMEDY OF PATENTEE BY BILL IN EQUITY.

Suit in Equity. THE alternative remedy for a Patentee, whose rights have been infringed on, is by a Bill in Equity,[a] praying an injunction of the Court to restrain the infringer from further violation of those rights, and an order to him to account for and pay over to the plaintiff the profits derived from the infringement.[b]

Injunction. The injunction is in the nature of a special injunction of the Court, restraining persons from committing damage or injury to property.[c] It is said not to be an original jurisdiction, but exercised solely in aid of a legal right,[d] on principles similar to those obtaining in the cases of nuisance, breach of contract and waste, the invasion of copyright or the property in secrets of trade and trade marks. Its exercise is not necessarily confined to the terms of the Patent right, the Court interfering even after its expiration to restrain the sale of articles made during

[a] An injunction will not be granted on a claim. *Holden* v. *Chalcraft* (1850), V. C., K. B., 14 Jur. 816.

[b] 3 Steph. Com 521.

[c] And not on account of the Patent being an exclusive privilege. *Calcraft* v. *West* (1845), L. C., Dublin Theatre Patent, 2 Jones & Lat. 128. "The proper officer of the Court, upon an application for an injunction, is not to ascertain the existence of a legal right, but solely to protect the property until that right can be ascertained by the jurisdiction to which it properly belongs." Per Cottenham, L. C., *Harman* v. *Jones* (1841), 1 Cr. & Ph. 299; Mitford's Ch. Pl. (5th ed.), 158; *Sparrow* v. *Oxford, Worcester and Wolverhampton Railway Company* (1851), 9 Hare, 441.

[d] 2 Story, Eq. Jur. 209; Jeremy, Eq. Jur., bk. iii., c. 2, s. 1; 1 Fonb. Eq. 34, n.; Drewry, Inj. 220; *Bacon* v. *Jones* (1839), L. C., gas-burner, 4 My. & Cr. 436; *Saunders* v. *Smith* (1838), L. C., copyright, 3 My. & Cr. 728.

its continuance in fraud of the Patentee.[e] The Plaintiff is entitled to an injunction although the defendant may promise to commit no further infringement and offer to pay the costs of the Bill.[f]

History.

In tracing the course of this jurisdiction in its exercise with respect to Patents, we find the explanation of much that strikes us at first sight as anomalous in its practice, particularly in the position assumed by the Court in connection with proceedings at Law. Here, as in other branches of our Law before alluded to, the practice of the Court of Chancery has survived the state of things for which it was originally designed. Long after the Patentee had ceased to be a Royal favourite, obnoxious to the public interests from having a monopoly of the necessaries of life, the Courts[g] refused to enforce a right claimed under Letters-patent or Charter from the Crown, until the right had been tested by the ordeal of a trial at Law.[h]

[e] *Crossley* v. *Beverley* (1829), L. C., 1 Russ. & My. 166, n.; 13 L. J., N. S., 25.

[f] *Fradella* v. *Weller* (1831), M. R., 2 Russ. & My. 247.

[g] In Coke's note (3 Inst. 181) on the clause of the Statute of Monopolies, declaring that cases of Patent right "shall be for ever hereafter examined, heard, tried and determined by and according to the Common Laws of this realm, and not otherwise," we find an explanation of the reasons of thus restricting the trial. "This Act having declared against all Monopolies, &c., to be void by the Common Law, hath provided by this clause that they shall be examined, heard, tried and determined in the Courts of the Common Law, according to the Common Law, and not at the *Councell Table, Starchamber, Chancery, Exchequer Chamber or any other Court of like nature*, but only according to the Common Laws of this realm, with words negative and not otherwise. For such boldnesse the Monopolists took, that often at the Councell Table, Starchamber, Chancery and Exchequer Chamber, petitions, informations and bills were preferred in the Starchamber, &c., pretending a contempt for not obeying the commandments and clauses of the said grants of Monopolies, and of the proclamations, &c., concerning the same; for the prevention of which *mischief this* branch was added." Dan. Ch. Pr. 2nd ed. 1511; Godson, 2nd ed. 251; *Prodgers* v. *Phrazier* (1682), L. K., 1 Vern. 137.

[h] *Blanchard* v. *Hill* (1742), L. C., cardmakers' charter, 2 Atk. 484.

Without reference to its origin the principle had become a maxim of the Court; and in process of time a fictitious inability[i] was the cause on which it founded its refusal to decide questions involving the validity of the grant, the claim of the Plaintiff to the property it conferred, and the fact of infringement. By degrees, however, the Court advanced to the position it was entitled to assume. In *Hicks* v. *Raincock*[k] a demurrer to a Bill for an injunction to stay the infringement of a Patent, on the ground that the Plaintiff had not established his right at Law, was overruled;[l] and in *Newman* v. *Milner* it was said by the Lord Chancellor never to be the right of a defendant to have a case transmitted for trial at Law, but that where the title of the party was clear a Court of Equity would act without a reference.[m]

At a much later period[n] we find Lord Eldon thus asserting the inability of the Court,—"Where the Patent is but of yesterday, and upon an application being made for an injunction it is endeavoured to be shown in opposition to it that there is no good Specification or otherwise that the Patent ought not to have been granted, the Court will not, *from its own notions respecting the matter in dispute*, act upon the presumed validity or invalidity of the Patent without the right having been ascertained by a previous trial, but will send the Patentee to Law and oblige him to establish the validity of his Patent in a Court of Law before it will grant him the benefit of an injunction;" and, again, in *Wilkins* v. *Aikin*,[o]—"Where a fair doubt appears as to the Plaintiff's legal right, the Court always directs it to be tried, making some pro-

[i] Fonb. Eq. 43.

[k] (1785) Thurlow, L. C., stocking, 2 Dick. 647.

[l] See also the recent case of *Soltau* v. *De Held* (1851), 2 Sim. N. S. 133, and cases there cited.

[m] (1794) 2 Ves. jun. 486.

[n] (1817) iron, 3 Mer. 622.

[o] (1810) copyright, 17 Ves. 481.

vision, the best that may be, for the benefit of both parties."

Virtual independence of the Court of Equity.

In point of fact, the Court of late has acted independently of references to Law. If, upon a special case stated, the opinion of one Court was not satisfactory, it was sent to another, sometimes to a third; and cases have occurred in which, after obtaining the opinion of more than one, the Court has acted upon its own impressions as to the case in preference to adopting any of them. In *Wilson* v. *Tindal*[p] the Master of the Rolls said, when directing an action at Law, he entertained no doubt whatever as to the power of the Court to grant an injunction *simpliciter*.

Verdict not sufficient.

Certain rules were, however, adopted with respect to the effect of the proceedings directed at Law. If a Bill of Exceptions were properly tendered, the Court would await its disposal before granting an injunction in consequence of a verdict for the Patentee.[q] In *Mangnall* v. *Benecke*,[r] however, an injunction was granted notwithstanding a Bill of Exceptions had been tendered and was undisposed of. Similarly, a rule *nisi* for a new trial having been obtained and then pending, the Court, in *Collard* v. *Allison*, considered the legal title as still incomplete.[s]

Three points.

The points upon which a reference was had to trials in Courts of Law previous to the injunction were mainly three—the validity of the Patent, the title of the Plaintiff, and the fact of infringement by the Defendant. Where, upon any of these points, the Court was doubtful, it has of late years shown great reluctance to exercise its powers of injunction.[t] A very usual course has been to refuse

[p] (1841) cocoa-nut oil, Web. P. R. 730, n. See also *Sumter* v. *Foster* (1841), M. R., 1 Cr. & Ph. 302.

[q] *Bridson* v. *M'Alpine* (1845), M. R., machinery for drying wove fabrics, 8 Beav. 229.

[r] (1849) M. R., same Patent, 34 Lond. Journ. 295.

[s] (1839) pianoforte, 4 My. & Cr. 487.

[t] 18 Jur. pt. 2, 338. See as to the cases of copyright in which the

the injunction until an action at Law has been tried to establish the right, the Defendant in the meantime undertaking to keep an account.[t] By these means, assuming the solvency of the Defendant,[u] the Plaintiff can be recouped for the loss he has sustained without running the risk of committing an irreparable injury to the Defendant by disturbing the *status in quo* of the parties.[v]

Expediency.

Oftentimes, when conflicting affidavits[w] render it impossible for the Court to arrive at conclusions satisfactory, it is driven to decide on the principle of expediency,[x] and to weigh the probabilities of injustice to either party from the granting or refusing the injunction, in the event of the hypothesis on which it acted proving subsequently incorrect. In some cases the injunction, by stopping extensive works, may do a mischief to the Defendant, if in the right, which can never be repaired; while, in the case of a Defendant whose circumstances are such as to render it improbable that he would be able to meet the pecuniary demands to which he would be liable if unsuccessful at Law, the Court naturally inclines to a more

legal title has been in dispute, *Campbell* v. *Scott* (1842), V. C., 11 Sim. 31; *Lewis* v. *Langdon* (1835), V. C., 7 Sim. 421; *Sunderland* v. *Newton* (1830), V. C., 3 Sim. 450.

[t] See as to account, *Crossley* v. *Derby Gas Company* (1834), V. C., gas metre, 3 My. & Cr. 420; *Morgan* v. *Seaward* (1835), V. C., paddle-wheel, Web. P. R. 168; *Bacon* v. *Spottiswoode* (1839), M. R., gas, 1 Beav. 387; *Neilson* v. *Fothergill* (1841), L. C., iron, Web. P. R. 290; *Macrae* v. *Holdsworth* (1848), V. C., design, 2 De G. & S. 496; *Mitchell* v. *Barber* (1851), M. R., looped fabrics, 39 Lond. Journ. 531.

[u] *Newall* v. *Wilson* (1852), L. J., wire rope, 19 L. T. 161.

[v] *Sanxter* v. *Foster* (1841), M. R., 1 Cr. & Ph. 302; *Midland Railway Company* v. *Ambergate, Nottingham and Boston and Eastern Junction Railway Company* (1853), 10 Hare, 359.

[w] *Hill* v. *Wilkinson* (1817), L. C., cited in a note to *The Electric Telegraph Company* v. *Nott* (1847), L. C., 2 Coop., C. C., 57.

[x] *Wilkins* v. *Aikin* (1810), L. C., copyright, 17 Ves. 424; *Harmer* v. *Plane* (1807), L. C., woollen cloth machine, 14 Ves. 132; *Hill* v. *Thompson* (1817), L. C., iron, 3 Mer. 622; *Coles* v. *Simms* (1854), L. J., 22 L. T. 277.

ready exercise of its powers.[y] The various courses which may be taken by the Court on application for an injunction are thus laid down by Lord Langdale, M. R.—"In such cases it will cautiously consider the degree of convenience and inconvenience to the parties by granting or not granting the injunction.[z] The right between the parties is a legal right, and the Court is naturally anxious to obtain the decision of a Court of Law, where the matter is properly cognizable, before it interferes to prevent a party exercising his *primâ facie* rights. According to the doubt which may exist in the mind of the Court upon the facts, and according to the degree of inconvenience to the parties, the Court, not thinking fit to grant the injunction, may take one of several courses—it may either refuse to grant the injunction simply, or it may refuse it on the terms of the party undertaking to keep an account, or it may direct the motion to stand over on the terms of the Plaintiff proceeding to a trial at Law. When it has been determined that the Plaintiff must first establish his right at Law, the Court does not generally interfere with the mode of trying the legal question, though in some cases it may require the parties to make the necessary admission of facts to facilitate the trial. It is to be remembered that the proceeding is not like the trial of an issue, but an action in the ordinary form, with which the Court will not interfere until the legal right has been determined at Law. I must, however, qualify this by saying, that in case of overwhelming mischief this Court has authority to interfere at any time."

Validity of the Patent.

With regard to the validity of Patents, the Court has, on the whole, been guided by the result of the proceedings at Law, and been inclined to grant injunctions in cases where the Plaintiff has been repeatedly successful in them. It still, however, to a certain extent, took cognizance of the merits of the case and the points put in

[y] *Newall* v. *Wilson* (1852), L. J., wire rope, 19 L. T. 161.
[z] *Bridson* v. *M'Alpine* (1845), Ch., 8 Beav. 239.

New point raised.

issue in the action. In *Crosskill* v. *Evory*[a] the Plaintiff had succeeded in former actions, but one raising a new question as to the infringement was then pending. Until its decision the Court refused an injunction. In *Newall* v. *Wilson*,[b] on the other hand, although a new point in the validity was attacked in an action then pending, the Patentee was, from his success in four previous actions, and twelve years enjoyment of the Patent, held entitled to the injunction. Strict proof in either particular is, as may be supposed, rarely obtainable; and, from the form in which the case comes before the Court, the grant or refusal of the injunction is generally a question for the exercise of its discretion, in the face of various conflicting probabilities.

Admissions of the Defendant.

If the Defendant admit the validity of the Patent, the title of the Plaintiff, and his own infringement, the Court will at once issue its injunction.[c] If, after admitting his infringement, the Defendant offer to undertake that there shall be no further infringement, the Plaintiff is nevertheless entitled to the usual order for an injunction.[d] The Patent having been worked by the Plaintiff and Defendant as partners, under circumstances affording a presumption that the Defendant did not, during the existence of the partnership, dispute that the Patent was valid, the Court will, upon an interlocutory application for an injunction, assume that the Patent is valid.[e]

Validity of the Patent.

With respect to the validity of the Patent, the rules proposed for its guidance by the Court have hitherto been almost entirely negative; the merits of the inven-

[a] (1848) M. R., crushing machine, 10 L. T. 479; Drewry on Inj., Sup., 41, n.

[b] (1852) L. J., wire rope, 2 Ch. Ca. 283.

[c] *Jones* v. *Hughes*, 1 Hare, 383; *Bentinck* v. *Wellink*, 2 Hare, 11; *Dircks* v. *Mellor* (1845), V. C. E., boiler and furnace, 26 Lond. Journ. 268.

[d] *Losh* v. *Hague* (1837), V. C., railway wheel, 2 Coop. C. C. 59, n.

[e] *Muntz* v. *Grenfell* (1842), V. C. K. B., shipsheathing, 2 Coop. C. C. 61, n.

tion as a manufacture never being in any degree entered upon. Long undisputed enjoyment of the invention gave, in the absence of a successful assertion of his rights at Law, a colour as well of validity to the Patent as of title in the Patentee.[f] For these reasons the Court never granted an injunction at once, if the Patent was of recent creation and the Defendant disputed its validity; and, on the contrary, granted it, even in the face of some material doubt, if the user of the Patent without challenge has been long and uninterrupted.[g] In *Curtis* v. *Catts*,[h] where there had been nearly fourteen years enjoyment under the Patent, Lord Cottenham observed, in dissolving an injunction granted by the Vice-Chancellor, that the rule acted on by the Court, where the validity of the Patent alone is disputed, requires not merely that there shall have been possession and enjoyment under the Patent, but such possession and enjoyment must have been undisturbed and exclusive.

Plaintiff's title.

With regard to the second point, the title of the Plaintiff to the relief claimed, the Court exacts a jealous watchfulness and prompt proceedings in vindication of his rights.[i] The legal right of a Plaintiff, it was said by Lord Cottenham,[k] ought to be established beyond all possibility of doubt before the Court will be justified in granting an injunction, which, by stopping extensive works, will do a mischief to the Defendant, that, if the Plaintiff do not succeed, can never be repaired. The

[f] *Electric Telegraph Company* v. *Nott* (1847), 2 Coop. 41; *Hill* v. *Thompson* (1817), L. C., iron, 3 Mer. 630; *Caldwell* v. *Vanvlissingen* (1851), V. C. S., screw propeller, 16 Jur. 115.

[g] *Wilkins* v. *Aikin* (1810), L. C., 17 Ves. 424; *Boulton* v. *Bull*, 2 H. Bl. 453.

[h] (1839) L. C., cotton, &c., carding machine, 2 Coop. C. C. 60, n.

[i] *Stevens* v. *Keating* (1847), stucco, 2 Ph. 333; *Soltau* v. *De Held* (1851), V. C. K., 2 Sim. (N. S.) 161; *Rochdale Canal Company* v. *King* (1851), V. C. K., 2 Sim. (N. S.) 79.

[k] *Neilson* v. *Forman* (1841), iron, 2 Coop. C. C. 61, n.; but see, as to presumption of good title, *Morris* v. *Kelly* (1820), L. C., copyright, 1 J. & W. 402.

Court will, however, consider the recovery of nominal damages in some cases sufficient evidence of good title to warrant the issue of its injunction.[l]

Laches.

Where the summary interference of the Court by injunction is invoked, it must be invoked promptly. Parties who have laid by and permitted a large expenditure to be made in contravention of the rights for which they contend, cannot call upon the Court for its summary interference. The jurisdiction to interfere is purely equitable, and must be governed by equitable principles. One of the first of those principles is, that parties coming into equity must do equity. If parties cannot come into equity without submitting to do equity, *à fortiori* they cannot come for the summary interference of the Court where their conduct before coming has been such as to prevent equity being done.[m] In a recent case the Bill was dismissed with costs, it being proved that the Patentees had during a long period been cognizant of the infringement without taking any steps in vindication of their position.[n] Omission to take active steps for the repeal of a subsequent Patent will not be construed as negligence on the part of the Patentee, unless such subsequent Patent be put in practice.[o] He need not bring an action in respect of each act of infringement; but if the infringer have been suffered to go on for a long time, and no actions have been brought against him, distinct notice must have been given him that the Patentee will seek to enforce his right.[p] Similarly, acquiescence in the monopoly of the Patentee, by the ab-

[l] *Rochdale Canal Company* v. *King* (1851), V. C. K., 2 Sim. (N. S.) 78; *Soltau* v. *De Held* (1851), V. C. K, 2 Sim. (N. S.) 133.

[m] Per Lord Justice Turner (1853), *The Great Western Railway Company* v. *The Oxford, Worcester and Wolverhampton Railway Company*, 3 De G., M'N. & G. 359.

[n] *Smith* v. *London and North Western Railway Company* (1854), V. C. W., carriage wheel, 23 L. T. 10; *Bacon* v. *Jones* (1839), L. C., gas-burner, 4 My. & Cr.

[o] *Newall* v. *Wilson* (1852), L. J., wire rope, 2 Ch. Ca. 283.

[p] *Hancock* v. *Moulton* (1852), V. C. T., M. Dig. 506.

stention of manufacturers in the same trade from the patented process or machine, has been held by the Court to be the strongest grounds for believing in the originality of the invention.[q]

Possession colourable title.

In the absence of rights established at Law, length of undisputed possession has, as has been observed, great weight with the Court. The question is whether such possession is on the part of the public or the Patentee. In *The Universities of Oxford and Cambridge* v. *Richardson*,[r] Lord Eldon said, that if the party gets his Patent, puts his invention in execution, and proceeds to a sale, that may be called possession under the Patent. In the case of *Boulton* v. *Bull*,[s] the Court, on the strength of seven-and-twenty years' possession under the Patent, enjoined the defendants during the pendency of proceedings at Law, although the title was open to considerable doubt, the Court of Common Pleas[t] having been equally divided upon the validity of the Patent, and the Court of King's Bench[u] on the first argument inclining to hold it bad, although subsequently deciding in favour of it. In *Harmer* v. *Plane*[x] his Lordship remarked, that where the public had admitted a reasonably long and undisputed possession under colour of the Patent, the Court thought, upon the fact of that possession proved against the public, that there was less inconvenience in granting the injunction until the legal question could be tried, than in dissolving it at the hazard that the grant of the Crown might in the result prove to have been valid.

Evidence of the infringement.

Of the infringement on the Patent right by the party to be enjoined, the Court requires a very strong *primâ*

[q] *Collard* v. *Allison* (1839), pianoforte, 4 My. & Cr.

[r] (1802) L. C., 6 Ves. 707; *Newall* v. *Wilson* (1852), L. J., wire rope, 19 L. T. 161; *Storking* v. *Llewellyn* (1844), V. C., cab, 3 L. T. 33; *Lukie* v. *Robson* (1835), V. C., glass matches, 2 Jur. 221; *Stevens* v. *Keating* (1847), L C., cement, 2 Ph. 333.

[s] (1796) L. C., 3 Ves. 140.

[t] (1795) Dav. Pat. Cas. 162; 2 H. Bl. 453.

[u] *Hornblower* v. *Boulton* (1799), Dav. Pat. Cas. 221; 8 T. R. 95.

[x] (1807) L. C., woollen cloth machine, 14 Ves. 132.

facie case in the absence of actual proof.[y] It has indeed been said that the Court would not, before a trial at Law, grant an injunction on evidence less strong than that on which it would commit for a breach of it.[z]

In *The Electric Telegraph Company* v. *Nott*,[a] Lord Cottenham stated it to be the rule of the Court not to give its aid to a legal right by an injunction, unless satisfied, the legal title being disputed, that in the result such legal right would be established, or, the legal right not being disputed, that the acts complained of were a violation of it. The exception to this rule, it was said, was where the sole question in issue was the validity of a Patent, under which there had been exclusive enjoyment for a reasonable time; in which case the Court would interfere by injunction until the validity of the Patent has been ascertained at Law. Where, however, the validity of the Patent is not disputed, but the evidence as to the question of infringement is conflicting, the general rule again applies, and the Court will not grant an injunction until it has been ascertained by a trial at Law that there has been infringement. It would, indeed, appear that the Court was less willing to exert its own powers of discrimination on this head than on either of the others. In *Wood* v. *Cocherell*,[b] where the affidavits were also directly contradictory, Lord Eldon, on refusing an injunction, observed, "where there is one question whether a Patent is valid, and another question whether it has been infringed, this Court would be going a great way if it took upon itself to grant an injunction."

Practice not greatly changed.

Notwithstanding the change effected by recent enact-

[y] Per Eldon, L. C., in *Hill* v. *Thompson* (1817), iron, 3 Mer. 622.

[z] In cases of copyright the usual course was to refer the publications to the Master for comparison, *Carman* v. *Bowles*, 2 Bro. C. C. 80. Sometimes, however, the Court undertook the decision of the question of piracy itself, *Whittingham* v. *Wooler*, 2 Swanst. 428; *Sheriff* v. *Coates* (1830), L. C., 1 R. & M. 149.

[a] (1847) 2 Coop. 41.

[b] Cited in note to *Electric Telegraph Company* v. *Nott* (1847), L C., 2 Coop. 57.

ments in the powers and relative position of the Courts of Equity and Common Law, it seems not improbable that the practice in the former with regard to injunctions will vary but little from that formerly obtaining, and actions will still no doubt be directed to be tried for the establishment of legal rights.[c] It is, however, no longer necessary. By Stat. 15 & 16 Vict. c. 86, s. 61, it is enacted, that "it shall not be lawful for the said Court of Chancery in any cause or matter to direct a case to be stated for the opinion of any Court of Common Law, but the said Court of Chancery shall have full power to determine any questions of Law which in the judgment of the said Court of Chancery shall be necessary to be decided previously to the decision of the equitable question at issue between the parties." And further, by section 62, that "in cases where, according to the present practice of the Court of Chancery, such Court declines to grant equitable relief until the legal title or right of the party or parties seeking such relief shall have been established in a proceeding at Law, the said Court may itself determine such title or right without requiring the parties to proceed to Law to establish the same." The Statute, it will be observed, is not retrospective in operation.[c]

Present power of the Court.

To render effective this jurisdiction in cases of Patents it will, however, be necessary to adopt to a great extent the practice of examining witnesses *viva voce* in open Court,[d] the inefficacy of affidavits, hitherto the Court's

Viva voce evidence in Court.

[c] *Hobson* v. *Neale* (1853), 22 L. J. 175, Exch.; 16 Jur. 1023.

[d] "This species of evidence is of all others the most unsatisfactory. All the circumstances which give to the system of English procedure its peculiar and characteristic merits—*viva voce* interrogation, cross-examination, publicity, examination in presence of the tribunal, whereby an opportunity is afforded of examining the demeanour of a witness—are here wanting; and not only this, but the testimony is often not even the spontaneous statement of the witness: the affidavit is prepared for and sworn to by the deponent, often without the sense of responsibility which would be felt by a witness when delivering a statement in his own words." (Chancery Commiss. Rep. p. 32.) See *Smith* v. *Pococke* (1854), V. C. K., 2 Eq. Rep. 371; *Wilkinson* v. *Stringer* (Nov. 1852), 20 L. T. 76.

only guide, having been usually alleged as the reason for directing issues at Law.[f]

Plaintiff.

The proprietors of the Patents are the parties entitled to the equitable relief sought by the Bill. Although different portions of the Patent right are vested in different persons by different titles, they may all be joined as co-Plaintiffs in a suit. There seems no reason why any of such parties might not alone maintain a suit for the protection of his own share in the Patent.[g] A Bill filed by the Plaintiff on behalf of himself and all other shareholders will, however, be demurrable, unless it state that all the Plaintiffs are shareholders.[h] On the general principles influencing the Court, it may be presumed that in a suit by several of the proprietors seeking an account against the party working the Patent for the benefit of the proprietors, the Court will refuse to interfere by injunction to restrain the Defendant from working the Patent, there being no dispute as to the shares, but only as to the power of the owners *inter se*. A receiver also, it seems probable,[i] would be appointed by the Court without determining the ultimate rights of the parties, with the view of preserving the property until those rights can be ascertained. The party working the Patent might, it seems, be continued as such receiver, but he would then be an officer of the Court, having given due security to account for the monies he should receive.[k]

Defendants.

A separate Bill must be filed against each infringer, although it would appear that if, after injunction obtained, the pirated articles have been transferred, the Court would give leave to amend by making the transferee a party, without prejudice to the injunction.[l] Such of the parties

[f] *Smith* v. *Effingham* (1847), M. R., 10 L. T. 1; *Moons* v. *De Bernales* (1826), M. R., 1 Russ. 301; *Lloyd* v. *Wait* (1841), 1 Phil. 61.

[g] Hindm. 308.

[h] *Banks* v. *Parker* (1848), V. C., 16 Sim. 176.

[i] *Blakeney* v. *Dufaur* (1851), M. R., 15 Beav. 41.

[k] *Castelli* v. *Cook* (1849), V. C., 7 Hare, 89; 18 L. J. (N. S.) Ch. 148.

[l] *Dilly* v. *Doig* (1794), L. C., copyright, 2 Ves. jun. 486.

interested in the Patent as are not joined as Plaintiffs should be made Defendants in the suit.[m]

Form of Bill.

The Bill is to contain, as concisely as may be, a narrative of the material facts, matters and circumstances on which the plaintiff relies, such narrative being divided into paragraphs, numbered consecutively, and each paragraph containing, as nearly as may be, a separate and distinct statement or allegation, and should pray specifically for the relief which the plaintiff conceives himself entitled to, and also for general relief. The Bill is not to contain interrogatories.[n] It should allege the validity of the Patent,[o] the title of the Plaintiff to the relief prayed, and the infringement of the Patent right by the Defendant. Special damage need not be alleged to entitle the plaintiff to an injunction.[p]

Materiality of allegations.

A Bill[q] contained allegations to the effect that the *Times* newspaper stated it as its opinion that the Plaintiff was the inventor of the process; that a prize medal had been awarded him by the Jurors of the Great Exhibition; that in their Report he was stated to be the inventor, and that various scientific persons had expressed their opinion as to the novelty of the invention. The Bill, after alleging that such representations were true, and that such would appear if the Defendants would answer the Bill, sought discovery of the process employed by the defendants in their manufacture. The Defendants pleaded, that the Plaintiff was not the true and first inventor, and accompanied this plea by an answer to those parts of the Bill not covered by the plea. They did not answer the interrogatories founded upon the above allegation, nor did

[m] Hindm. 308.

[n] Stat. 15 & 16 Vict. c. 86, s. 10. Report of the Chancery Commissioners, p. 25. See Form in Appendix.

[o] *Kay* v. *Marshall*, 1 My. & Cr. 373.

[p] *Dickenson* v. *Grand Junction Railway Company* (1852), 15 Beav. 260.

[q] *Young* v. *White* (1853), M. R., paraffine oil, 18 Jur. 277; 23 L. J. 190. See as to the pleading, *Hunt* v. *Penrice* (1853), M. R., 18 Jur. 4.

they give the discovery sought. Upon exceptions to the plea and answer for insufficiency, it was held, that the allegations in the Bill, not stating facts which could be laid before a jury in an action brought by the Plaintiff under an order of the Court, upon the question whether the Plaintiff was the first inventor, were covered by the plea and did not require to be answered; but that if the Defendants had set up the defence that they had not infringed the Patent, the interrogatories seeking discovery must have been answered. The Defendants having waived one of the grounds of defence originally set up, namely, that they had not infringed the Plaintiff's Patent, leave was given to amend the order of the Court, under which the Plaintiff was to bring an action at Law for the purpose of confining the issue at Law to the single question raised by the plea.

Licences. Specific performance.

A party seeking relief by injunction on the ground of an agreement must state in his Bill all the documents on which that agreement was founded, or he will not be entitled to the relief prayed. Where the stipulations of an agreement between the parties have been systematically violated by both parties for a long course of time, the Court will not interfere at the instance of one of the parties to enforce an isolated portion of the stipulations.[r] Where a wrong arises from a breach of contract or confidence, the Court enjoins at once, without awaiting the establishment of the title at Law.[s] On an application *ex parte* for an injunction, the Plaintiff omitted to state a material fact. On motion, the Court dissolved the injunction with costs, although the Plaintiff swore that he had forgotten the circumstance: it being held, that it was no excuse for the suppression.[t]

Delivery of counterfeits.

The Bill usually contains a prayer that the articles made on the principle or in imitation of a Patent may be

[r] *Sheard* v. *Webb* (1854), V. C. S., 23 L. T. 48.

[s] *Prince Albert* v. *Strange* (1849), L. C., 1 M'N. & G. 25; 13 Jur. 109; *Lewis* v. *Smith* (1848), L. C., 1 M'N. & G. 417.

[t] *Clifton* v. *Robinson* (1853), M. R., 16 Beav. 355.

delivered up to the Patentee. Judging from the analogy of copyright, it seems doubtful if the Court would order the counterfeits to be delivered up in a suit to which the person at whose expense and on whose account they were manufactured was not a party.[u]

Substituted service of bill.

On an affidavit that the Defendant is out of the jurisdiction, the Court will, without any affidavit of merits, allow substituted service of the Bill on his attorney.[x]

When to be applied for.

If urgent, *ex parte*.

An injunction may be applied for at any stage of the proceedings in vacation or term time.[y] In urgent cases, where irreparable injury is likely to be the result of delay, a written copy of the Bill may be filed, on the personal undertaking of the Plaintiff or his solicitor to file a printed copy of such Bill within fourteen days.[z] Motion for the injunction may immediately thereupon be made, upon a certificate of the Bill having been filed and affidavits verifying the statements it contains, and without serving the Defendant with process or notice of motion. If the injunction be obtained, the Plaintiff should serve the Defendant, or some person substituted for him by the Court, with a notice in writing, stating that an injunction has been granted, and that it will be sealed and served as soon as it can be passed; or a copy of the minutes of the order, signed by the registrar, may be served personally, at the same time showing the original, either of which will be sufficient to stop the defendant's proceedings, provided the Plaintiff loses no time in serving the injunction.[a] In *Vansandau* v. *Rose* the Defendant was committed for a breach of an injunction after a notice of it had been obtained, although the order for the injunc-

[u] *Colburn* v. *Simms* (1843), V. C. W., 2 Hare, 543; 12 L. J. (N. S.) Ch. 388; 7 Jur. 1104. By the French law, the party infringing forfeits the articles made in violation of the Patent right. Renouard (Ed. 1825), 361. A similar provision exists in Spain, Art. 27, Law of 27th March, 1826.

[x] *Sergison* v. *Beavan* (1852), V. C. S., 16 Jur. 111.

[y] *Temple* v. *Bank of England* (1802), L. C., 6 Ves. 70.

[z] Stat. 15 & 16 Vict. c. 86, s. 6. See Drewry, Inj., Sup. 45.

[a] *Vansandau* v. *Rose* (1820), L. C., 2 J. & W. 264.

tion had not been served. Applications *ex parte* are at all times closely scrutinized by the Court, and are in no case granted after appearance of the Defendant.[b] In some cases the Court will give leave to serve notice of motion before the Bill is filed.[c] The Plaintiff must not rely on the answer of the Defendant for continuance of the injunction.[d] Its refusal at this stage does not prevent its being obtained on the answer coming in.[e]

Practice. The motion for an injunction may be treated by consent of both parties as the hearing of the cause, and the decision in that case has the effect of a decree on the hearing.[f]

Lord Mansfield. The modern practice of the Court is very materially different from that formerly obtaining. In *Millar* v. *Taylor*[g] Lord Mansfield said, that whoever attended the Court of Chancery must know that if an injunction in the nature of an injunction to stay waste is granted upon motion or continued after answer, it is vain to go to hearing; for such injunction is never granted upon motion unless the legal property of the Plaintiff is made out,[h] nor continued after answer unless it still remains clear, allowing all the Defendant has said. In such a case the Defendant is always advised to acquiesce or ap-

[b] *Langham* v. *Great Northern Railway Company* (1847), 1 De G. & Sm. 486.

[c] *Fosbrook* v. *Woodcock* (1849), 12 Jur. 956.

[d] *Curtis* v. *Cutts* (1839), L. C., wool cards, 8 L. J. 184.

[e] *Isaac* v. *Humpage* (1792), 1 Ves. jun. 430.

[f] *Dickinson* v. *Grand Junction Railway Company* (1852), 15 Beav. 260.

[g] (1769) 4 Burr. 2400. See cases cited in note to *Electric Telegraph* v. *Company* v. *Nott* (1847), L. C., 2 Moo. 41.

[h] "If one who has Letters-patent for an invention files a bill for an injunction to restrain another from pirating his invention, he must state by his bill that he has brought his action at law, and so established his right by a good verdict, or a demurrer to his bill, for want of equity, shall be sustained." Old MSS. cited 2 Coop. C. C. 61, n.; and see the remarks there made on the case of *Hicks* v. *Raincock* (1783), L. C., looped stockings, 2 Dickens, 647, and 1 Cox, 40.

peal, for he can never make a better defence than is stated in his answer.

The judgment of Lord Cottenham in *Bacon* v. *Jones*[i] contains a summary of the grounds on which the Court at that time exercised its jurisdicion. "When the application is for an interlocutory injunction, several courses are open. The Court may at once grant the injunction *simpliciter*, without more, a course which, though perfectly competent to the Court, is not very likely to be taken where the Defendant raises a question as to the validity of the Plaintiff's title; or it may follow the more usual, and, as I apprehend, the more wholesome practice in such a case of either granting an injunction, and, at the same time, directing the Plaintiff to proceed to establish his legal title, or of requiring him first to establish his title at Law and suspending the grant of the injunction until the result of the legal investigation has been ascertained, the Defendant in the mean time keeping an account. Which of these several courses ought to be taken must depend entirely upon the discretion of the Court according to the case made. When the cause comes to a hearing, the Court has also a large latitude left to it; and I am far from saying that a case may not arise in which, even at that stage, the Court will be of opinion that the injunction may properly be granted without having recourse to a trial at Law. The conduct and dealings of the parties, the frame of the pleadings, the nature of the Patent right and of the evidence by which it is established,—these and other circumstances may combine to produce such a result, although this is certainly not very likely to happen, and I am not aware of any case in which it has happened. Nevertheless, it is a course unquestionably competent to the Court, provided a case be presented which satisfies the mind of the judge that such a course, if adopted, will do justice be-

Bacon v. Jones.

When to be applied for.

[i] (1839) gas-burner, 4 My. & Cr. 436; *S. C.* (1839), M. R., 1 Beav. 382.

tween the parties. Again, the Court may, at the hearing, do that which is the more ordinary course,—it may retain the Bill, giving the Plaintiff the opportunity of first establishing his right at Law. There still remains a third course, the propriety of which must also depend upon the circumstances of the case, that of at once dismissing the Bill."

Injunction on notice. Delay.

On motion for injunction on notice, the Plaintiff is also required to act promptly, although somewhat less so than in applying for an injunction *ex parte*. "I think," said the Master of the Rolls in *Bridson* v. *Benecke*,[j] "that a party coming for the assistance of this Court to protect a legal right not absolutely established against the party who is alleged to have infringed it, ought to come at an early period. I do not say at the earliest possible period, because that would be putting an application for an injunction on notice, where all parties have an opportunity of being heard, in the same position as an injunction *ex parte*, which it would not be expedient to do." A special injunction was consequently refused on the ground of delay, notwithstanding the Court had a strong impression in favour of the plaintiff's right. Leave was reserved to revive the motion. An action (*Mangnall* v. *Benecke*)[k] was accordingly brought. The Plaintiff succeeded. Defendants tendered a Bill of Exceptions. An injunction was granted under the circumstances before the Bill of exceptions was disposed of.

Affidavits.

The affidavits in support of the application must swear that, to the best of the applicant's belief, the Patent is valid,[l] and has been infringed by the Defendant.[m] They must not be sworn until after the filing of the Bill. The Defendant, previous to filing his own affidavits, may cross-examine the parties making them under Stat. 15 & 16

[j] (1849) machine for stretching wove fabrics, 12 Beav. 3.
[k] (1849) before Coleridge, J., 34 Lond. Journ. 281.
[l] *Hill* v. *Thompson* (1817), L. C., iron, 3 Mer. 622.
[m] *Startz* v. *Delarue* (1828), L. C., paper, 5 Russ. 322.

Vict. c. 86, s. 4.[n] An alteration of some importance in the practice is effected by the provisions of Stat. 15 & 16 Vict. c. 86, s. 59, enacting, that upon any application by motion or petition to the Court in any suit depending therein for an injunction, or to dissolve an injunction, the answer of the defendant shall, for the purpose of evidence on such motion or petition, be regarded merely as an affidavit of the defendant, and affidavits may be received and read in opposition thereto. Where the legal title is denied by the answer, the Plaintiff may move for leave to try the legal right, without asking for an injunction in the mean time.[o]

In cases of an injunction granted *ex parte*, the party obtaining it must, immediately upon the receipt of a written request and undertaking, or within such time as may be specified in such request or may have been directed by the Court, deliver copies of the affidavits upon which it is granted upon payment of the proper charges.[p]

Motion for injunction stands over.

The terms on which a motion for injunction stands over are generally that the plaintiff shall forthwith commence an action to try the right at Law, and that the defendant in the mean time shall keep an account.[q] The Court will not in such a case exact any admissions from the defendant as to the matters in dispute.[r] Retaining a Bill is not in itself a determination that relief in Equity must ultimately be given.[s]

Interrogatories for examination of defendant.

In cases in which the Plaintiff requires an answer to the Bill, interrogatories for his examination are to be

[n] *Besemeres* v. *Besemeres* (1853), V. C. W., 2 Eq. 668; 2 Week. Rep. 124.

[o] *Rodgers* v. *Nowill* (1846), V. C. W., trademark, 6 Hare, 333.

[p] Order I., 25 Oct. (1852), Rule 8.

[q] *Normanville* v. *Williams* (1854), V. C. W., railway wheel, Aug. 1.

[r] *Pidding* v. *Franks* (1849), 1 M'N. & G. 56. But see *Hilton* v. *Granville* (1841), L. C., Cr. & Ph. 293.

[s] *Curtis* v. *Cutts*, cited 2 Coop. C. C. 62, (n.); *Harwood* v. *Oglander* (1801), L. C., 6 Ves. 225.

filed within eight days after the time limited for the appearance of such Defendant.[s] After that time no interrogatories can be filed for his examination without special leave of the Court, to be applied for upon notice of motion.

Answer, plea or demurrer of defendant.

The defendant, if required to answer the Bill, must put in his plea, answer or demurrer thereto, not demurring alone, within fourteen days from the delivery to him or his solicitor of a copy of the interrogatories.[t] The Court has power to enlarge the time on application.[u]

In a case in which the Plaintiff allowed the cause to come to a hearing without having taken any steps to obtain an interlocutory injunction, the Defendant's answer denying the validity of the Patent and the fact of the infringement, the Master of the Rolls, being of opinion that the Plaintiff, upon the evidence, had not made out a case which would have supported an injunction if applied for in the interlocutory stage, refused to give him an opportunity of establishing his title at Law, by retaining the Bill with liberty to bring an action, and dismissed his Bill with costs.[v]

Equity confessed upon the answer.

The rule of the Court requiring that there should be an equity confessed by the answer in order to sustain an injunction, does not require that the equity so appearing should constitute such admission by the defendant as on the face of the answer would entitle the plaintiff to a decree. By an equity confessed upon the answer was meant, under the old practice, that the Defendant had thereby admitted such facts as sufficed to show the Court that there was a question to be tried at Law.[x]

[s] General Orders in Chancery, 7 Aug. (1852), No. 16.

[t] Ibid. No. 20.

[u] Ibid. No. 19.

[v] *Bacon* v. *Jones* (1839), gas-burner, 4 My. & Cr. 433; affirmed, L. C., 1 Beav. 382; 3 Jur. 476, 994.

[x] Per Wigram, V. C., *Bentinck* v. *Willink* (1842), 2 Hare, 11.

The right to an injunction is not lost by not applying for it till the hearing.[y] If previously obtained, the Court may continue it on the undertaking of the plaintiff to be answerable in damages or by way of compensation in the event of the injunction being dissolved.[z] The Court will at any time previous to the hearing postpone the hearing in order to allow time for filing affidavits; but no affidavits filed after the hearing is begun can be read.[a] And similarly at the hearing, the plaintiff may move to have the injunction already obtained *ex parte* made perpetual, or the defendant may move to have it dissolved. If the plaintiff has not accompanied his Bill in the first instance with a sufficient affidavit as to his belief[b] that he was the inventor, it will now be dismissed with costs.[c] If, having obtained the injunction *ex parte*, on the terms of speedily trying the right, he has been guilty of *laches* with respect to the trial, it will be dissolved.[d] No reference will be allowed to affidavits filed on the application for the injunction;[e] but, under Stat. 15 & 16 Vict. c. 86, s. 59, such affidavits may be made evidence in the cause.

The hearing.

Affidavit.

Where a case before the Court is not such, upon the evidence, that it would direct an issue on a matter of fact raised by the pleadings, the Court will not examine witnesses *vivâ voce* on the mere speculation as to the evidence which may be elicited on such examination.[f]

Vivâ voce examination.

Where the Vice-Chancellors are to work out questions

Scientific assistance.

[y] *Bacon* v. *Spottiswoode* (1839), 1 Beav. 382; 4 M. & Cr. 433.

[z] *Morrison* v. *Moat* (1851), L. J., medicine, 18 L. T. 164.

[a] *Electric Telegraph Company* v. *Nott* (1841), V. C. C., 11 Jur. 272.

[b] *Newall* v. *Wilson* (1852), L. J., wire rope, 19 L. T. 161.

[c] *Sturtz* v. *Delarue* (1828), paper, 5 Russ. 322.

[d] *Stevens* v. *Keating* (1847), cement, 2 Ph. 333.

[e] *Barfield* v. *Kelly* (copyright), 4 Russ. 359; and see *Dunstan* v. *Patterson* (copyright), 2 Ph. 341.

[f] *Wilkinson* v. *Stringer*, 20 L. J. 76, Ch.

of reference which were formerly sent to the Masters, they will do so in Chambers, with, if necessary, the assistance of accountants, merchants, architects, &c., as provided for by Stat. 15 & 16 Vict. c. 80, s. 42. Mere questions of detail will be worked out by the Chief Clerk: questions of Law or of a grave nature arising will be discussed in open Court.[h]

Interim order.

On a motion *ex parte* in the analogous case of staying waste, although an injunction was refused, an interim order was made, with leave to discharge it.[i] Considerable care is necessary in the wording of the order—a party being entitled to move to dissolve the injunction, if from ambiguity in its terms he may, under any construction of the order, be prejudicially affected.[k]

Writ of injunction.

The order for injunction having been obtained, the writ, prepared by the solicitor[l] and endorsed with his name and address, must be sealed[m] by the Clerk of Records and Writs, whose duty it is to ascertain that it is correct, and that the party presenting it is entitled to sue out the same.[n]

Service.

Each party enjoined should be served personally. As to substituted service, where the Defendant is not to be found, see *Kirkman* v. *Honour*.[o]

Order.

It is material that the order should extend to the defendant, his agents, servants and workmen. Unless such be expressed in terms the Court will not commit the defendant's agent for a breach of the injunction.[p]

[h] *Mildmay* v. *Methuen* (1852), V. C. K., 20 L. T. 63; 16 Jur. 965.

[i] *Amyl* v. *Owens* (1853), L. J., 20 L. J. 995.

[k] *Dalglish* v. *Jarvie* (1850), Lords' Com., 2 M'N. & G. 231.

[l] Order XVI., Oct. (1842).

[m] The fee for sealing the writ is 1*l*., payable by means of a stamp. Order VI., 25 Oct. (1852).

[n] Order IV., Oct. (1842).

[o] 6 Beav. 400; 12 L. J. (N. S.) 336.

[p] *Wellesley* v. *Lord Mornington* (1849), waste, 11 Beav. 180; 12 Jur. 367.

Dismissal of bill.

If the plaintiff neglect to proceed at Law[q] or be unsuccessful, the Bill should be dismissed with costs.[r] Matters at issue on the direction to proceed at Law, if neither decided, put in a train of investigation, nor reserved, must be considered by the Court as points either abandoned or on which the plaintiff was entitled to no order.[s] In a recent case[t] the Bill had been retained for a year, with liberty to bring an action, and it had been ordered, that if the plaintiff should not proceed to trial within that period, the Bill was to stand dismissed. The Court ordered the defendant's motion to dismiss to stand over, and, on a cross motion by the plaintiff, enlarged the time after it had expired. The defendant was allowed the costs of the original motion, those of the plaintiff being costs in the cause. In some cases an order will be made on motion by the defendant for the dismissal of the Bill, on the defendant submitting to the plaintiff's demand and paying the costs of the suit as between party and party,[u] or under very special circumstances without costs.[x]

Dissolving injunction.

Although the course of dissolving the injunction by demurring to the Bill is open to him,[y] it is not obligatory on the defendant. He may move to dissolve upon affidavits[z] before answer[a] or upon the answer coming in.[b] Notice of such motion must be served on all parties

[q] *Bickford* v. *Skewes* (1839), L. C., miners' safety fuse, 4 My. & Cr. 499.

[r] *Chappell* v. *Purday* (1847), L. C., copyright, 2 Ph. 227.

[s] *Passingham* v. *Sherborn* (1839—1846), M. R., 9 Beav. 424.

[t] *Swanger* v. *Gardner* (1850), V. C., 3 De G. & S. 696; Seton on Decrees, 526.

[u] *Pemberton* v. *Topham* (1838), M. R., 1 Beav. 316.

[x] *Holden* v. *Kynaston* (1840), M. R., 2 Beav. 205.

[y] Drewry on Inj., supra, 102.

[z] *Barnsley Canal Company* v. *Twibell* (1844), M. R., 7 Beav. 19; *Hudson* v. *Maddison* (1841), V. C., 12 Sim. 416.

[a] Drewry on Inj. 428.

[b] But see *Curtis* v. *Cutts* (1839), L. C., cards for woolcarding, 8 L J. 184.

likely to be affected by the dissolution.[c] If there appears to be any material inconsistencies in the plaintiff's case, the injunction will be dissolved with costs.[d] Such dissolution does not preclude the plaintiff from reviving the injunction after a successful action at Law;[e] or, if the injunction has been obtained *ex parte*, from making a fresh application upon the merits.[f] If the injunction be dissolved on the answer coming in, it will not be revived as of course without special motion or amendment verified by affidavit.[g] In *Storer* v. *Jackson*[h] the Court refused to hear a motion to dissolve, pending a motion, of which the plaintiff had given notice, for production of documents, no unnecessary delay having taken place on the plaintiff's part.

Demurrer.

Motion to dissolve.

It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction, and it is no excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward. Thus, where a plaintiff obtained *ex parte* an injunction on the facts stated in the Bill, but other facts came out in the defendant's answer raising a question of Law on which the right of the plaintiff to the injunction depended, it was held, that the omission of the plaintiff to bring these facts under the notice of the Court was of itself a sufficient ground for dissolving the injunction.[i]

Costs.

If after an injunction obtained on motion the defendant do not offer to pay the costs of it, the plaintiff may bring

[c] *Service* v. *Castenada* (1845), V. C. K. B., 9 Jur. 367.

[d] *Stocking* v. *Llewellyn* (1844), V. C., cab, 3 L. T. 33.

[e] *Neilson* v. *Harford* (1841), L. C., iron, 2 Coop. C. C. 61, n.

[f] *Fitch* v *Rochfort* (1849), 18 L. J. 458.

[g] *James* v. *Downes* (1811), L. C., 18 Ves. 522.

[h] (1842) V. C., 12 Sim. 503. See as to costs, where the injunction is dissolved with liberty to plaintiff to bring an action, *Sanxter* v. *Foster* (1841), 1 Cr. & Ph. 302.

[i] *Dalglish* v. *Jarvie* (1850), Lords Commissioners, 2 M'N. & G. 231.

the suit to a hearing, and will be entitled to the costs of it.[k] Where, on the injunction being obtained, the plaintiff gives an undertaking to bring an action, and that action fails and the Bill is dismissed with costs, the defendant's costs of opposing the motion for the injunction are costs in the cause.[l] If the plaintiff dismiss his Bill, the defendant, though a pauper, is entitled to *dives* costs.[m] Where, however, the Bill becomes nugatory from events subsequent to its filing, the Court may dismiss it without costs.[n]

The hearing.

From the language of Lord Cottenham in *Bacon* v. *Spottiswoode*[o] it appears that a plaintiff at the hearing of the cause is expected to have already obtained the decision of a Court of Law upon the points at issue between him and the defendant. It is, however, to be remarked, that in the case alluded to the Bill was filed in October, 1835, and that the hearing was not until May, 1839. In adducing the cases of some standing in the Court, it is to be noticed, that the recent changes in the increase of judicial power has rendered the proceedings more speedy.

If an injunction until further order have been obtained on motion, the Court may, at the hearing, refuse to make it perpetual, if not satisfied on any point. It may retain the Bill for a limited period, giving the plaintiff liberty to bring such action as he may be advised, continuing the injunction in the mean time.[p] If no interlocutory application have been made, the Court, if in doubt, may, as in *Rodgers* v. *Nowill*,[q] give the defendants the option

[k] *Geary* v. *Norton* (1816), V. C., shawl, 1 De G. & S. 9; *Fradella* v. *Weller* (1831), M. R., 2 R. & My. 247.

[l] *Stevens* v. *Keating* (1850), L. C., 1 M'N. & G. 659.

[m] *Rubery* v. *Morris* (1849), L. C., 16 Sim. 433.

[n] *Sutton Harbour Improvement Company* v. *Hitchens* (1852), M. R., 15 Beav. 161.

[o] (1839) gasburner, 1 Beav. 382.

[p] *Beaufort* v. *Morris* (1847), V. C. W., 6 Hare, 340.

[q] (1848) trademark, 6 Hare, 325.

of having the Bill dismissed against them without costs or of having the right tried at Law. The defendants in that case declined the former alternative. The Bill was ordered to be retained for a year, with liberty to the plaintiffs to bring an action.

Breach of injunction.

Contempt of Court.

Disregard of an injunction is a contempt of Court, punishable by attachment and imprisonment.[r] The usual mode of purging such contempt is by payment of the costs of the adverse party. In the case of corporations aggregate[s] or persons entitled to the privilege of Parliament,[t] a sequestration will be ordered on breach of an injunction.

Practice.

If the party enjoined be not a corporation or person entitled to the privilege of Parliament, the usual course is to serve upon him, personally if possible,[u] a notice of motion that he shall stand committed.[x] It is not the practice to move that he shows cause why he should not be committed.[y] Where the breach of the injunction has arisen from error or mistake,[z] or if there have been acquiescence or neglect on the part of the plaintiff,[a] the Court will not commit. An injunction improperly obtained cannot be disobeyed with impunity.[b] The proper course is to move to discharge it for irregularity.[c]

Injunction operates from time of being pronounced.

The injunction becomes operative from the time of the order for the issue of the writ being pronounced, and not

[r] Hindm. 306; Dan. Ch. Pr. 1550.

[s] *Partington* v. *Booth* (1817), L. C., 3 Mer. 149.

[t] *Robinson* v. *Byron* (1788), L. C., 2 Dick. 703.

[u] *Durant* v. *Moore* (1830), L. C., 2 R. & My. 33; *Pearce* v. *Crutchfield* (1807), L. C., 14 Ves. 206.

[x] *Ellerton* v. *Thirsk* (1820), L. C., 1 J. & W. 376.

[y] *Angerstein* v. *Hunt* (1801), L. C., 6 Ves. 488.

[z] *Devonshire* v. *Sandys* (1801), L. C., 6 Ves. 107.

[a] *Mills* v. *Cobby* (1815), L. C., 1 Mer. 3. See *Rodgers* v. *Nowill* (1852), L. C., trademark, 22 L. J. 404.

[b] *Devonshire* v. *Sandys* (1801), L. C., 6 Ves. 107.

[c] *Robinson* v. *Byron* (1788), L. C., 2 Dick. 703; *Partington* v *Booth* (1817), L. C., 3 Mer. 149.

from the date of its sealing and being issued. The plaintiff must not be guilty of unnecessary delay, either in getting the order drawn up or serving it on the defendant, or a motion to commit will be refused with costs.[d]

Service.

In the event of its appearing to the Court that the party enjoined is endeavouring to evade the personal service of the writ, it will allow service at the last place of abode[e] or on the wife of the defendant.[f] If, indeed, the presumption is strong that the parties are apprised of the order, the Court will commit them, notwithstanding there has been no formal service of the injunction.[g] If the matter be urgent, a copy of the minutes of the order, or a notice of its having been passed, will subject the party enjoined to the effect of the injunction.[h]

Offer of compensation.

With regard to costs after an offer of compensation by the defendants for their infringement, the observations of Lord Cottenham in *Millington* v. *Fox*[i] are important. the parties there were perfectly unconscious that they had committed a wrong by the use of the plaintiffs' trademark. His Lordship, after saying that the plaintiffs were entitled to their decree, adds, that this abstract right of the plaintiff was not the only right he had to guard. There was another object which the Court must keep in view,—that of repressing unnecessary litigation, of keeping litigation within the bounds essential to the esta-

[d] *James* v. *Downes* (1811), L. C., 18 Ves. 522.

[e] *Pearce* v. *Crutchfield* (1807), L. C., 14 Ves. 206.

[f] *Pulteney* v. *Shelton* (1799), L. C., 5 Ves. 147.

[g] *Anon.* (1747), 3 Atk. 567; *Skip* v. *Harwood* (1747), 3 Atk. 564; *Powell* v. *Tollett*, ibid.; *M'Neil* v. *Garrett* (1841), L. C., Cr. & Ph. 99; *Ellerton* v. *Thirsk* (1820), L. C., 1 J. & W. 376; *Scott* v. *Becker* (1817), Eq. Exch., 4 Pr. 346; *Hearn* v. *Tennant* (1807), L. C., 14 Ves. 136; *James* v. *Downes* (1811), L. C., 18 Ves. 522; *Kimpton* v. *Eve* (1813), L. C., 2 V. & B. 349.

[h] Dan. Ch. Pr. 1547.

[i] (Trademarks) 3 My. & Cr. 353; *Colburn* v. *Simms* (1843), V. C., copyright, 2 Hare, 561.

blishment and vindication of the rights of the parties. In *Kelly* v. *Hooper*[k] the only question was, up to what point the plaintiff was justified in prosecuting his suit.

Account.

Besides asking for an injunction, the Bill usually prays for an account[l] of the profits made by the defendant from the use of the invention.[m] Where the title to the exclusive use of the invention is in dispute, a very usual course is to refuse an injunction until the Court is satisfied as to the title, directing the defendant in the mean time to keep such an account.[n] Such account, it is evident, is in many cases a very inexact mode of measuring the loss sustained by the Patentee. In some, however, it is the nearest approximation to justice that can be made.[o] It is, in general, incident to the injunction,[p] and to obtain it the plaintiff must establish a case which would entitle him to an injunction.[q]

Must be complete and clear.

The account rendered must be complete. It is not sufficient to render the plaintiff the account books, and leave him to deduce from them the information he seeks.[r] The defendant must himself examine the books and make out a reasonable account, referring to the books for verification in details.[s]

[k] (1841) V. C, copyright, 1 Yo. & Coll. C. C. 197; *Whittingham* v. *Wooler* (1817), M. R., copyright, 2 Swanst. 428.

[l] As to the jurisdiction of equity in matters of account, see 1 Fonb. Eq. 13, n.; *Jesus College* v. *Bloome*, 3 Atk. 262; *Piers* v. *Piers*, 1 Ves. 521; *Lee* v. *Alston*, 1 Bro. C. C. 194; 3 Bro. C. C 37.

[m] Dan. Ch. Pr. 2nd Ed. 1500.

[n] *Bridson* v. *M'Alpine* (1845), M. R., 8 Beav. 229; *Hill* v. *Thompson* (1817), L. C., iron, 3 Mer. 628.

[o] See the remarks of the Vice-Chancellor in *Colburn* v. *Simms* (1843), copyright, 2 Hare, 260.

[p] *Parrott* v. *Palmer* (1834), L. C., 3 My. & K. 633; but see *Sheriff* v. *Coates* (1830), L. C., 1 K. & M. 159; 18 Jur. pt. 2, p. 185.

[q] *Baily* v. *Taylor* (1829), M. R., copyright, 1 R. & M. 73.

[r] See as to notice of wrong doing in general, *Attorney-General* v. *East Retford* (1833), M. R., 2 M. & K. 35.

[s] Wigram on Discovery, s. 283; *White* v. *Williams* (1803), L. C. 8 Ves. 193.

CHAPTER XI.

NOTICES OF FOREIGN LAW.

Foreign Patents, in connexion with English Patents.

By a before-mentioned provision of the Patent Law of 1852, the conditions attached by foreign states to the grants of special trade privileges in the nature of Letters-patent for inventions enter as an element into English Law. Where the subject-matter of an English Patent has, previously to the grant, been patented in a foreign state, the English Patent is to become void on the expiration of such foreign Patent. Two cases of exception, however, are made to this rule. The subject-matter must have been "first invented" abroad or by the subject of a foreign state. It may therefore be inferred that those inventions would be excepted which can be shown to have been perfected, although not published, in this country previous to the foreign grant, or which, if first patented abroad, were the inventions of British subjects.

Excepted cases.

Stat. 15 & 16 Vict. c. 83, s. 25.

The section in question enacts as follows:—"Where upon any application made after the passing of this Act Letters-patent are granted in the United Kingdom for or in respect of any invention first invented in any foreign country, or by the subject of any foreign power or state, and a Patent or like privilege for the monopoly or exclusive use or exercise of such invention in any foreign country is there obtained before the grant of such Letters-patent in the United Kingdom, all rights and privileges under such Letters-patent shall (notwithstanding any term in such Letters-patent limited) cease and be void immediately upon the expiration or other determination of the term during which the Patent or like privilege obtained in such foreign country shall continue in force; or where more than one such Patent or like

privilege is obtained abroad, immediately upon the expiration or determination of the term which shall first expire or be determined of such several Patents or like privileges: Provided always, that no Letters-patent for or in respect of any invention for which any such Patent or like privilege as aforesaid shall have been obtained in any foreign country, and which shall be granted in the said United Kingdom after the expiration of the term for which such Patent or privilege was granted or was in force, shall be of any validity."

To state with anything approaching to accuracy the various causes which in the principal states of Europe work a forfeiture of the grant would be entirely out of character with the relation of such considerations to the other questions discussed in the present Treatise. All that has been here attempted is to enumerate the chief enactments regulating the grant, and to point out the leading peculiarities attendant on it.

Notwithstanding the wide variety to be observed between the provisions of the several Laws, they bear the leading features of our own, which have served as the model to almost all.[b] In all, the privilege confers on the grantee a transferable right to the profits derivable from the exclusive use of his invention. The rights of the public, it will be observed, are in general more carefully guarded than is the case with us, while in several provisions existing for this purpose, as compared with our own, the advantages cannot be said to be wholly on our side.

Evidence of Foreign Law.

As to the admissibility and effect of proceedings in foreign Courts generally, see 2 Phillips on Evidence, 61—78. As a rule, Judgments of a foreign state given by a Court of competent jurisdiction are *primâ facie* evidence of the facts declared by them, although in particular instances they are impeachable.[c] Satisfactory

[b] Renouard, p. 136.

[c] See Story on the Conflict of Laws, s. 584, *et seq.*; 1 Greenl. Evid. s. 540, *et seq.*

evidence of the Laws in force in foreign states can only be given by persons who have themselves practised it, and not by those whose knowledge of it is derived only from books.[d] If judicial notice is to be taken of the seals of a foreign Court, the witnesses called must have known the seal used on other occasions.[e] Seals.

America (United States).

Legislation.

The United States of North America have adopted the principles prevalent in this country with respect to property in inventions. The legislation on the subject originates in the provision of the Constitution,[f] which authorizes Congress "to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries," and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

The first Act of Congress was passed April 10th, 1790 (chap. 7). It was repealed by that passed February 21st, 1793 (chap. 9), which, with the subsequent Acts passed June 7th, 1794 (chap. 8), April 17th, 1800 (chap. 25), February 15th, 1819 (chap. 19), July 3rd, 1832 (chap. 162), and July 13th, 1832 (chap. 203), was repealed by the Act passed July 4th, 1836 (chap. 357), and which forms the groundwork of the Law at the present time. The subsequent enactments have been those of March 3rd, 1837 (chap. 41), March 3rd, 1839 (chap. 88), August 29th, 1842 (chap. 263), and that of May 27th, 1848 (chap. 47).

The application is by petition, accompanied by an

[d] *Bristow* v. *De Secqueville* (1850), N. P., 3 C. & P. 64; 1 Phil. Evid. 464.

[e] Ibid.

[f] Constit. U. S., A. 1, s. 8, No. 8. A more extensive proposition, empowering Congress "to establish public institutions, rewards and immunities for the promotion of agriculture, commerce and manufactures," was silently abandoned in the Convention that framed the Constitution. 3 Story, Com. on Const. 50; Journal of Convention, 261.

United States.

affidavit verified by two witnesses before any sitting magistrate, and a general description of the invention. This is sent by the applicant to Washington, together with a receipt of the United States Treasury Bank for the duty payable upon the Patent. Time is allowed to the petitioner for the preparation of his Specification, which is forwarded by him with the necessary drawings, specimens or models, and takes its turn for examination.[g]

The Grant.

The Patent issues in the name of the United States, under the hand of the Secretary of State, and is sealed with the seal of the Patent Office, and countersigned by the Commissioner of Patents.

A rigorous preliminary examination (productive sometimes of considerable delay[h]) is instituted by the Commissioner of Patents[i] (with functions analogous to those of the Law Officers in this country) and a permanent Board of Examiners (appointed by the Government for a term of years), consisting of one member practically acquainted with chemistry and three others generally conversant with manufacturing art. Their decision is only conclusive as to novelty, and is not expressive of any opinion as to the utility of the Patent. Their report, together with the Specification, &c., is forwarded to the Patent Office, whence the Patent issues.

Caveats against the grant may be lodged at the Patent Office. They entitle the party lodging them to notice of application within a year of their deposit. On such notice being given, Specifications, drawings and models must be filed by the objector within three

[g] (1851) Evid. 502—510.

[h] (1851) Evid. 2325. Frequently from six to twelve months.

[i] The staff of the Commissioner's Office (all of whom are interdicted during their employment from acquiring interests under Patents otherwise than by operation of Law) consists of a chief clerk, an examining clerk, three others, two draughtsmen, a machinist and a messenger.

The Commissioner is charged with the additional duty of collecting agricultural statistics, which are included in his annual Report. Act of March 3, 1839, s. 9.

months. Opponents are heard before the Board,[j] and a large number of Patents are constantly refused[k] for want of novelty.[l] An appeal lies from the decision of the Commissioner to the Chief Justice of the United States for Columbia.[m] An annual report is made by the Commissioner, containing, among other matters, abstracts of the Specifications.[n] The Specifications United States.

[j] (1851) Evid. 478.

[k] The number of Patents issued from the United States' Patent Office in each year, from 1790 to 1850, was stated before the Committee, in 1851, as follows:—

In 1790	1	In 1810	222	In 1830	551
1791	31	1811	218	1831	575
1792	11	1812	245	1832	473
1793	21	1813	167	1833	579
1794	21	1814	206	1834	608
1795	13	1815	178	1835	746
1796	41	1816	209	1836	677
1797	51	1817	173	1837	429
1798	29	1818	227	1838	509
1799	44	1819	157	1839	410
1800	39	1820	159	1840	452
1801	46	1821	167	1841	494
1802	64	1822	203	1842	517
1803	94	1823	117	1843	553
1804	83	1824	224	1844	502
1805	54	1825	300	1845	502
1806	64	1826	327	1846	619
1807	98	1827	334	1847	572
1808	160	1828	366	1848	660
1809	199	1829	439	1849	1,076

(1851) Evid. 2270.

The number of applications and grants in the years 1847—9 were as follows:—

In 1847	Applications	1,531	Patents granted	572
1848	„	1,628	„	660
1849	„	1,955	„	1,076

The average number in England during the same period was under 500. (1851) Evid. 411, 501, 1022, 2404.

[l] (1851) Evid. 591.

[m] Act of March 3, 1839, s. 11.

[n] (1851) Evid. 512.

United States.

themselves are not published,[o] but the claims of the Patentee only.[p] The publication is by means of a monthly circular, which is given gratuitously or sent post free on application.[q] Indices of the titles (arranged according to subject-matter) of all grants made in the United States as well as those abroad may be inspected at the Office of Patents at Washington,[r] where also are exhibited drawings, specimens and models of already patented inventions. The library attached to the Office is a large collection of foreign and native works on scientific and manufacturing topics.

The remedy of the Patentee in case of infringement is by action in the Circuit Courts of the United States, or any District Court having the power and jurisdiction of a Circuit Court,[s] which Courts have power to grant injunctions. Copies of records, books, papers and drawings under the seal of the Patent Office are evidence in any case where the originals would be. Writs of error or appeal lies to the Supreme Court at Washington.[t]

Transfers of the whole interest or any undivided part thereof may be made by any instrument in writing; to be valid they must be recorded in the Patent Office within three months from the execution thereof.[u] An assignment of the right before the Patent is taken out will, it appears, enable the assignee to take out the Patent originally.[x]

Subject-matter.

Prior user in foreign countries does not invalidate the

[o] (1851) Evid. 459.

[p] Ibid. 2326.

[q] Ibid. 502.

[r] The original Patent Office was, with its contents, destroyed by fire, December 15, 1836. The present edifice is of white marble, built after the model of the Parthenon at Athens.

[s] Act of 1836, s. 17.

[t] (1851) Evid. 2327.

[u] Act of May 27 (1848); C. Rep. 47, s. 2.

[x] Digest of the Decisions on Patents (1831), No. 20, p. 26.

subject-matter for Patent in the United States,[y] although a similar provision to that made in our recent Act exists with reference to the duration of the Patent where the subject-matter is patented in foreign states. Patents, in point of fact, are constantly granted for inventions in use elsewhere, and also for such as have during a considerable period been sold by the inventor previous to his application.[z] United States.

Patents are granted to citizens of the United States, to aliens who have resided one year next preceding and who shall have made oath of their intention of becoming citizens, and also to foreigners who are the inventors or discoverers of the subject-matter. The distinction hitherto made to the prejudice of British subjects will, we may hope, now that the assigned cause has been removed, soon cease to be observed.[a] The Patentee must be the meritorious inventor or his assignee. He is required to make an affidavit that he believes himself to be the inventor. Corporations may become Patentees.[b] In the case of the death of the inventor his personal representatives may take out a Patent.[c] Patentee.

Although, as in other states, the Specification of a Patentee is required to contain a full description of the invention and the means employed by the inventor, yet Specification.

[y] By the Act of Congress of March 3 (1839), chap. 263, s. 3, it is enacted, that no person shall be debarred from receiving a Patent by reason of the invention having been patented in a foreign country more than six months prior to the application.

[z] See, as to previous user in the United States by the Patentee, *Evans* v. *Weiss*, 3 Evans, Law J. 180, per Washington, J.

[a] The fee for citizens or inchoate citizens is . . . 30 dollars.
for British subjects . . . . . 500 „
for any other foreigner . . . . . 300 „
The reason assigned for this exception was the high cost of British Patents. (1851) Evid. 642. In the event of the Patent being declared invalid, if the Patentee be a foreigner, two-thirds of the money paid is returned. Godson, 277.

[b] Act of March 3 (1839), chap. 88, s. 7.

[c] Act of August 29 (1842), chap. 263, s. 3.

United States.

in the absence of an intention to deceive, a defective Specification will not avoid a Patent.[d] Explanatory models and drawings must, where necessary, be added to the Specification.[e]

Duration of the grant.

The term of the Patent is for fourteen years,[f] renewable for five or six years upon evidence adduced that the inventor has not benefited sufficiently by the use of his invention. If the Patent be for subject-matter previously patented abroad, the American Patent expires with the foreign Patent.[g]

Austria.

Legislation.

The Laws of Austria with respect to Patents are,—an Ordinance of December 8th, 1820; the Supreme Decree of July 16th, 1829, published together with the Decree of the Upper Chamber of July 24th of the same year (No. 32661—1327); the Supreme Patent of March 31st, 1832, Sections 70 (No. 1) and 206 of the Stamp and Tax Law of January 27th, 1840; the Decree of the Upper Chamber, March 30th, 1840 (No. 13084); the Decree of the Justiciary Court of May, 1840 (No. 2273); and the Law of August 15th, 1852. The last, although intituled an Amendment of the Law of 1832, has in reality repealed or re-enacted almost every provision of preceding enactments.

Property.

The Patent extends over the whole empire.[h] The right is assignable by deed or will.[i] The deed of assign-

[d] See *Whittemore* v. *Cutter* (1813), 1 Gallisen, 429, per Story, J.; Phillipps, 60.

[e] The following rule with respect to models was issued in 1852 from the American Patent Office:—"The model must be of durable materials and firmly constructed, so as to bear the frequent handling to which it is necessarily exposed. If of any soft wood, it should be painted, stained or varnished. It is not to exceed, if practicable, one cubic foot. The name of the inventor or of the assignee, if the Patent issue to him, should be permanently affixed to it, either by engraving or otherwise."

[f] (1851) Evid. 611.

[g] Act of March 3 (1839), chap. 88, s. 6.

[h] Law of 1852, Art. 24.

[i] Ibid. Art. 35.

ment, properly certified, is required on each assignment to be forwarded with the Patent to the Office of the Minister of Commerce. The assignment is recorded in the register, and a notice of it indorsed on the Patent. A special certificate is issued on the assignment of a partial interest under the Patent.[l] All registered assignments are published without delay.[m] It also confers the power of licensing others to use the invention.[n] The Patent must be worked within a year, and must not during the term be suspended for two whole years.[o] Austria.

Grants and prolongations of Patents are officially published by the President of the Board of Trade.[p] A monthly report of new Patents, prolongations, &c., is made to the minister, who communicates it to the provincial governments and chambers of commerce throughout the empire. An annual report on the same subject is published.[q] Descriptions of inventions or discoveries which are no longer patented, affecting important or useful manufactures, are published annually.[r]

A register of Patents, open to public inspection,[s] is kept at the Board of Trade.[t] Copies of the Specifications of expired Patents, or those which are not decreed to be kept secret, may be taken.[u] Register.

The application (which must be addressed to the respective provincial governments,[x] or to the prefectures, &c.) is by petition, stating, (1) the description of the petitioner or his representative in Austria, and the house of business in which the manufacture is to be carried on; (2) the title of the invention; (3) the period for which the Patent is desired; and (4) whether or not the Obtaining the grant.

[l] Law of 1852, Art. 37.
[m] Ibid.
[n] Ibid. Art. 22.
[o] Ibid. Art. 29.
[p] Ibid. Art. 28.
[q] Ibid. Art. 33.
[r] Ibid. Art. 34. (1851) Evid. 2258.
[s] Ibid. Art. 32.
[t] Ibid. Art. 31.
[u] Ibid. Art. 32.
[x] Ibid. Art. 8.

Austria.

Specification is desired to be kept secret.[y] The petition must be accompanied by (1) a receipt for the duty payable for the term demanded; (2) a legal authorization where the application is through an agent; (3) the foreign Patent, or an authenticated copy, in the case of an imported invention; (4) the Specification under seal, having inscribed the title of the invention and the residence of the petitioner or his agents, together with the drawings, models, &c., if necessary, to render the description intelligible.[z]

The date, day and hour of the presentation of the petition, &c., is endorsed, by the authority applied to, on the Specification, and signed by the petitioner or agent. A certificate (the date of which is decisive on the question of priority) is also issued to him, containing the name and residence of the petitioner, the day and hour of the presentation of the petition, &c., the payment of the dues and the title of the invention.[a]

Where the application is not directly to the government authorities, it must be notified within three days at the latest to the provincial governments.[b]

The government examination is conducted with reference to two considerations only,—first, whether the article is capable of being patented; second, whether the accompaniments of the petition are conformable to the conditions prescribed. If the subject-matter be found not patentable, notice is given to the petitioner that the description under seal and the dues already paid by him will be restored to him on application, or that he must address himself to the Minister of Commerce within the time prescribed by the Law.[c]

The Minister of Commerce, to whom the entire articles deposited are forwarded, is the only person authorized to open the sealed description and decide whether all the

[y] Law of 1852, Art. 9.
[z] Ibid. Art. 7.
[a] Ibid. Art. 13.
[b] Ibid. Art. 14.
[c] Ibid. Art. 15.

formalities and conditions of the Law have been faithfully complied with.[d] The grant is without the guarantee of the government either as to novelty or utility.[e] The Patent is issued and signed by the Minister of Commerce. If refused, the grounds of its refusal are communicated to the petitioner, and the amount of the dues paid returned.[f] Austria.

The Minister of Commerce is the sole judge of the nullity of a Patent, both with respect to the novelty of the invention or the identity or similarity of two Patents.[g]

Infringement consists in imitation or manufacture of the article patented, as described in the Specification (even by the grantee of a subsequent Patent for the article), in the importation of counterfeits for the purpose of sale, and in undertaking to sell such articles or expose them for sale.[h] If the Specification be not kept secret, the penalty for the first infringement, in addition to the confiscation of counterfeits, is a fine of from 25 to 1,000 florins, or, in default of payment, imprisonment at the rate of five florins per day on the fine pronounced. The fine is paid to the Poor-box of the parish where the infringement is committed. The apparatus used by the infringer is displaced or destroyed, unless an arrangement be otherwise made with the Patentee. Abuse of confidence by the infringer is considered a circumstance of aggravation.[i] If the Specification be kept secret, the Patentee is entitled to an injunction to restrain the manufacture and sale, and to an undertaking that the counterfeits shall not be sold or employed in Austria during the Patent, and that those imported shall be re-exported.[k] Proceedings are taken in the Courts of First Instance. An appeal from their decision lies within a fortnight to the Provincial Government—a final appeal to the Mi- Infringement.

[d] Law of 1852, Art. 16.
[e] Ibid. Art. 17.
[f] Ibid. Art. 18.
[g] Ibid. Art. 42.
[h] Ibid. Art. 38.
[i] Ibid. Art. 39.
[k] Ibid. Art. 40.

Austria.

nister of Commerce. Execution of the judgment is suspended during an appeal.[l]

The Court of First Instance may refer the matter to persons conversant with the manufacture, and, on the motion of the Patentee, order the immediate seizure of the counterfeits and tools of manufacture.[m] If the decision involve the proceedings preliminary to the grant, the Court may suspend proceedings, and refer the matter directly to the Minister of Commerce. Such reference does not prevent the seizure or other preventive measures at the disposal of the Courts.[n] If a civil action be instituted by the Patentee, the Civil Court may, after proof of the infringement, on motion of the Patentee, order the seizure of the counterfeits and other preventive measures. Such seizure, &c. must be followed within a week by proceedings against the Defendant, failing which the Defendant will be entitled to claim the suspension of the order made and damages from the Patentee.[o] If necessary, the parties to the suit may apply to the Minister of Commerce for a decision of any point.[p] Infringements on the rights of others by the Patentee is punishable by the authorities appointed to judge in the case.

The competent Courts decide whether the party obtaining a Patent for the invention of another is guilty of a fraud, or punishable by other action.[q]

Subject matter.

Patents are granted for every discovery, invention or improvement having for its result—(1), a new industrial product; (2), a new means of production; (3), a new mode of manufacture.

The disclosure of an industrial process in practice in former times, but lost or generally unknown in the Empire, ranks as a *discovery*. The manufacture of a new article by a new process, or of a new article by known

[l] Law of 1852, Art. 43.
[m] Ibid. Art. 44.
[n] Ibid. Art. 45.
[o] Ibid. Art. 47.
[p] Ibid. Art. 48.
[q] Ibid. Art. 50.

means, or of a known article by means not hitherto em- Austria.
ployed, is defined to be an *invention*. Every addition of a process or arrangement to an article known or patented, by means of which the result is more successfully or economically obtained, is considered as an *improvement*.

Novelty, for the purpose of the grant, consists in the discovery, invention or improvement not having been reduced to practice in the Empire of Austria, nor described in any printed work.[r] Aliments, liquors and medicines cannot be subjects of the grant. All inventions also are excluded whose practice would be injurious to the morals or health of the people, or would contravene the Laws of the State.[s]

An invention imported into Austria is patentable only when it is the subject of a Patent in a foreign State.[t] Patents of importation confer on the Patentee an exclusive right only to the use of the part of the article improved by the Patent.[u] No Patent will be accorded for a theory or principle, although it be capable of being immediately employed in manufactures. But every new application of such principle is patentable if it constitutes a new industrial product, a new means of production or a new process of manufacture.[x] The inclusion under one Patent of two inventions, discoveries or improvements, is admissible only in cases in which they are employed as necessary and indispensable to its production.[y]

Austrians and aliens are placed on the same footing Patentee.
as regards Patents of invention.[z] Patents of importation are granted only to the Patentee of the foreign Patent, or his assigns.[a] The Patentee's rights are not affected

[r] Law of 1852, Art. 1.
[s] Ibid. Art. 2.
[t] Ibid. Art. 3.
[u] Ibid. Art. 4.
[x] Ibid. Art. 5.
[y] Ibid. Art. 6.
[z] Ibid. Art. 1.
[a] Ibid. Art. 3.

Austria.

by his subsequently procuring a Patent in a foreign State.[b]

Specification.

The requisites for the Specification are—(1.) It must be in German, or the language of the Province in which the application is made and must be signed by the Petitioner or his agent. (2.) It must contain a detailed analysis of the invention. (3.) Of such a character as to enable a person conversant with the trade to manufacture the article. (4.) It must point out precisely each particular of the invention. (5.) Disclose the invention, &c. clearly and unequivocally. (6.) Without any concealment either as to the means or mode of manufacture, —without enumeration of dearer or less efficacious materials than those known to him, and without suppressing any process material to the success of the operation.[c] The Specifications, models, &c. are kept in the Patent Record Office.[d] The Specification is decisive as to the claims of a Patentee in the event of infringement. In case of litigation, the desire of the Patentee for the secrecy of the Specification is disregarded.[e]

Duration.

The term of a Patent can never exceed fifteen years, unless on special grounds adduced by the Patentee.[f] Patents of importation expire with the foreign Patent.[g] The term is computed from the date of the Patent.[h] The proprietor of a Patent, with a term of less than fifteen years, may obtain its prolongation by applying before the expiration of the term, and paying in advance the dues for the prolongation. The clause of prolongation is inserted in the original Patent, which must, for this purpose, be forwarded to the Office of the Minister of Commerce.[i]

[b] Law of 1852, Art. 22.
[c] Ibid. Art. 12.
[d] Ibid. Art. 20.
[e] Ibid. Art. 41.
[f] Ibid. Art. 25.
[g] Ibid. Art. 9 (3).
[h] Ibid. Art. 26.
[i] Ibid. Art. 27.

Austria.

The following are the dues payable:—

	Florins.
For the first five years, 20 florins each year .	100
„ sixth year	30
„ seventh	35
„ eighth	40
„ ninth	45
„ tenth	50
„ eleventh	60
„ twelfth	70
„ thirteenth	80
„ fourteenth	90
„ fifteenth	100
Total tax for privilege of fifteen years . .	Fl. 700

Payment for the term demanded must be made in advance. The money is returnable only in the event of the Patent being refused or declared null.[k]

Belgium.

Belgium.

The Belgian Patent Laws are those which have received the latest attention of the Legislature of Europe. They consist of a Law passed by the Chambers in 1854, and a Royal Decree, dated May 24th, 1854, regulating its execution in detail.

Application for the Patent is made by Petition, through the Principal Prefect or District Commissary of Arrondissement of the Province in which the applicant resides.[l] Duplicate certified copies of the Specification and drawings, with the necessary models and specimens, and an inventory of such documents and articles, must accompany the Petition, which is required to be upon stamped paper. A payment of ten francs, the duty for the first year, must precede the deposit of the documents, &c.; the receipt for which forms part of the de-

[k] Law of 1852, Art. 11. [l] Law of 1854, Art. 1.

Belgium.

posit.[m] The Petition sets forth the name, profession and residence of the party making the application, and the subject matter and object of the invention. If the Patent be one of importation, it should set forth the date, term and locality of the foreign Patent. A legally executed power to act for the foreign Patentee must be annexed in this case to his Petition by the applicant.[n] A Certificate is thereupon prepared by the Registrar of the Prefect or Commissary, verifying the date of the deposit, and containing a short statement of the principal circumstances under which the application is made.[o] A copy of this Certificate is given gratuitously to the Petitioner; the original being forwarded, with the documents and articles deposited and transmitted in company with them, within five days, to the Ministry of the Interior.[p] They are registered on their arrival in the order of their date of deposit, in a Register open to public inspection daily.[q] A Decree of the Minister of the Interior, which is delivered to the applicant, constitutes his Patent.[r] The first copy of such Patent is issued gratuitously; subsequent copies must be paid for. The Patent contains a declaration that the Government does not, by its Patent, guarantee the accuracy of any of the assertions put forward by the Petitioner, and that the grant is without prejudice to any existing rights.[s]

Property.

The right is transferable.[t] Any assignment or change of proprietorship (either total or partial) under the Patent must be notified to the Department of the Interior. The notice must be accompanied by an authenticated copy of the deed affecting it. The duty of ten francs is payable on the registration thereof.[u]

Patents of importation and improvement are granted, which confer the same rights as Patents of invention.

[m] Law of 1854, Art. 2.
[n] Ibid. Art. 6.
[o] Ibid. Art. 7.
[p] Ibid. Art. 10.
[q] Ibid. Art. 11.
[r] Ibid. Art. 13.
[s] Ibid. Art. 14.
[t] Ibid. Art. 4 (a).
[u] Ibid. Art. 21; Royal Decree, Art. 19.

Specifications are published by the Government, either in substance or in full, in a special publication, three months after the date of the Patent. Usually the substance only is given. The Patentee may, however, procure the publication *in extenso* of the whole or any part of his Specification, by giving notice to the Government at least one month before the period for such publication, and paying the expenses.[v] On the expiration of this term of three months the Specifications are open to the inspection of the public, and copies may be obtained on payment of the expenses.[x] Specifications, drawings, &c. of expired Patents are placed in the Musée de l'Industrie. Royal Decrees inserted in the Moniteur announce the avoidance of Patents. Belgium.

The Patent must be worked in Belgium within a year of its being worked abroad. On cause shown to the Minister of the Interior, two months at least before its expiration, the Government may extend the time for a period not exceeding one year. If within such time the Patent be not worked in Belgium, or if being worked abroad it ceases to be worked in Belgium for the space of one year, except on good cause shown for the inaction, the grant is annulled by Royal Decree. All official communications relative to Patents are inserted in the Moniteur.[y]

The Law with respect to infringement in Belgium is somewhat peculiar. It is defined as being manufacture of the products, employment of the means prescribed in the Specification, exposing for sale or importing counterfeit articles.[z] The Courts take cognizance of Patents as matters of urgency. If the infringement have been wilful, the Courts of First Instance pronounce the confiscation, for the benefit of the Patentee or his assigns, of the articles manufactured and the instruments em-

[v] Royal Decree (1854), Art. 16.
[x] Ibid. Art. 17.
[y] Law of 1854, Art. 25.
[z] Law of 1854, Art. 4 (b).

Belgium.

ployed in contravention of the Patent. They have power also to award a money compensation to be paid in respect of the articles sold.[a] If the infringers have acted in ignorance of the rights of the Patentee, they are enjoined by the same Courts, under a warning of such confiscation, to abstain from further infringements. In this case, however, damages may be awarded to the proprietor of the Patent.

The proceedings to be taken by the Patentee in cases of infringement are thus prescribed by Articles 6—13 inclusive:—The Patentee or his assigns, having obtained upon petition an order of the Tribunal de Première Instance, is, with the assistance of one or more experienced persons sworn before the President of the Tribunal, to prepare an inventory of the articles alleged to be made or used in contravention of the Patent right. The order may forbid the removal of the articles therein named and empower the Patentee to appoint the person in whose custody they shall remain, or may decree them to be placed under seal. The President may require security from the Patentee. In the case of foreigners security is always to be required. If admission be refused by the infringer to his premises, proceedings are to be taken conformably with Art. 587 of the Code of Civil Process. If the act of taking such inventory be not followed within eight days by citation of the Defendant before the Tribunal, the order made becomes void, and the party holding the articles described may require the remission of the original memorandum, with prohibition to the Patentee from making use of the contents or rendering it public;[b] the whole being without prejudice to the question of damages.

Subject-matter.

Patents of invention are granted only for such inventions as have not been employed within the kingdom, or put in operation for commercial purposes, by another

[a] Law of 1854, Art. 5.

[b] Ibid. Art. 6.

person than the applicant.[c] Such Patents will not be granted where the subject-matter has been described with correct drawings in works printed and published prior to the application.[d] Each patent is confined to one principal object and the details and applications incident thereto.[e] The government, having the monopoly of railroads, until very recently refused to permit articles applicable thereto to become the subjects of Patents.[f] Belgium.

The author of an invention patented abroad may, personally or by his assigns, obtain a Patent of importation. The grantee of a Belgian Patent may at any time during the term take out a Patent of improvement. Patentee.

The Specification must be in French, Flemish or German. If in either of the latter it must be accompanied by a translation in French, unless the inventor be a Belgian resident. Alterations and erasures must be counted and verified, and the pages and passages noted. It is required to describe the invention in a clear and complete manner, and is to conclude with a concise statement of its characteristics.[g] The drawings must be to a scale, and are to represent the subject matter of the Patent as nearly as possible in plan, section or elevation. The parts specially characterizing the invention must be shown by a difference of colour.[h] *Intentional* omissions or misdirections avoid the Patent.[i] Specification.

Patents of importation are limited to the term of the foreign Patent.[k] Patents of invention are for twenty years if the Patentee choose to continue the annual payments as follows :— Duration.

For the 1st year	. . . .	10	francs.
„ 2nd	„	20	„
„ 3rd	„	30	„

and so on up to the 20th year, for which the Patent is

[c] Law of 1854, Art. 24 (a).
[d] Ibid. Art. 24 (c).
[e] Royal Decree (1854), Art. 3.
[f] Urling, Introd. xviii.
[g] Law of 1854, Art. 4.
[h] Ibid. Art. 5
[i] Ibid. Art. 24 (b).
[k] Ibid. Art. 14.

Belgium. 200 francs. The duty must be paid in advance, and is in no case refunded.[l] Patents of improvement taken out by the original Patentee are not subject to any fresh duty. They expire at the same time with the original Patent.[m] The term of the Patent is computed from the date of the registrar's certificate before alluded to.[n]

Denmark.

Denmark. In the kingdom of Denmark and duchies of Schleswig and Holstein no special Patent Laws are in existence.[o] Every industrial inventor is however entitled to the exclusive use of his invention effecting an improvement in manufactures, and special concessions are made in consideration of such improvements.

France.[p]

France. The history of trade privileges in France is very similar to that of England, although its corresponding incidents follow far behind. Alike moreover in this,—that the abolition of the abuses they had given rise to in both countries was the precursor of vast political revolutions. Corporations and favourites under an absolute *régime* monopolized there as here the products of the industrial arts. The spirit of invention was deadened and commercial enterprize stagnant.

A first instalment of the rights of industry was conceded by the Royal Ordinance of 1762, which, among other things, reduced to the term of fifteen years such privileges as had been arbitrarily granted, and revoked all those that had not been exercised.

To Turgot, the minister of Louis XVI., is due the honour of still further enfranchising industry. Yielding to the solicitations of the Third Estate, he obtained the

[l] Law of 1854, Art. 3.
[m] Ibid. Art. 15.
[n] Ibid. Art. 8.
[o] Loosey, 95.
[p] Ibid. 173.

memorable Edict of 1776. Unhappily it was soon re- France.
called, and industry, relapsing into the bondage of the old privileges, languished until the eventful year 1791. In that year the *principle* by virtue of which the property was created in the products of his intellectual skill was first recognized in France.[q] The National Assembly declared "privileged guilds and exclusive corporations for professions, arts and trade no longer to exist."

The various decrees and regulations arising out of the administration of this Law of 7th January, 1791, constituted, down to the year 1844, the legislation applicable to French Patents. They consisted of:—

(1) The Law of May 25, 1791, regulating the form of Legislation.
the Patent and the proceedings connected with its issue.

(2) The Law of September 20, 1792, by which schemes of finance were excepted from the legitimate subject-matter of Patents.

(3) The Decree of 17 Vendemaire, year 7 of the Republic, ordering the publication of the Specifications of expired Patents, and the deposit of the documents themselves, on the expiration of the term, in the Conservatoire Royal des Arts et Metiers.

(4) The Decree of 5 Vendemaire, year 9, by which

[q] The preamble of this law was as follows:—

"The National Assembly, considering that every new idea, the promulgation and development of which may be of use to society, belongs to the person who has conceived it, and that not to regard an industrial discovery as the property of its author would be to attack the rights of man in their essence: considering, also, how much the want of a positive and authentic declaration of this truth may have contributed until now to discourage French industry, by causing the emigration of many distinguished *artistes*, and in causing a great number of new inventions, of which this empire should have derived the first advantages, to pass over into foreign countries: considering, in fine, that every principle of justice, public order and national interest imperatively require it to mark for the future the opinion of French citizens with respect to this species of property by a law which consecrates and protects it, decrees," &c.

France. (1) certificates of petitions for Patents were ordered to be signed by the Minister of the Interior, Patents to be issued every three months by the First Consul, and published in the *Bulletin des Lois*; and (2) a clause was directed to be inserted that the government in granting the Patent guaranteed neither the priority, merit nor success of the invention.

(5) The Decree of November 25th, 1806, repealed the provision of the Law of May 25th, 1791, which forbade the working of the Patent by Joint Stock Companies, and directed inventors desirous of adopting this mode of working their Patent to apply for the sanction of the government.

(6) The Decree of January 25th, 1807, by which Patents were to date from the delivery of the certificate, and which made the privilege between rival Patentees dependent on the deposit of their Specifications, &c.

(7) The Decree of August 13th, 1810 (not inserted in the *Bulletin des Lois*), by which Patents of importation were placed on the same footing with those of invention or improvement.

The necessity at length felt for a modern legislation in harmony with the requirements of the times, which should embody the results of the experience acquired in the development of the original Law of 1790, resulted in the enactment of the Law of July 5th, 1844, which at present forms the main portion of French legislation with regard to Patents.

The subsequent Law on the subject is contained in Ordonnances Ministerielles of the respective dates of July 5th, 1848, and October 26th, 1848; the former prescribing the formalities attendant on assignment of Patent interests, the latter extending the Law of 1844 to all French colonies.

Property. The property conferred by the Patent is thus defined by Article 1 of the Law of 1844:—"Every new dis-

covery or invention, in any branch whatever of industrial pursuits, confers on its author, under the conditions and for the term hereinafter named, the exclusive right of practising for profit the said invention or discovery." France.

"The Patent right extends over both the utensils and the article manufactured, in cases where the use of the utensil patented is intimately and indissolubly incorporated with the manufacture, so as to change its form, its character or its intrinsic value."[r]

"The author of a principal invention preserves throughout the entire term of his Patent the right of preventing persons, unless licensed by him, from adopting modifications and improvements which necessarily involve the application and use of his own invention, and from producing the same results by means and processes, the working of which he is exclusively entitled to."[s]

A Patentee may transfer the whole or any part of his interest under the Letters-patent, or grant licences for any department, or the whole of France. Such transfer can be effected only by means of a public deed, and after payment of the entire tax prescribed by Art. 4. To be valid it must be registered[t] at the Office of the Secretary of the Prefecture in which the deed is executed. For the purpose of such registration an authenticated abstract of the deed must be produced. Copies of the deed are within six days forwarded to the Minister of Agriculture and Commerce.[u] Notice of the transfer or licences must be inserted in the margin of the original Patent.[x]

[r] Decree of the Imperial Court of Amiens, July 15th, 1853.

[s] Extract from the Judgment of the Civil Court on Appeal from the Court of First Instance, in the case of Elkington's and De Ruolz' Patents (electro-gilding, &c.), February, 1852.

[t] The fee for Registration of such transfer is one per cent. on the consideration money.

[u] Law of 1844, Art. 20. These provisions are only a re-enactment of those of the Law of May 25, 1791.

[x] Circulaire Ministerielle, 1848.

France.

Proceedings to obtain a Patent.

No preliminary inquiry is instituted into the novelty or utility of the Patent, the Government expressly disavowing any intention of guaranteeing the right of the Patentee in either respect.[y]

Specification, drawings, &c.

According to the terms of Art. 5 of the Law of 1844, every application must be accompanied with a duplicate of the Specification and drawings. This duplicate is verified by comparison with the original, and is annexed to the Ministerial Decree, which constitutes the Patent. The original is deposited at the Office of the Minister of Trade, there to lie open for inspection, and to be published either entire or in abstract, after the payment of the second annuity.[z] The responsibility as to the correctness of the copies rests with the applicant. Samples of the patented article cannot be sent with the Specification as a substitute for drawings.[a] Copies of the Specifications, when published, are sent to all Chambers of Commerce and public Libraries.[b] By the old Law (1791) publication was reserved till the expiration of the Patent. Indexes of all Patents granted since 1844 are in preparation. Specifications, models and drawings lie open to public inspection at the *Conservatoire des Arts et Metiers*, after a period of two years from the date of the grant. A French Patent must be worked within two years.[c]

Patents of improvement and addition.

By Art. 18 no other person than the Patentee or his assign can, during a year from the date of the grant, take out a Patent of improvement or addition. Any one may, nevertheless, in the course of such year, apply for

[y] The number of Patents issued in France during the year 1847 was 2,132; in 1848, 852, and in 1849, 1,484. (1851) Evid. 1022.

[z] The inconvenience arising at this period from the necessary withdrawal of the instrument, either for the purpose of its being transcripted or transmitted to the printer, has induced the Commission to recommend the forwarding of three copies at the period of application. Report of the Commission of 1849, Answer to Question 1.

[a] Ibid. to Question 3.

[b] (1851) Evid 2181, 2519.

[c] Urling, 262.

such Patent—the application remaining sealed at the Office of the Minister of Agriculture and Trade. On the expiration of the year the seal is broken, and the grant made. In case of conflicting applications preference is to be given to the original Patentee. The payment for a Patent of improvement by the original Patentee is fixed at 20 francs. Against the policy of this Regulation the Commission of 1849 expressed themselves very strongly, as calculated, if not to paralyze, very materially to discourage all applications. They proposed the reduction of the term to six months,[c] during which the original Specification was to remain under seal, unless made public by the desire of the Patentee; such publication to confer upon any party an equal right to a Patent of improvement with the Patentee himself. A suggestion was at the same time made that the *Comité Consultatif des Arts et Manufactures* should, on the removal of the seals, decide as to the proper connection of the additional matter with that forming the subject of the original Patent. If the matter be then deemed more proper for an original Patent, application for such Patent to date from the period of application for the Patent of addition or improvement.[d] France.

[c] Answer of the Commission to Question 4.

[d] The tribunals to which Patent causes should be referred occupied a considerable share of the attention of the Commission of 1849. The questions proposed for their consideration were: 1. Whether a central jury or departmental juries were the proper arbiters in questions of infringement and disputes arising out of Patents. 2. What should be the composition of such juries? Should their decision be without appeal, or subject to the reversal of the Cour de Cassation?

The following lively picture of the state of Patent Law in France, given by the Minister of Agriculture and Commerce, is cited in their Report:—" Le brevet d'invention a une valeur absolue qui s'étend à toutes les parties du territoire: toute annullation, toute extinction locale des droits qui en dérivent, répugne à sa nature. Or les tribunaux et les cours d'appel étant souverains appréciateurs des faits de leur compétence, leurs décisions se heurtent souvent et consacrent les anomalies les plus choquantes. Tel brevet déclaré valable dans un res-

France. Infringement.

If the Patent right be invaded the Patentee may institute proceedings before the *Juge correctionnel*.[e] Such action must be commenced within three years of the commission of the act complained of. Mere possession of the counterfeit does not constitute infringement, unless the possessor be the manufacturer or salesman of the article. The counterfeit may be seized by the Patentee, without prejudice to any question between such possessor and the person by whom the counterfeit was supplied. In case, however, of the possessor being declared guilty of infringement, his remedy against the party manufacturing the article is gone. Importation of counterfeits for sale is infringement.[f]

It is competent for the person accused to adduce evidence impugning the novelty of the invention, or establishing a breach of the conditions of the Patent. He cannot, however, plead ignorance of the Patent; their publication in the *Bulletin des Lois* being notice of them.[g] An acquittal on these grounds operates only to relieve the accused; it does not necessarily avoid the Patent. Proceedings for that purpose are ordinarily instituted in

sort judiciaire est frappé de nullité dans le ressort voisin: tel acte est qualifié de contrefaçon à Paris et ailleurs, ce même acte échappe à toute répression. D'un autre côté l'application des cas de déchéance et de nullité soulève à chaque instant des problèmes delicats, dont la solution ne peut-être demandée qu'aux hommes nourris d'études scientifiques ou familiarisés avec la théorie et la pratique des arts industriels: aussi les magistrats, étrangers d'habitude à ces divers ordres de connaissances, sont-ils obligés de recouvrir à des experts pour la décision du plus grand nombre de litiges: de là des lenteurs et des frais excessifs."

[e] Law of the 23rd May, 1838.

[f] Law of July 5th, 1844, tit. 5, Art. 41.

[g] Report of the Committee of 1849, Answer to Question 6. The tribunals of Police Correctionnelle have, however, under the Law of 1844, the power of giving a judgment in such proceedings which nullifies the Patent as effectually as would be done by the process of a Civil Court.

the Civil Courts.[h] Any person is competent to institute a suit for repeal. If such suit proceed upon the ground that the subject matter was known before the grant, the description of it must be shown to have been contained in works printed and published. Success on the part of the Patentee in previous actions of infringement is no bar to a suit instituted for the repeal of the Patent. France.

The penalty for infringement, in addition to the damages awarded to the Patentee, and confiscation, for his benefit, of counterfeits and apparatus, consists in a fine, which is always one-quarter of the amount of the damages for the first offence. On a second conviction, within five years, the ratio of the fine is doubled, and an imprisonment added of from one to six months. If the Plaintiff fail in his action he is ordered to pay damages to the Defendant, together with a fine of a quarter of the amount of such damages.

Every discovery or new invention of any kind, every means of improving a manufacture, and every first importation into France of a new invention, are subjects of a Patent. Several applications of the same principle to manufactures are patentable under one grant. Medicines are excepted from the patentable articles. On the question of novelty the French legislation is different from ours, requiring not only that the subject matter shall have been unknown in France, but that the manufacture shall not have been used or described in any other country; the description in such latter case being sufficiently definite to enable a workman to make use of the process. In this respect a change has taken place since the passing of the Law of 1844. Before that time the Courts of Law, which are in general hostile to the rights of inventors, took advantage of any vague description, or even similarity of description, in any foreign work to Subject matter.

[h] Dictionnaire de Legislation Usuelle (1850), Art. *Brevet d'Invention*.

France. avoid a Patent. Previous to 1844 there existed *Brevets d'importation.* These were for inventions already patented in foreign countries, and were granted to any person who chose to demand them. Since 1844, however, no one can obtain a Patent in France for an invention previously patented in another country, except he be the original Patentee or his assign. The Patent in France expires with the foreign Patent.[k] The right, however, does not extend to the case of a foreign Patent where a complete Specification of the invention is published,[l] nor to the cases in which the invention has been described in works published either in France or the country in which the original Patent was obtained.[m]

Patentee. The Law of France, with respect to the grantee of a Patent, is on a somewhat similar footing with our own, although a liberal tone was imparted to it at an earlier period. Aliens may obtain Patents by observing the formalities and conditions prescribed for French subjects;[n] and the holder of a foreign Patent may obtain one for the same matter in France, limited, however, to expire with the foreign grant.[o] The restriction as to working the Patent by means of shares, imposed by the Law of 1791, was repealed by that of November 25th, 1806, which directed the Patentee to apply in such cases for the sanction of the government. A Patentee does not in France prejudice his title by subsequently taking out a Patent in another state. In the case of rival applicants priority is decisively determined, save in the case of fraud, by the deposit of the required articles.

[k] As to the interpretation of the words "new application of known means" (Art. 2 of the Law of July 5, 1844), see a very careful opinion of M. Delorme, Advocate of the Court of Appeal in Paris, communicated to the editors of the *Génie Industriel,* vol. 4, p. 153.

[l] (1851) Evid. 2499.

[m] *C.* Cass. 9 Jan. 1828, s. 28, 1, 94.

[n] Law of July 5th, 1844, Art. 27.

[o] Ibid. Art. 29. (1851) Evid. 2493.

The Patent is granted, in ordinary cases, for terms of five, ten or fifteen years, according as the demand is made on application.[p] The dues annually payable during the continuance of the term are a sum of 100 francs.[q] Patents of addition, taken out by the original Patentee, pay a duty of 24 francs. France. Duration.

The following provisions, somewhat similar to those enacted with reference to the Great Exhibition of All Nations in 1851, have been issued by an Imperial Decree for the regulation of the Exhibition of Industry at Paris, of 1855.

Art. 53. Any exhibitor, inventor or legal proprietor of a process, machine or design in a manufacture admitted to the Exhibition, and not yet deposited or patented, may on application, until within one month from the opening

[p] Law of July 5th, 1844, tit. 1, Art. 1. The term is reckoned only from the date of the certificate issued by the Minister of the Interior, although the applicant for a Patent does not endanger his privilege by public manufacture and sale in the interval between his application and the issue of such certificate.

[q] Although the payment is annual, so long as the Patent is the property of the Patentee, yet, before the assignment of the Patent can be legally made, the dues for the whole term must be paid. The Commission of 1849 suggested a reform of these dues on the following scale:—

For the	1st	2nd	and	3rd	years . . .	25	francs	a year.
„	4th	5th	and	6th	„ . . .	50	„	
„	7th	8th	and	9th	„ . . .	100	„	
For each successive year						200	„	

So that the entire dues for a Patent of five years would be 175 francs; for ten, 725, and for fifteen, 1,725 francs. The recommendation was based on the observed fact, that one-tenth only of the Patents survived to the extent of the term originally assigned them. (Rep., Answer to Question 5.) On a return recently made, it was found, that of 360 Patents from October 9th, 1844, to the end of 1845, on 170 only had the second annual dues been paid. In the third year, the number fell to seventy-one, and decreased subsequently, until, in the ninth year, not above ten were in existence. An allowance of about half-a-dozen was made on this computation for those who had, on commencing, paid the dues for the whole term.

France. of the Exhibition, obtain from the Imperial Commission a Certificate descriptive of the article deposited.

Art. 54. This Certificate shall assure to the Petitioner the property in the object described, and the exclusive privilege of working it within the space of one year from the 1st May, 1855, without prejudice to the Patent, which the exhibitor may take in the ordinary mode before the expiration of that term.

Art. 55. All applications for Certificates must be accompanied by exact descriptions of the articles to be protected, and, if necessary, by plans or drawings.

Art. 56. These applications, and also the decisions which shall have been given, shall be inscribed upon the Register kept for that purpose, and shall be afterwards deposited at the Ministry of Agriculture, Commerce and Public Works (Office of Industry), to serve as proof during the time of the validity of the Certificate.

Art. 57. The delivery of this Certificate shall be gratuitous.

HOLLAND.[r]

Holland. Legislation. Until the enactment by the latter State of the Law of 1854, Patents in the kingdoms of Holland and Belgium rested on the same Law,—that of January 25th, 1817, and the Royal Decree of March 26, in the same year, regulating its execution. In the case of Belgium some alterations were introduced by a Royal Decree, dated September 25th, 1840, ordering the republication of the Decree of March, 1817, with amendments.

With the exception of the principle on which the dues were payable in Belgium, the payment was at intervals. In Holland the whole amount of the tax was required at the time of application.

Dutch. Patents are signed by the King. Application, with Specification under seal, is made through the Secretary to the governor of the province in which the applicant resides. This is forwarded by the governor to the Com-

[r] Loosey, 221; Urling, 24, App. B. 258.

missary-General of Instruction, Arts and Sciences. On the report of the Commissary-General, the King may refer the case to the Royal Institute of the Netherlands.[s] No guarantee is implied by the government grant. Holland.

The Specifications are published on the expiration or nullification of the Patent,[t] unless the government think fit to defer the publication.

The Patent must be worked within two years from the grant, unless for reasons to be approved by the government.[u]

The invention must not have been described in any printed work.[x] The subject matter of a foreign Patent may be patented in Holland, but in such case the Dutch Patent expires with the foreign Patent. All articles manufactured according to the Specification must be manufactured in the kingdom of Holland.[y] Certain classes of subjects are arbitrarily excepted in this country from receiving the protection of Patents; such, for instance, as Patents involving chemical processes for the manufacture of sugar.[z] Subject matter.

A Patentee cannot, after obtaining a Patent in Holland, solicit one in a foreign country without endangering his Dutch Patent.[a] On demanding Patents of additional improvement, the whole tax payable with the former Patent must be paid, but the greater part of this is returned in the shape of a reward for the ingenuity displayed in the improved invention. Patentee.

The Specification must clearly indicate the claims made by the inventor.[b] If the Patent be one of impor- Specification.

[s] Reg. 1817, Art. 5.
[t] Ibid. Art. 7.
[u] Ibid. Art. 8 (c).
[x] Ibid. Jan. 25, Art. 8 (b).
[y] Ibid. Jan. 25, Art. 5.
[z] Mr. Urling, in his treatises, makes a similar statement with regard to railway inventions in Belgium, the railroads being in the hands of Government. The restriction, it will be seen by the list of Patents published, has, however, in that kingdom been removed.
[a] Reg. 25 Jan. 1817, Art. 8 (d).
[b] Reg. 1817, Art. 6.

Holland.

tation, the Specification must state the date, title and term of the foreign Patent.

Duration.

The term is five, ten or fifteen years, at the option of the petitioner, the duty payable being 150, 300 and 600 florins respectively.[b]

Dutch West Indies.[c]

Dutch West Indies.

In the Dutch West Indies a Patent is avoided by (1) a defective Specification; (2) prior user of the invention; (3) neglect to work the Patent within two years from the date of the grant, unless for reasons approved of by the government; (4) the taking out by the Patentee of a Patent for the same matter in a foreign State; (5) neglect to establish within two years from the date of the grant a factory sufficient to supply the invention at reasonable cost; (6) the subject-matter being dangerous to the security or safety of the government or the inhabitants of the colony.

Leave of the Governor-General is necessary to a transfer of the interest under the Patent, to whom also notice of the devolution of the same by succession must be given. Entries of such acquired interests are made in a Register. Failure of compliance with the regulation in this behalf renders the Patent void. The fee on such transfer is 20 florins (1*l.* 15*s.*)

The term of the privilege is varied by the importance of the invention, the dues being for five years 150 florins (13*l.*); for ten years 300 florins (26*l.*), or 400 florins (34*l.* 10*s.*); for fifteen years 600 florins (52*l.*), or 700 florins (60*l.*), according to the importance of the invention.[d]

[b] Urling, 258; Reg. 27 Jan. 1817, Art. 14.

[c] Regulations dated Paramaribo, 4 July, 1844, Art. 20; Urling, 28, App. C. 260.

[d] Art. 9.

ITALY.

Sardinia.[e]

ITALY. Sardinia. Legislation.

The existing Laws on Patents in the kingdom of Sardinia are those contained in the Patents of February 28th, 1826, January 2nd, 1829, and March 31st, 1832, the provisions of which are framed in a spirit of great liberality.

To obtain the grant, a petition, with Specification, &c., is presented through the Secretary of State for the Interior.[f] The Specification, drawings and models are, upon the grant of the Patent, deposited in the Academy of Science at Turin.[g] Where the Patent extends over the whole State the grant must be registered in all Councils and all Tribunals of Commerce. But Patents applying only to the capital or to certain districts need only be registered in the Consulate of Turin or the District Tribunal of Commerce. If the grant be not published within six months from its date, the Patent becomes void.[h] A list of the Patents granted, with their subject matter and term, is published by the Academy of Science.[i] The period within which the Patent must be worked is prescribed specially in each case,[k] and every year proof must be given to the Council of Turin or the Chamber of Commerce of the district in which the Patentee resides that it is in such operation.

Duration.

The term is fixed at the discretion of the government. Six, eight and ten years are those ordinarily granted.[l]

[e] Looscy, 389.
[f] Patent of Feb. 28, 1826, Art. 3.
[g] Ibid. Art. 4.
[h] Patent of Jan. 2, 1829, Art. 1.
[i] Patent of Feb. 28, 1826, Art. 15.
[k] Ibid. 1826, Art. 6.
[l] Ibid. 1826, Art. 2.

Modena.[m]

Modena.

The Laws in force in this State are those passed July 1st, 1848, with reference to inventions patented in the Sardinian States.

Tuscany.

Tuscany.

The same remarks apply to this State, the only regulations there existing being those contained in the Royal Decree of October 31st, 1840, giving effect to the proposals made by their Majesties the Emperor of Austria and the King of Sardinia, in Article 27 of the treaty concluded between them for the securing of the rights of authors of literary and artistic works in their respective States.

Parma, Piacenza and Guastalla.

Parma, Piacenza and Guastalla.

The grant in these States is still governed by the French Laws of 7th January and 25th May, 1791, and a Decree of 27th September, 1800 (5 Vendem. An. IX.), and a Sovereign Ducal Decree dated 21st August, 1833.

Rome, States of the Church.[n]

Rome, States of the Church.

The Law consists of a Patent issued from the Apostolic Chamber, September 3rd, 1833.

Aliens may become Patentees. Patents of imported subject matter expire with the foreign Patent if there be one, or is limited to five years if there be not. The terms for those of invention are five, ten and fifteen years, with possibility of extension. Opposition to avoid the grant must be made within six months from its date. The Patent must be worked within a year, and never suspended for an entire year.

[m] Loosey, 219.

[n] Loosey, 353; Urling, 169, App. M. 271.

Lucca.[o]

Lucca.

Patents in this State are regulated by Laws of the date of 5th May, 1807, and 31st August, 1819.

Kingdom of the Two Sicilies.[p]

Kingdom of the Two Sicilies. Legislation.

Patents in the kingdom of the Two Sicilies are regulated by Decrees of the dates of March 2nd, 1810, and March 18th, 1844.

Nova Scotia.

Nova Scotia. Source of the grant.

Patents in Nova Scotia are granted under a recent Act of the General Assembly of the province of Nova Scotia. The Letters-patent issue at the direction of the Governor, and are recorded by the Provincial Secretary in a book kept for that purpose.[q] Copies of the Letters-Patent are obtainable at the rate of six-pence per folio, and drawings at a reasonable rate.[r] The interest is assignable. The assignment (which must be recorded in the Office of the Secretary) carries with it the liabilities as well as the rights of the Patentee. Copies of Specifications, certified by the provincial Secretary, are admissible evidence within the Courts of the province.

Subject matter.

"Any new and useful art, machine, manufacture or composition of matter, or any new or useful improvement thereon previously unknown."[s] Simple change of form or proportions of any machine or composition of matter is not deemed a discovery.[t]

Patentee.

The only limitation with respect to the Patentee is, that he shall have resided in the province for twelve months prior to the date of his application.[u] No distinction is made with respect to the tax between British subjects and others, the fee being 20*s.* for all parties, payable at the Office of the Secretary, on application.[x]

[o] Loosey, 201.
[p] Loosey, 427.
[q] Sect. 1.
[r] Sect. 5.
[s] Sect. 1.
[t] Sect. 3.
[u] (1851) Evid. 2388.
[x] Sect. 4.

Nova Scotia.

The applicant is required to make oath that he believes himself to be true inventor, and that his invention is new within the province.[y]

Specification.

Before the grant the applicant is required to deliver a full description of his invention, and the manner of using or the process of compounding the same; and in the case of a machine to deliver a model and explain the principles by which it may be distinguished from other machines; similarly in other cases to deliver drawings or specimens of ingredients sufficient for the purposes of experiment. The whole is to be deposited and kept in the Secretary's Office. The Governor may dispense with the delivery of a model.

Term.

The term is not to exceed fourteen years.[z]

Portugal.[a]

Portugal. Legislation.

The Laws relating to Patent privileges in Portugal are those of 16th of January, 1837, and the clauses 367—385 inclusive of the penal Law.

The government reserves to itself the right to purchase the Patent.[b] It guarantees neither the novelty, priority or merit of the invention.[c]

The Patent is transferable in the same manner as other property.[d] A register of all Patents is kept at the Office of the Secretary of State for the Home Department.

The Patent must be worked within half the term assigned to the Patent.[e] If the Patent involve a chemical process, a bond of 1,000,000 R. (250*l.*) is given by the Patentee, conditioned to become void on his publicly

[y] Sect. 6.
[z] Sect. 1.
[a] Loosey, 321; Urling, 193, App. O. 273.
[b] Law of Jan. 16, 1837, Art. 5.
[c] Ibid. Art. 7.
[d] Ibid. Art. 4.
[e] Ibid. Art. 22.

exhibiting his invention on the expiration of his Patent.[f] Portugal.
During the term of the privilege the inventor is required twice in every month publicly to manufacture the subject matter of his Patent.

Each Patent is limited to one substantive invention.[g] Subject matter. Foreign user, prior to the Patent, does not invalidate the grant.[h] If the subject matter be previously patented abroad, the Portuguese Patent expires with the foreign Patent.

No limitation is imposed as to the person of the Pa- Patentee. tentee. A kind of caveat, which ensures a priority of claim, may be deposited with a description. It has this advantage,—that it avoids the necessity of putting the invention of which such priority is claimed into such speedy execution as would be insisted on in the case of a Patent.

The term is for any period less than fifteen years at Duration. the option of the Patentee. The duty payable is under 1*l.* per annum. Prolongations are not allowed.

Russia.

The Laws of Russia on the subject of Patents are Russia. those of the respective dates of 22nd November, 1833, Legislation. and 23rd October, 1840, forming a part of Vol. IV., Bk. 1, pt. 3, § 3, of the Imperial Code.[i] From the form of government in this State the precise terms of the Law are naturally not so sure an index of the conditions under which inventors' privileges exist as in other States. Great activity is displayed by the government in the improvement of their manfactures, and of late years an agent has been constantly travelling in this country and on the Con-

[f] Law of Jan. 16, 1837, Art. 19.

[g] Decree of 1826, Art. 16.

[h] Penal Code, 2 Dec., cap. 2, Art. 369.

[i] Previous to the revision of the Law in 1833, Patents were regulated by imperial ukases, dated June 17, 1812, and May 16, 1829, respectively. Urling, 266.

Russia.

tinent for the purpose of reporting the progress made in manufactures, with a view to the introduction of the improvements into Russia.[k]

Nature of property.

By the Laws referred to every discovery, invention or improvement in art or trade is declared to be the property of the person with whom it originates, although a *legal right* to such property is only to be obtained by means of an exclusive privilege.[l] In granting such privilege the government guarantees neither the success nor the merit of the invention, nor that it was the invention of the party applying, the grant being proof only of the nature of the invention, the name of the Patentee and the term of the Patent.[m] The title thus acquired by the Patentee is defeasible on proof by any person that the invention was not the property of the Patentee, or that it had been put in practice before the date of the grant. The right is transferable.[n]

Practice of obtaining.

Applications for Patents are made to the Department of Manufactures and Commerce of the Interior. They must contain (1) a special petition, mentioning the term desired for the Patent and indicating the advantages of the discovery; (2) an exact and complete Specification, with, if necessary, drawings and models, such as to enable competent persons to exercise the discovery without having to resort to experiments; (3) the petitioner must annex to his petition a receipt for the duty payable for the Patent. A certificate signed by the Director of the Department, and sealed with the seal of the Office, is, on the deposit of these articles, delivered on the same day to the Petitioner.[o] The certificate contains the year, month, day and hour of the presentation of the petition.[p] The matter is then referred to the Council of Manufac-

[k] (1851) Evid. 2479, Brewster.

[l] Art. 116.

[m] Art. 118.

[n] Art. 120 (1).

[o] Art. 126.

[p] Art. 127.

tures,[q] at whose sitting the Director of the Department to whose province the subject matter belongs is required to be present. The only questions on the examination by the Council are,—whether a similar grant is already in existence, whether the Specification is sufficiently precise, and whether the public is likely to derive any advantage from the invention.[r] Russia.

If the examination be satisfactory on these points, a report is immediately made by the Council of Manufactures to the Minister of Finance, who is charged with the office of issuing the Patents. The report is communicated by the Council to the department or branch of the administration to which the privilege belongs, in order that ulterior arrangements may be made in accordance with the rules established. Report.

If, on the contrary, it is found by the report that the invention has been described or put in general practice, the petition is refused; and if the invention is pronounced injurious to public health or safety, it enjoins the petitioner in writing to abstain from its employment under pain of the penalties prescribed by the Law. The causes of such refusal are published in the official journals of the two capitals.[s] If the petition be refused on the ground only that the Specification is incomplete, the petitioner may, on amending it in the parts objected to, receive his Patent.[t] If different parties simultaneously apply for the same Patent, no grant is made, unless on legal proof that one party has adopted the invention of the other.[u] In case of refusal of the Patent, the duty paid in respect of the Patent is immediately returned.[x]

Infringement is defined[y] as consisting in the exact imitation of all the essential parts of the patented inven-

[q] Inventions having reference to agriculture are examined by the authorities of the Agricultural Administration.

[r] Art. 128. [s] Art. 129.

[t] Art. 130. [u] Art. 131.

[x] Art. 132. [y] Art. 121.

Russia.

tion, discovery or improvement, notwithstanding unimportant or immaterial variations introduced by the infringer. The power of pursuing infringers dates from the delivery of the certificate before mentioned; for which reason, the certificates are published in the official journals of both capitals.[z]

Subject matter.

No grant will be conceded for the exclusive use of abstract theoretical principles, but only for new means, processes and apparatus carrying those principles into practice.[a] Patents are granted for inventions practised under Patents in other States, but not introduced into Russia. The term of such Patent cannot, however, exceed that of the foreign Patent. In the case of inventions practised without Patent in foreign States, but unknown and unpractised in Russia, Patents can only be exceptionally granted in regard of the advantage to be derived from and the expenses attendant upon their introduction. Such Patents, however, when granted, confer the same rights as those for inventions originating in Russia.[b] No grant will be made in respect of discoveries, however ingenious, which present no prospect of material advantage, nor those which may prove detrimental to the public interests or the revenues of the State.[c]

Patentee.

The right to a Patent exists in an equal degree for Russian subjects and foreigners who purpose to establish manufactures without becoming Russian subjects.[d]

Duration.

The term depends upon the demand of the petitioner and the discretion of the government. It may be for three, five or ten years as an extreme. Patents of importation cannot be granted for longer than six years, or for the term fixed by Art. 122, unless the petitioner be the owner of the foreign Patent, in which case it may be for ten years.[e] Patents can in no case be prolonged.[f]

[z] Art. 135.
[a] Art. 123.
[b] Art. 122.
[c] Art. 124.
[d] Art. 125.
[e] Art. 133.
[f] Art. 134.

The term commences with the day on which the Patent is signed.[g] Russia.

The duty payable in respect of Patents is[h]—

		Silver Roubles.	£	s.	d.
For Patents of Invention for	3 years	. . 90 . . .	14	10	0
„ „	5 „	. . 150 . . .	24	0	0
„ „	10 „	. . 450 . . .	72	0	0
For Patents of Importation for	1 year	. . 60 . . .	9	12	0
„ „	2 years	. . 120 . . .	19	4	0
„ „	3 „	. . 180 . . .	28	16	0
„ „	4 „	. . 240 . . .	38	8	0
„ „	5 „	. . 300 . . .	48	0	0
„ „	6 „	. . 360 . . .	57	12	0

In no case after issue of the Patent will the duty paid be returned, whether the Patent be cancelled before the expiration of the term, or fail in consequence of the Patent not being put into operation.[i] Duty.

The duties prescribed cover the expenses of the Patent and its publication. The surplus is devoted to the acquisition of useful matters, such as books, models, &c.

Spain.[k]

The grant of Patents in Spain is regulated by the Royal Decree of Ferdinand VII., dated March 27, 1826, and the Royal Ordinances dated June 14 and December 30, 1829, containing the details of the said decree. Spain. Legislation.

Under the provisions of Arts. 1 and 5 of the Law of March 27, 1826, every inventor, whether Spanish subject or alien, may obtain for five, ten or fifteen years, at his option, a Royal Patent, conferring on him the exclusive use of his invention, provided such invention have not been published in Spain or elsewhere. Inventions are held to be known where descriptions in the Spanish language or models have been deposited in the

[g] Art. 135. [h] Art. 136. [i] Art. 137.
[k] Looscy, 439; Urling, 177, App. N. 272.

Spain.

Royal Conservatory of Arts, unless three years have elapsed since such deposit, without the invention having been reduced to actual practice.[l]

If the subject matter patented or in use elsewhere be made the subject of a Patent by a person other than the inventor or his assign, the Spanish Patent is limited to a term of five years; and by Art. 3 of the Law of 1826, and the Ordinance dated June 14, 1829, the Patent exclusive powers of sale are conferred on the Patentee, on condition only of his manufacturing in Spain the articles sold under the Patent.

The application is by petition to the Queen. This (which must be on stamped paper), accompanied by a Specification, and models, &c., is then delivered to the Intendant of Madrid or the Intendant of the province in which the applicant resides. The demand is forwarded to the Secretary of State. No investigation is made into, nor does the Government grant imply, a guarantee as to the novelty or utility of the invention.[m] The Patentee must apply for Letters-patent within three months from the date of his application.

The titles of the Patents granted are published in the State Gazette. A Register, open to public inspection at the Royal Conservatory of Arts, contains further particulars as to the subject matter, the parties interested, and the term of the Patent.[n] Notice of the expiration of Patents is given by the Director of the Museum of Arts to the Council of the Royal Exchequer. Transfers of the right must be by public deed, registered by the Intendant within thirty days of its execution.

Working.

The Patent must be worked within a year and a day from the date of the Patent. Cessation of the working for the period of a year and a day avoids the Patent.

In case of infringement, the remedy is by civil action,

[l] Royal Decree of March 27, 1826, Art. 5.

[m] Ibid. Art. 21. [n] Ibid. Art. 14.

the ultimate appeal in which is to the Council of the Royal Exchequer.[o] A decision in favour of the Patentee is followed by confiscation to his use of the counterfeits and instruments of manufacture used by the infringer, together with compensation of three times their value, as estimated by competent persons.[p] Spain.

Patents of invention granted for five years may, on good cause being shown, be extended to ten years, but those originally granted for the longer terms cannot.[q] The right of the applicant to the exclusive use of his invention dates from the presentation of his petition to the Intendant, but the term is computed only from the date of the Patent. The fees payable are, in the case of Patents of invention for five years, 1,000 reals (£10:16*s.*); for ten years, 3,000 reals (£32:8*s.*), and for fifteen years, 6,000 reals (£64:16*s.*). Patents of importation pay 3,000 reals.[r] Duration.

Sweden.[s]

Swedish Patents are granted under the provisions of an Ordinance of the King, dated 13th December, 1834. They confer on the Patentee the exclusive right of manufacturing and selling and licensing others to manufacture and sell the Patent article.[t] It is transferable, like other property. Notice of transfer must, however, be given to the College of Commerce.[u] Sweden.

The subject-matter is distinguished as either original, improved or imported,[x] and the term varied accordingly, being fifteen, ten and five years respectively.[y]

The Patentee may be either a native or foreigner. If the latter, he is required within one year from the date Patentee.

[o] Royal Decree of March 27, 1826, Art. 26.
[p] Ibid. Art. 27.
[q] Ibid. Art. 4.
[r] Ibid. Art. 11.
[s] Urling, 199, App. P. 276; Loosey, 410.
[t] Art. 2.
[u] Art. 18.
[x] Art. 3.
[y] Art. 4.

Sweden.

of the grant either to establish himself in the kingdom or to appoint some resident in it to whom the Patent is to be transferred.[z] In the event of two parties applying for the same Patent, the first applicant will have the preference.[a]

Nature of the grant.

Royal Ordinances of the dates of 13th December, 1834, and 30th December, 1841, regulate the concessions in Sweden. The grant is obtained upon petition to the Crown. Specifications and drawings of the invention are inspected by the Royal College of Commerce. The Patentee is required, within two months from the date of the grant, to insert his Specification three times in the official Gazette (Sveriges Stats Tidnungen).[b] Opposition may be made within six weeks after the last insertion by any party, on the ground that the invention is not such as is stated by the Patentee.[c] The decision on such opposition is by arbitration, from which there is no appeal. The arbitrators are five in number, two chosen by the Patentee, two by the opposing party, and one by the four so chosen.[d] If the opposition be successful on such arbitration, the benefit of the decision is lost, unless the decision be communicated by the party opposing to the President of the Chamber of Commerce within two months from its date.[e] Pending the arbitration, the Patentee enjoys the full rights derivable from the invention.[f] The invention must commence its operation within two years from the date of the Patent, or such further period as the College of Commerce may allow, and must, once in every year, be proved to that body to be in continued activity.[g] Transfers of interests must be registered at

[z] Art. 5.
[a] Art. 8.
[b] Law of December 13, 1834, Art. 10; Loosey, 414.
[c] Law of Dec. 13, 1834, Art. 11.
[d] Ibid. Art. 12.
[e] Ibid. Art. 13.
[f] Ibid. Art. 14.
[g] Ibid. Art. 16.

the College of Commerce.[h] Infringement is on the first offence punished by a fine of 100 rix-dollars, and on each further instance 200: one half of such fine goes to the owner, the other half to the use of the poor. Counterfeits are confiscated for the benefit of the Patentee.[i] Sweden.

Although any person may apply for and obtain the beneficial interest under the grant, a resident in Sweden must be named to whom the Patent may be issued, and who may be responsible for the performance of the conditions prescribed in the Patent. Patentee.

The term of the grant is, for Patents of invention, fifteen years; for Patents of improvement, ten years; for a Patent of importation, five years; subject, however, to variation, according to the importance of the invention and expense of its establishment. The date of the grant is from the day on which it is placarded on the door of the College of Commerce at Stockholm.[k] Prolongation of the term may be obtained on proof of insufficient remuneration.[l] Duration.

Switzerland.[m]

In Switzerland no Patents are granted. Switzerland.

Zollverein.

At the period of the revolutionary outbreak of 1849, arrangements were all but concluded for the establishment of a general Patent Law, which would have rendered one Patent operative over the whole extent of the Zollverein.

[h] Law of Dec. 13, 1834, Art. 18.
[i] Ibid. Art. 17.
[k] Ibid. Art. 4.
[l] Urling, 274.
[m] Loosey, 425; (1851) Evid. 2137.

Zollverein.

States comprised within the Customs and Trade Union.[o] By that movement, however, the plan was necessarily suspended, and matters still remain on the footing established in 1843. By a Convention of the various states in union, ratified June 29th, in that year, certain general rules were agreed upon, subject to which each State was to be at liberty to regulate the grant by its existing or future laws. Of the States thus in union, the principal, such as Bavaria, Hanover, Prussia, Saxony and Wurtemburg, had already made the matter subject of Legislation. The following petty States and free towns, although without special Laws upon the subject, are, as may be seen from the Commissioners of Patents Journal, in the habit of granting Patents, the average duration of the grant being about five years:—Anhalt Dessau, Anhalt Bernburg, Anhalt Cöthen, Brunswick, Bremen, Frankfort, Hamburg, Hessen Cassel, Hessen Darmstadt, Hessen Homburg, Hohenzollern-Hechingen, Hohenzollern-Sigmaringen, Lippe Detmold, Lippe Shaumburg, Lübeck, Mecklenburg Schwerin, Mecklenburg Strelitz, Nassau, Oldenburg, Reuss zu Schleitz, Reuss zu Ebersdorf, Reuss zu Greiz, Sachsen Altenburg, Sachsen Coburg Gotha, Sachsen Meiningen, Sachsen Weimar Eisenach, Schwarzburg Rudolstadt, Schwartzburg Sondershausen, Waldeck.[p]

Baden.

The Grand Duchy of Baden has no special enactments with reference to Patents. The practice hitherto with reference to such has been to present a Petition to the Minister of the Interior, who, after having obtained the opinion of technical judges as to the novelty and utility of the invention, issued the Patent.

[o] By arrangement of the authorities in the various States, Patents can now be taken out in all, by application to that effect at the time of obtaining a Patent at Berlin. (1851) Evid. 2240.

Lousey, 33.

The duty payable is about forty or fifty florins (4*l.*), and the term variable from five to ten years.[q] Zollverein.

The following are the principal Rules of the Convention referred to:—

I. The subject matter must be really new and original, and never published within the limits of the Union. The question of novelty or originality is left to the decision of each State. The publication, by description or drawing, in any printed work, German or foreign, vitiates the Patent, if it be such that the execution or imitation of the Patent could be effected by a competent person from such description or drawing.

If the subject-matter is once patented in any State in Union, Patents in the other States will for that matter be granted only to the Patentee or his assign.

II. Patents of improvement on articles already known or patented may be granted, provided the improvement result from the discovery of some new and original property: such Patent cannot, however, prejudice the original one, nor can it be made use of without the consent of its proprietor.

III. A Patent in any State in Union will not entitle the grantee,

(a) To the exclusive importation of the Patent article;

(b) To an injunction to restrain its sale; or

(c) To an injunction to restrain the use and employment of the Patent (if it consist of articles or materials of general trade), unless the article patented be bought of him or with his consent. The exception to this Rule is in the case of the patented article being a machine or instrument used in manufacture.

[q] Loosey, 31.

Zollverein.

IV. Each State may, within its own jurisdiction, issue Patents conferring on the grantee the right to,

(1) The exclusive manufacture or employment of the article in question;

(2) The exclusive application of

(a) A new mode of manufacture;

(b) New machines or instruments for such manufacture to this extent, that the Patentee may restrain from the use of the Patent method, or the Patent article, all persons who have not been licensed by him to use such method, or have not obtained the Patent articles through him.

V. Subjects of all States in Union are to be placed on the same footing with those of the State making the grant. The grant of a Patent in one State of the Union is by no means to be used as an argument against the refusal of one for the same matter in another. The decision of the question whether an object is patentable is left to the independent judgment of each State, on the principles laid down for this purpose by each, without in any degree being influenced by what has taken place in other States. The grant of a Patent by any State to a subject of another State does not necessarily imply a right to the independent establishment and practice of the trade to which the Patent article belongs. Permission for this end must be specially obtained, in conformity with the regulations of each particular State.

VI. If, after the granting of a Patent, proof be adduced that the pretensions of its subject-matter to novelty cannot be sustained, the Patent shall be immediately annulled; but in cases where the invention has been known only to a few individuals, who keep the particulars thereof secret, the Patent shall be held valid (provided there be no other reason for nullifying the same) against

all persons, except such as were previously acquainted with the invention. Zollverein.

VII. The grant of a Patent in any State must be published immediately in the official journals, together with a notice of its subject-matter, the name and residence of the Patentee, and the duration of the grant. Patents prolonged or cancelled must be noticed in the same manner.

VIII. The different Governments of the States in Union are bound to communicate to each other, at the end of each year, an exact account of the Patents granted in them during the year.

Bavaria.

The Bavarian Law of Patents rests, so far as the seven older departments of the Kingdom are concerned, upon Arts. 9—11 of the Law of 11th September, 1825, and a Royal Ordinance of the 10th February, 1848; that for the Rhenish Provinces and the Palatinate upon the French Laws of 31st December, 1790, and 7th January, 1791 (Art. 357 of the Constitution of the year 3).[r] Bavaria. Legislation.

There is little calling for special remark. Any person may become a Patentee. His subsequently obtaining a Patent for the invention in a foreign State does not invalidate his privilege. Patentee.

The Patent must he worked within two years from the date of the grant. Working.

Infringement is punishable by fine of from 100 to 500 florins, of which half becomes the property of the Patentee, and half is given to the poor of the district in which the infringement is discovered. In addition to this fine, the counterfeits are confiscated for the benefit of the Patentee.[s]

The term is at the discretion of the Government, and varies from two to fifteen years. It is, however, usual Duration.

[r] Loosey, 35.

[s] Law of September 11, 1825, Art. 9.

for the applicant to name a period in his application. The annual duty is about 1*l.* 10*s.*[t]

Rhenish Bavaria.

Duration.

In Rhenish Bavaria, Patents are granted for five, ten or fifteen years, at the option of the inventor. The term of fifteen years cannot, however, be extended without a special decree of the legislative body.

Hanover.

Hanover.

Legislation.

The Hanoverian Law on the subject of Patents is contained in Articles 269—291, inclusive, of the Laws relative to trade, and which came into operation on July 1st, 1848.

Patents are divided into those of invention, importation and improvement. Petitions are addressed to the Minister of the Interior, accompanied by a complete Specification, the necessary models and drawings, and, if possible, a sample of the manufactured article. The Minister refers the matter to persons of experience, and on their favourable report issues the Patent. The grant is published in the official journals. If the Patent has been practised secretly before the grant the restrictive provisions of the Law do not apply to such persons, at the same time that such prior user does not invalidate the Patent. The Specifications may be published on their deposit. They are open to inspection by all persons resident in the kingdom, copies of them are issued on payment of the expenses. If the Patent be not at work within six months from the grant, or if it be suspended for six months at any time, the Patent is avoided. The Patent, if granted to aliens, contains a condition that the manufacture shall take place in the kingdom. The costs of the preparation of the Patent are defrayed by the Patentee. Patents cannot be granted for more than a term of ten years, or for a term beyond the expiration of a foreign Patent. If originally granted for less than this term it may be extended to it. Such decision must,

[t] Urling, 266.

however, be published upwards of a year before the expiration of the term originally named. Hanover.

Infringement is visited with a fine of from five to twenty dollars (15*s*. to 3*l*.), with confiscation of counterfeits and of the utensils, in cases where their retention would enable the infringer to repeat the offence.[u]

The property is transferable by deed or will, or by operation of law.

Prussia.[v]

Prussian Patents are founded on the Royal Proclamation of 14th October, 1815, and various supplementary Proclamations. They are, of course, subject to the General Rules of the Convention before mentioned. Prussia. Legislation.

A list of the Titles of all Patents granted, cancelled or prolonged is advertised by the Government in the "Prussian State Gazette."[x] The Titles of those in force are also published annually in the Transactions of the Society for the Promotion of the Useful Arts, Trade and Commerce. A list taken from the former source is to be found in the Commissioners of Patents Journal, published in this country. The Specifications are not published, but a Library and Museum at Berlin, containing scientific treatises and models, are open on certain days to the public.

The inventor in Prussia has to submit his claims to a far more severe ordeal than in any other of the States comprised within the Union.[y] Application is in the first instance made to the Minister of Trade and Commerce. It must be accompanied by a complete Specification of the invention, and should state the locality over which the privilege is demanded.[z] It is forwarded to the Patent Commissioner at Berlin.[a] No system of *caveats* Practice of obtaining.

[u] General Law of Hanoverian Police, Arts. 273, 274.
[v] Loosey, 339.
[x] (1851) Evid. 2175.
[y] (1851) Evid. 2249.
[z] Proclamation of 1815, sect. 3.
[a] The Commission is composed of one member conversant with

Prussia.

is in use, and parties are not heard in opposition. The report of the Commission (from which there is no appeal) is forwarded to the Minister of Finance. If the Specification be allowed to be that of a new invention the Patent issues, liable, however, to avoidance on its being subsequently proved deficient in any requisite.[b] The report frequently suggests conditions for the grant, and recommends the grant for a longer or shorter period according to circumstances.[c]

The Patentee is required to give evidence within six months from the grant of the execution of the invention. Failing this, he receives a warning. On giving reasons for the delay, approved by the Commission, the Minister is frequently induced to extend the time.[d] If the warning be unheeded the Patent is cancelled. On putting the invention into execution the Patentee must acquaint the head of the police, from whom he receives a certificate which he forwards to the Minister. If the invention be of part of a machine it is sufficient that such part is constructed. It need not be actively employed.

In cases of infringement the Patentee applies to the police, who, under the advice of a scientific examiner, stop the works of the infringer. Suits are instituted for the recovery of damages. The members of the Patent Commission are occasionally ordered to examine and decide in the event of the parties being dissatisfied with the decision of the police.[e]

Subject matter.

The Prussian requirements in general are far stricter than those of Saxony, Bavaria or Wurtemburg, or the

metallurgy, one versed in natural philosophy and chemistry, a third in civil engineering, and a fourth exclusively devoting his attention to railway matters. No person of a legal character is connected with the Commission. The Under-Secretary of the Board of Trade acts as its President, selects the member to whom each application is to be referred, and receives the Report.

[b] (1851) Evid. 2159.
[c] Ibid. 2165.
[d] Ibid. 2170.
[e] Ibid. 2195.

other States of the Zollverein.[f] Patents are granted only for a new invention or a substantial improvement on an existing invention.[g] Publication in foreign States prior to the grant operates in the same manner as would publication in Prussia.[h] Prussia.

The Patentee must be a Prussian citizen[i] or a person capable of voting in his parish (*gemeinde*).[k] Patentee.

The description, where necessary, must be accompanied by drawings and models.[l] All Specifications are kept under seal and remain so even after the expiration of the Patent, unless opened by the members of the board, in which case they are resealed and a memorandum endorsed of the purpose for which they have been opened.[m] If the term be extended a new Specification, embodying the invention as worked at the period of extension, must be furnished by the Patentee.[n] Specification.

The term for which the Patent is sought must be named by the applicant in his petition.[o] The term granted varies with the importance of the invention from three to twelve years; occasionally the term is prolonged.[p] There is no duty payable in respect of the Patent; the only expenses attendant on the grant are the costs of the stamp, writing and sealing of the instrument itself, which amount to 2½ rix dollars (7*s*. 6*d*.)[q] Duration.

Saxony.[r]

A Royal Ordinance, bearing date January 20, 1853, has been issued, with a view to bring the Law of Saxony as to Patents into harmony with the general regulations Saxony. Legislation.

[f] (1851) Evid. 2249, 2253. It is stated, that out of four hundred or five hundred applications, only from seventy to eighty Patents are granted annually. Evid. 2185.

[g] Ibid. 2146.

[h] Ibid. 2147.

[i] Proclamation of 1815, sect. 2.

[k] Ibid. sect. 1.

[l] Ibid. sect. 3.

[m] Ibid.

[n] (1851) Evid. 2253.

[o] Proclamation of 1815, sect. 3.

[p] (1851) Evid., Weddinge.

[q] Ibid. 2167.

[r] Loosey, 381.

Saxony.

of the Zollverein, the notice of which was communicated on the 31st July, 1843.

The grant, prolongation and expiration of each Patent is announced in the Leipzig Gazette.[r]

The Patent must be worked within a year from the grant. On payment of the dues and by application to the Minister of the Interior the term for working may, on due cause being shown, be prolonged.[s] It is open to any person to take steps for the repeal of a Patent by addressing himself to the Minister of the Interior. Such person, however, renders himself liable for the costs of the proceedings in the case of failure.[t]

In actions for infringement the Court determines whether the summary measures taken for the protection of the Patentee shall, during the decision of the question as to infringement or validity of the Patent, be suspended or continued. If it be necessary to refer to the Specification, models, &c., to establish the identity of the Defendant's manufacture with the Patent, they are forwarded to the competent authorities under a guarantee as to secrecy. In case of the matter being referred to persons conversant with the trade, the secrecy is enjoined on them with respect to matters contained in the Specification.[u]

Subject matter.

The subject matter must be new at the date of the Patent as to execution within the limits of the Union, and not have been described with the precision required in a Specification in any work, native or foreign. Medicines and the methods of making them, *cosmétiques*, aliments, including luxuries of that nature, models, designs, forms and general principles or scientific theories, are expressly excepted.[x] Patents of improvement on existing Patents are granted, but can only be put in

[r] Ord. 1853, Art. 16.
[s] Ord. 1853, Art. 9.
[t] Ibid. Art. 13.
[u] Ibid. Arts. 18—20.
[x] Ibid. Art. 1.

practice during the term of the original Patent by arrangement with its proprietor.[y] Saxony.

The fact of the invention having, previously to the date of the Patent, been known to some few persons who had kept the matter secret, will not destroy the novelty of the invention.[z]

Saxon subjects and aliens may equally apply for Patents. Aliens not belonging to the Union must, on application, give the name of a resident subject and citizen of Saxony, in whose name the Patent is made out.[a] Misrepresentation as to nationality of the Patentee avoids the Patent.[b] Patents are granted only to the inventor or his assign in cases where the invention is the property of a subject of one of the States in Union, and has already been patented in one of them. Assignments are limited to subjects of the States in Union.[c] Patentee.

Specifications, models and drawings are during the existence of the Patent carefully kept secret at the office of the Minister of the Interior. The Minister reserves to himself the right, on the expiration or repeal of the Patent, to make them public. Specifications are required to be executed with such precision as to render it possible for every person conversant with the branch of trade to execute the invention.[d] Specification.

The term originally conceded is five years, dating from the grant. On application, above one month before its expiration, to the Minister of the Interior, it may be prolonged for five years.[e] Duration.

[y] Ord. 1853, Art. 2.
[a] Ibid. Art. 3.
[c] Ibid. Art. 4, 5.
[e] Ibid. Art. 8.
[z] Ibid. Art. 12.
[b] Ibid. Art. 10 (3).
[d] Ibid. Art. 17.

WURTEMBURG.[f]

Wurtemburg. The Laws in this Kingdom with respect to Patents are contained in the General Ordinance of Trade, published on the 5th of August, 1836.

The fact of the grant having been made is published officially. The usual limit of the term is ten years.[g] The Patent must be worked within two years from the grant. The Specification is kept secret except in case of litigation.[h] Its inspection is subject to the following conditions:—The party requiring inspection must be either a citizen of or resident in Wurtemburg. He must show an interest requiring the inspection. He must give security not to make use of the information obtained without consent of the Patentee. The inspection is limited, in the case of Patents of invention, to the last year, and in those of importation to the latter half of the term. Notice of the application to inspect is given to the Patentee, and a certain time allowed him to show cause against the inspection.

Infringement is punished with confiscation of counterfeits and apparatus to the use of the Patentee, and damages, to be estimated by the Patentee, for the articles so made already disposed of. Art. 151. Importers of the Patent article are classed as infringers.

Patents of addition are usually granted free of extra charge.

[f] Loosey, 469.

[g] Art. 146.

[h] Art. 147 (1).

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STATUTES RELATING TO LETTERS-PATENT.

18 Hen. VI. c. 1 [A.D. 1439], *An Act that Letters-patent shall bear the Date of the King's Warrant delivered into the Chancery.*

27 Hen. VIII. c. 11 [A.D. 1535], *An Act concerning Clerks of the Signet and Privy Seal.*

3 & 4 Edw. VI. c. 4 [A.D. 1549], *An Act concerning Grants and Gifts made by Patentees out of Letters-patent.*

13 Eliz. c. 6 [A.D. 1570], *An Act that the Exemplification or Constat of the Letters-patent shall be as good and available as the Letters-patent themselves.*

31 Eliz. c. 5, s. 5 [A.D. 1589, limiting the time within which penal actions may be commenced].[a]

21 Jac. I. c. 3 [A.D. 1623].

An Act concerning Monopolies and Dispensations of Penall Laws, and the Forfeyture thereof.

The King's Declaration against Monopolies and Grants of Penalties and Dispensations;

Forasmuch as your most excellent Majestie, in your Royall Judgment and of your blessed Disposicon to the Weale and Quiet of your Subjects, did, in the yeare of our Lord God One thousand six hundred and ten, publish in Print to the whole Realme and to all Posteritie, that all Graunts of Monapolyes and of the benefitt of any penall Lawes, or of Power to dispence with the Lawe or to compound for the Forfeyture, are contrary

[a] 2 Hawk. P. C. 8th ed. c. 26, § 26.

to your Majesties Lawes, wch your Majesties declaracon is truly consonant and agreable to the auncient and fundamentall Lawes of this your Realme: And whereas your Majestie was further graciously pleased expressely to comaund that noe Suter should psume to move your Majestie for Matters of that Nature; yet nevertheles, uppon Misinformacons and untrue pfences of publique good, many such Graunts have been undulie obteyned and unlawfullie putt in execucon, to the greate Greevance and Inconvenience of your Majesties Subjects, contrary to the Laws of this your Realme, and contrary to your Majestys royall and blessed Intencon, soe published as aforesaid: For avoyding whereof and pventinge of the like in tyme to come May it please your excellent Majestie, at the humble Suite of the Lords Spirituall and Temporall, and the Comons in this present Parliament assembled, That it may be declared and enacted, and be it declared and enacted, by the authoritie of this psent Parliament, That all Monapolies, and all Comissions, Graunts, Licences, Charters and tres patents heretofore made or graunted, or hereafter to be made or graunted, to any pson or psons, Bodies Politique or Corporate whatsoever, of or for the sole buyinge, sellinge, makinge, workinge or using of any thinge within this Realme or the Dominion of Wales, or of any other Monopolies, or of Power, Libtie or Facultie to dispence with any others, or to give Licence or Toleracon to doe, use or excise any thinge against the tenor or purport of any Lawe or Statute, or to give or make any Warrant for any such Dispensacon, Licence or Toleracon to be had or made; or to agree or compound with any others for any Penaltie or Forfeitures lymitted by any Statute, or of any Graunt or Pmise of the Benefitt, Pfitt or Comoditie of any Forfeiture, Penalty or some of Money that is or shalbe due by any Statute before Judgement thereuppon had, and all Proclamacons, Inhibicons, Restraints, Warrants of Assistance, and all other Matters and Things whatsoever any way tendinge to the institutinge, erecting, strengtheninge, furtheringe or countenancing of the same, or any of them, are altogether contrary to the Laws of this Realme, and so are and shalbe utterlie void and of none effecte, and in noe wise to be put in ure or execucon.

All Monopolies and Grants, &c. thereof, or of Dispensations and Penalties declared void.

II. Validity of all Monopolies and of all such Grants &c., shall be tried by the Common Laws.

And be it further declared and enacted by the authoritie aforesaid, That all Monopolies and all such Cõmissions, Graunts, Licences, Charters, tres patents, Proclamacõns, Inhibicõns, Restraints, Warrants of Assistance and all other Matters and Things tendinge as aforesaid, and the force and validity of them and every of them, ought to be and shalbe for ever hereafter examyned, heard, tryed and determined by and accordinge to the Cõmon Lawes of this Realme, and not otherwise.

III. All persons disabled to use Grants, Monopolies, &c.

And be it further enacted by the authoritie aforesaid, That all pson and psons, Bodies Politique and Corporate whatsoever, which now are or hereafter shalbe, shall stand and be disabled and uncapable to have, use, exeise or putt in ure any Monopolie or any such Cõmission, Graunt, Licence, Charters, tres Patents, Proclamacõn, Inhibicõn, Restraint, Warrant of Assistance or other Matter or Thinge tendinge as aforesaid, or any Libtie, Power or Facultie grounded or ptended to be grounded upon them or any of them.

IV. Party aggrieved by any Monopoly or grant, &c., shall recover treble damages by action in the Superior Courts, with double costs.

And be it further enacted by the authoritie aforesaid, that if any pson or psons, at any tyme after the end of fortie dayes next after the end of this psent Session of Parliament, shalbe hindred greeved disturbed or disquieted, or his or their Goods or Chattells any way seised, attached, distreyned, taken, carried away or deteyned by occasion or ptext of any Monopolie, or of any such Cõmission, Graunt, Licence, Power, Libtie, Facultie, tres Patents, Proclamacõn, Inhibicõn, Restraint, Warrant of Assistance or other Matter or Thinge tendinge as aforesaid, and will sue to be releeved in or for any of the pmisses; that then and in every such case the same pson and psons shall and may have his and their Remedie for the same at the Cõmon Lawe by any Accõn or Accõns to be grounded upon this Statute, the same Accõn and Accõns to be heard and determyned in the Courts of Kings Bench, Cõmon Pleas and Exchequer, or in any of them, against him or them by whome he or they shalbe soe hindred greeved disturbed or disquieted, or against him or them by whome his or their Goods or Chattells shalbe so hindred, greeved, disturbed or disquieted, or against him or them by whome his or their Goods or Chattells shalbe soe seized, attached distrayned taken carried away or deteyned, wherein all and every such pson and psons which shalbe

soe hindred greeved disturbed or disquieted, or whose Goods or Chattells shalbe soe seized attached distrayned taken carryed away or detayned, shall recover three tymes soe much as the damages which he or they susteyned by means or occasion of beinge soe hindred greeved disturbed or disquieted, or by meanes of havinge his or their Goods or Chattells seised attached distrayned taken carryed away or deteyned, and in double costs; and in such Suits, or for the staying or delaying thereof, noe Essoine Protecc̃on Wager of Lawe Aydeprayer Priviledge Injunecc̃on or Order of Restraint shalbe in any wise prayed graunted admitted or allowed, nor any more than one Imperlance: And if any pson or psons shall, after Notice given that the Accc̃on dependinge is grounded upon this Statute, cause or ꝓcure any Accc̃on at the Cōmon Lawe grounded uppon this Statute to be stayed or delayed before Judgement, by coulor or meanes of any Order Power Warrant or Authoritie, save onely of the Court wherein such Accc̃on as aforesaid shalbe brought and dependinge, or after Judgement had uppon such Accc̃on, shall cause or ꝓcure the Execuc̃on of or uppon any such Judgement to be stayed or delayed by coulor or meanes of any Order Warrant Power or Authoritie, save onely by Writt of Error or Attaint, that then the said pson or psons soe offendinge shall incurre and sustaine the Paines, Penalties and Forfeitures ordeyned and provided by the Statute of Provision and Premunire made in the Sixteenth yeare of the Raigne of King Richarde the Second.

Penalty on unduly delaying any such Action, &c. Præmunire under Stat. 16 Ric. II. c. 5.

V. Proviso for existing Patents for twenty-one years, &c. Less for new inventions.

PROVIDED neverthelesse and be it declared and enacted, That any Declaracc̃on before menc̃oned shall not extend to any tres Patents and Graunts of Priviledge for the tearme of one and twentie yeares or under heretofore made of the sole workinge or makinge of any manner of newe Manufacture within this Realme, to the first and true Inventor or Inventors of such Manufactures, which others att the tyme of the makinge of such Letters Patents and Graunts did not use, soe they be not contrary to the Lawe nor mischievous to the State, by raisinge of the prices of Cōmodities at home or hurt of Trade or generallie inconvenient, but that the same shalbe of such force as they were or should be if this Acte had not bene made, and of none other; And if the same were made for more then one and twentie yeares, that then the same for the tearme of one and twentie years

onely, to be accompted from the date of the first tres Patents and Graunts thereof made, shalbe of such force as they were or should have byn yf the same had bene been made but for tearme of one and twentie yeares onely, and as if this Acte had never bene had or made, and of none other.

VI. Proviso for future Patents for fourteen years, or less for new inventions.

PROVIDED alsoe and be it declared and enacted, That any Declaracõn before mencõned shall not extend to any tres Patents and Graunts of Privilege for the tearme of fowerteene yeares or under, hereafter to be made of the sole working or makinge of any manner of new Manufactures within this Realme, to the true and first Inventor and Inventors of such Manufactures, which others at the tyme of makinge such tres Patents and Graunts shall not use, soe as alsoe they be not contrary to the Lawe nor mischievous to the State, by raisinge prices of Cõmodities at home or hurt of Trade or generallie inconvenient; the said fourteene yeares to be accompted [accomplished] from the date of the first tres Patents or Grant of such priviledge hereafter to be made, but that the same shall be of such force as they should be if this Act had never byn made, and of none other.

VII. Proviso for existing grants by Act of Parliament.

PROVIDED alsoe and it is hereby further intended, declared and enacted by the authoritie aforesaid, That this Act or any thing therein conteyned shall not in any wise extend or be p̃judiciall to any Graunt or Priviledge Power or Authoritie whatsoever heretofore made graunted allowed or confirmed by any Act of Parliament now in force, so long as the same shall so continue in force.

VIII. Proviso for warrant to justices to compound penalties.

PROVIDED alsoe, That this Act shall not extend to any Warrant or Privie Seale made or directed, or to be made or directed by his Majestie, his Heirs or Successors, to the Justices of the Courts of the Kings Bench or Cõmon Pleas and Barons of the Exchequer, Justices of Assize, Justices of Oyer and Terminer and Goale Deliverie, Justices of the Peace, and other Justices for the tyme being, having Power to heare and determyne Offences done against any Penall Statute, to compound for the Forfeitures of any Penall Statute depending in Suite and Question before them or any of them respectively after Plea pleaded by the Partie Defendant.

IX. Proviso for charters of London and other corporations.

PROVIDED alsoe and it is hereby further intended, declared and enacted, That this Act or any thing therein contayned shall not in any wise extend or be p̃judiciall

unto the City of London, or to any Cittie, Borough or Towne Corporate within this Realme, for or concerning any Graunts, Charters or lres Patents to them or any of them made or granted, or for or conc̃ning any Custome or Customes used by or within them or any of them, or unto any Corporacions Companies or Fellowshipps of any Art Trade Occupacion or Mistery, or to any Companies or Societies of Merchants within this Realme, erected for the mayntenance enlargement or ordering of any Trade of Merchandize, but that the same Charters Customes Corporacions Companies Fellowshipps and Societies, and their Liberties Priviledges Power and Iīmunities, shalbe and continue of such force and effect as they were before the making of this Act, and of none other; Any thing before in this Act contayned to the contrary in any wise notwithstanding.

X. Proviso for Patents concerning printing, saltpetre, gunpowder, ordnance and grants of offices.

PROVIDED also and be it enacted, That this Act or any Declaracion Provision Disablement Penaltie Forfeiture or other thing before menc̃oned shall not extend to any lres Patents or Grants of Priviledge heretofore made or hereafter to be made of for or concerning Printing; nor to any Cōmission, Graunt or lres Patents heretofore made or hereafter to be made of for or concerning the digging, making or compounding of Saltpeter or Gunpowder, or the casting or making of Ordinance or Shot for Ordinance; nor to any Graunt or Letters Patents heretofore made or hereafter to be made of any Office or Offices heretofore erected made or ordayned, and now in being or put in execucion, other then such Offices as have been decryed by any his Majesties Proclamacion or Proclamacions; but that all and every the same Graunts, Cōmissions and lres Patents, and all other Matters and Things tending to the mayntayning strengthening or furtherance of the same or any of them, shalbe and remayne of the like force and effect, and no other, and as free from the Declaracions Provisions Penalties and Forfeitures contayned in this Act as if this Act had never ben had nor made, and not otherwise.

XI. Proviso for Patents, &c., concerning Allum mines.

PROVIDED also and be it enacted, That this Act or any Declaracon Provision Disablement Penaltie Forfeiture or other Thing before menc̃oned, shall not extend to any Cōmission Graunt lres Patents or Priviledge heretofore made or hereafter to be made of for or concerning the digging, compounding or making of Allome

or Allome Mynes, but that all and every the same Cõmissions, Graunts, Letters Patents and Priviledges shalbe and remayne of the like force and effect, and no other, and as free from the Declaracions Provisions Penalties and Forfeitures contayned in this Acte, as if this Act had never byn had nor made, and not otherwise.

XII. [*Proviso for excepting Customs, &c. of Hoastmen of Newcastle as to Coals, Licences for Taverns, &c.*]

XIII. [*Proviso for excepting the Grants for Glass making* [" to Sir Robert Maunsell, Knight, Vice-Admirall of England"], *and that for the Exportation of Calves Skins* [James Maxwell, Esquire].

XIV. [*Proviso for excepting the Grants for making Smalts* [Abraham Baker], *and the making of Iron Ore* [Edward Lord Dudley].

3 & 4 Will. IV. c. 41.

An Act for the better Administration of Justice in His Majesty's Privy Council.

[Royal Assent, 14th August, 1833.]

[Sect. 1. *constitutes the President for the time being of His Majesty's Privy Council, the Lord High Chancellor of Great Britain for the time being, and such of the members of His Majesty's Privy Council as shall from time to time hold any of the offices following, that is to say, the office of Lord Keeper or First Lord Commissioner of the Great Seal of Great Britain, Lord Chief Justice or Judge of the Court of King's Bench, Master of the Rolls, Vice-Chancellor of England, Lord Chief Justice or Judge of the Court of Common Pleas, Lord Chief Baron or Baron of the Court of Exchequer, Judge of the Prerogative Court of the Lord Archbishop of Canterbury, Judge of the High Court of Admiralty, and Chief Judge of the Court in Bankruptcy, and also all persons members of His Majesty's Privy Council who shall have been President thereof or held the office of Lord Chancellor of Great Britain, or shall have held any of the offices mentioned, a Committee, to be styled "The Judicial Committee of the Privy Council:" Provided nevertheless, that His Majesty may from time to time, as and when he shall think fit, by His sign manual, appoint any two other persons, being Privy Councillors, to be members of the said Committee.*]

Sect. III. *provides for the reference to the said Committee of Appeals to His Majesty in Council.*

Sect. IV. *authorizes His Majesty to refer any other matters to the Committee.*

Sect. V. *enacts, that no matter shall be heard, unless in the presence of four members of the Committee.*]

Evidence may be taken *viva voce* or upon written depositions.

VII. And be it enacted, That it shall be lawful for the said Judicial Committee, in any matter which shall be referred to such Committee, to examine witnesses by word of mouth (and either before or after examination by deposition), or to direct that the depositions of any witness shall be taken in writing by the Registrar of the said Privy Council, to be appointed by His Majesty, as hereinafter mentioned, or by such other person or persons and in such manner, order and course as His Majesty in Council or the said Judicial Committe shall appoint and direct; and that the said Registrar and such other person or persons so to be appointed shall have the same powers as are now possessed by an examiner of the High Court of Chancery or of any Court Ecclesiastical.

[Sect. VIII. *enables the Committee to order any particular witness to be examined, and as to any particular facts, and to remit causes for rehearing.*]

Witnesses to be examined on oath, and to be liable to punishment for perjury.

IX. And be it enacted, That every witness who shall be examined in pursuance of this Act shall give his or her evidence upon oath, or, if a Quaker or Moravian, upon solemn affirmation, which oath and affirmation respectively shall be administered by the said Judicial Committee and Registrar and by such other person or persons as His Majesty in Council or the said Judicial Committee shall appoint; and that every such witness who shall wilfully swear or affirm falsely shall be deemed guilty of perjury, and shall be punished accordingly.

[Sect. X. *empowers the Committee to direct an issue to try any fact, and* Sect. XI. *to direct in certain cases depositions to be read on the trial of such issues;* Sect. XII., *to make such orders as to the admission of evidence as is made by the Court of Chancery, and* Sect. XIII. *to direct new trials of such issues.* Sect. XIV. *enacts, that the powers and provisions contained in Statutes* 13 *Geo. III. c.*63, *and* 1 *Will. IV. c.*22, (*intituled "An Act to enable the Courts of Law to order the Examination of Witnesses upon Interrogatories or otherwise,"*) *shall extend to and*

be exercised by the said Judicial Committee in all respects as if such Committee had been therein named as one of His Majesty's Courts of Law at Westminster.]

Costs to be in the discretion of the Committee.

XV. And be it enacted, That the costs incurred in the prosecution of any appeal or matter referred to the said Judicial Committee, and of such issues as the same Committee shall under this Act direct, shall be paid by such party or parties, person or persons, and be taxed by the aforesaid Registrar, or such other person or persons to be appointed by His Majesty in Council or the said Judicial Committee, and in such manner as the said Committee shall direct.

Committee may refer matters to Registrar in same manner as matters are by Court of Chancery referred to a Master.

XVII. And be it further enacted, That it shall be lawful for the said Committee to refer any matters to be examined and reported on to the aforesaid Registrar or to such other person or persons as shall be appointed by His Majesty in Council or by the said Judicial Committee, in the same manner and for the like purposes as matters are referred by the Court of Chancery to a Master of the said Court, and that for the purposes of this Act the said Registrar and the said person or persons so to be appointed shall have the same powers and authorities as are now possessed by a Master in Chancery.

The King may appoint Registrar.

XVIII. And be it further enacted, That it shall be lawful for His Majesty, under his sign manual, to appoint any person to be the Registrar of the said Privy Council, as regards the purposes of this Act, and to direct what duties shall be performed by the said Registrar.

Attendance of witnesses and production of papers, &c., may be compelled by subpœna.

XIX. And be it further enacted, That it shall be lawful for the President for the time being of the said Privy Council to require the attendance of any witnesses and the production of any deeds, evidences or writings by writ to be issued by such President in such and the same form, or as nearly as may be, as that in which a writ of *subpœna ad testificandum* or of *subpœna duces tecum* is now issued by His Majesty's Court of King's Bench at Westminster; and that every person disobeying any such writ so to be issued by the said President shall be considered as in contempt of the said Judicial Committee, and shall also be liable to such and the same Penalties and consequences as if such writ had issued out of the said Court of King's Bench, and may be sued for such penalties in the said Court.

Power of enforcing decrees.

XXVIII. And be it enacted, That the said Judicial Committee shall have and enjoy in all respects such and the same power of punishing contempts and of compelling appearances, and that His Majesty in Council shall have and enjoy in all respects such and the same powers of enforcing judgments, decrees and orders, as are now exercised by the High Court of Chancery or the Court of King's Bench (and both *in personam* and *in rem*), or as are given to any Court Ecclesiastical by an Act of Parliament passed in a session of Parliament of the second and third years of the reign of His present Majesty, intituled "An Act for enforcing the Process upon Contempts in the Courts Ecclesiastical of England and Ireland;" and that all such powers as are given to Courts Ecclesiastical, if of punishing contempts or of compelling appearances, shall be exercised by the said Judicial Committee, and if of enforcing decrees and orders, shall be exercised by His Majesty in Council, in such and the same manner as the powers in and by such Act of Parliament given, and shall be of as much force and effect as if the same had been thereby expressly given to the said Committee or to His Majesty in Council.

[*The remaining Sections of the Act are not specially applicable to the subject of this treatise.*]

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5 & 6 Will IV. c. 62.

An Act to repeal an Act of the present Session of Parliament, intituled "An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of Voluntary and Extra-Judicial Oaths and Affidavits," and to make other Provisions for the Abolition of unnecessary Oaths.

[Royal Assent, 9th September, 1835.]

Declaration substituted for oaths and affidavits heretofore required on taking out a Patent.

XI. And be it enacted, That whenever any person or persons shall seek to obtain any Patent under the Great Seal for any discovery or invention, such person or persons shall, in lieu of any oath, affirmation or affidavit which heretofore

has or might be required to be taken or made upon or before obtaining any such Patent, make and subscribe, in the presence of the person before whom he might, but for the passing of this Act, be required to take or make such oath, affirmation or affidavit, a declaration to the same effect as such oath, affirmation or affidavit; and such declaration, when duly made and subscribed, shall be to all intents and purposes as valid and effectual as the oath, affirmation or affidavit in lieu whereof it shall have been so made and subscribed.

[*Sect. XXI. constitutes persons making a false declaration guilty of a misdemeanor.*]

5 & 6 WILL. IV. c. 83.

An Act to amend the Law touching Letters-patent for Inventions.

[Royal Assent, 10th September, 1835.]

Any person having obtained Letters-patent for any invention, may enter a disclaimer of any part of his Specification, or a memorandum of any alteration therein, which, when filed, to be deemed part of such Specification.

WHEREAS it is expedient to make certain additions to and alterations in the present Law touching Letters-patent for inventions, as well for the better protecting of Patentees in the rights intended to be secured by such Letters-patent, as for the more ample benefit of the public from the same: Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That any person who, as grantee, assignee or otherwise, hath obtained, or who shall hereafter obtain Letters-patent for the sole making, exercising, vending or using of any invention, may, if he think fit, enter with the Clerk of the Patents of England, Scotland or Ireland respectively, as the case may be, having first obtained the leave of His Majesty's Attorney-General or Solicitor-General in the case of an English Patent, of the Lord Advocate or Solicitor-General of Scotland in the case of a Scotch Patent, or of His Majesty's Attorney-General or Solicitor-General for Ireland in the case of an Irish Patent, certified by his fiat and signature, a disclaimer of any part of either the Title of the invention or of the Specification, stating the reason for such disclaimer, or may, with such leave as aforesaid, enter a me-

morandum of any alteration in the said Title or Specification not being such disclaimer or such alteration as shall extend the exclusive right granted by the said Letters-patent; and such disclaimer or memorandum of alteration being filed by the said Clerk of the Patents, and enrolled with the Specification, shall be deemed and taken to be part of such Letters-patent or such Specification in all Courts whatever: Provided always, that any person may enter a caveat in like manner as caveats are now used to be entered against such disclaimer or alteration; which caveat, being so entered, shall give the party entering the same a right to have notice of the application being heard by the Attorney-General, or Solicitor-General or Lord Advocate respectively: Provided also, that no such disclaimer or alteration shall be receivable in evidence in any action or suit (save and except in any proceeding by *scire facias*) pending at the time when such disclaimer or alteration was enrolled, but in every such action or suit the original Title and Specification alone shall be given in evidence, and deemed and taken to be the Title and Specification of the invention for which the Letters-patent have been or shall have been granted: Provided also, that it shall be lawful for the Attorney-General, or Solicitor-General or Lord Advocate, before granting such fiat, to require the party applying for the same to advertise his disclaimer or alteration in such manner as to such Attorney-General, or Solicitor-General or Lord Advocate shall seem right, and shall, if he so require such advertisement, certify in his fiat that the same has been duly made.

Caveat may be entered as heretofore.

Disclaimer not to affect actions pending at the time.

Attorney-General may require the party to advertise his disclaimer.

II. And be it enacted, That if in any suit or action it shall be proved or specially found by the verdict of a jury that any person who shall have obtained Letters-patent for any invention, or supposed invention, was not the first inventor thereof, or of some part thereof, by reason of some other person or persons having invented or used the same, or some part thereof, before the date of such Letters-patent, or if such Patentee or his assigns shall discover that some other person had, unknown to such Patentee, invented or used the same, or some part thereof, before the date of such Letters-patent, it shall and may be lawful for such Patentee or his assigns to petition His Majesty in Council to confirm the said

Mode of proceeding where the Patentee is proved not to be the real inventor, though he believed himself to be so.

Letters-patent or to grant new Letters-patent, the matter of which petition shall be heard before the Judicial Committee of the Privy Council; and such Committee, upon examining the said matter and being satisfied that such Patentee believed himself to be the first and original inventor, and being satisfied that such invention, or part thereof, had not been publicly and generally used before the date of such first Letters-patent, may report to His Majesty their opinion that the prayer of such petition ought to be complied with, whereupon His Majesty may, if He think fit, grant such prayer; and the said Letters-patent shall be available in Law and Equity to give to such petitioner the sole right of using, making and vending such invention as against all persons whatsoever, any law, usage or custom to the contrary notwithstanding: Provided that any person opposing such petition shall be entitled to be heard before the said Judicial Committee: Provided also, that any person, party to any former suit or action touching such first Letters-patent, shall be entitled to have notice of such petition before presenting the same.

If in any action or suit a verdict or decree shall pass for the Patentee, the judge may grant a certificate, which, being given in evidence in any other suit shall entitle the Patentee, upon a verdict in his favour, to receive treble costs.

III. And be it enacted, That if any action at Law or any suit in Equity for an account shall be brought in respect of any alleged infringement of such Letters-patent heretofore or hereafter granted, or any *scire facias* to repeal such Letters-patent; and if a verdict shall pass for the Patentee or his assigns, or if a final decree or decretal order shall be made for him or them upon the merits of the suit, it shall be lawful for the judge before whom such action shall be tried to certify on the record, or the judge who shall make such decree or order to give a certificate under his hand that the validity of the Patent came in question before him, which record or certificate, being given in evidence in any other suit or action whatever touching such Patent, if a verdict shall pass or decree or decretal order be made in favour of such Patentee or his assigns, he or they shall receive treble costs in such suit or action, to be taxed at three times the taxed costs, unless the judge making such second or other decree or order, or trying such second or other action, shall certify that he ought not to have such treble costs.[a]

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[a] See *post*, Stat. 5 & 6 Vict. c. 97, s. 2.

Mode of proceeding in case of application for the prolongation of the term of a Patent.

IV. And be it further enacted, That if any person who now hath or shall hereafter obtain any Letters-patent as aforesaid shall advertise in the London Gazette three times, and in three London papers, and three times in some country paper published in the town where or near to which he carried on any manufacture of any thing made according to his Specification, or near to or in which he resides in case he carried on no such manufacture, or published in the county where he carries on such manufacture, or where he lives in case there shall not be any paper published in such town, that he intends to apply to His Majesty in Council for a prolongation of his term of sole using and vending his invention, and shall petition His Majesty in Council to that effect, it shall be lawful for any person to enter a caveat at the Council Office; and if His Majesty shall refer the consideration of such petition to the Judicial Committee of the Privy Council, and notice shall first be by him given to any person or persons who shall have entered such caveats, the petitioner shall be heard by his counsel and witnesses to prove his case, and the persons entering caveats shall likewise be heard by their counsel and witnesses; whereupon, and upon hearing and inquiring of the whole matter, the Judicial Committee may report to His Majesty that a further extension of the term in the said Letters-patent should be granted, not exceeding seven years; and His Majesty is hereby authorized and empowered, if He shall think fit, to grant new Letters-patent for the said invention for a term not exceeding seven years after the expiration of the first term, any law, custom or usage to the contrary in anywise notwithstanding: Provided that no such extension shall be granted if the application by petition shall not be made and prosecuted with effect before the expiration of the term originally granted in such Letters-patent.[b]

In case of action, &c., Notice of objections to be given.

V. And be it enacted, That in any action brought against any person for infringing Letters-patent, the defendant on pleading thereto shall give to the plaintiff, and in any *scire facias* to repeal such Letters-patent the plaintiff shall file with his declaration, a notice of any objections on which he means to rely at the trial of such action, and no objection shall be

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[b] See *post*, Stat. 2 & 3 Vict. c. 67.

allowed to be made in behalf of such defendant or plaintiff respectively at such trial, unless he prove the objections stated in such notice: Provided always, that it shall and may be lawful for any judge at chambers, on summons served by such defendant or plaintiff on such plaintiff or defendant respectively, to show cause why he should not be allowed to offer other objections whereof notice shall not have been given as aforesaid, to give leave to offer such objections on such terms as to such judge shall seem fit.

As to costs in actions for infringing Letters-patent.

VI. And be it enacted, That in any action brought for infringing the right granted by any Letters-patent, in taxing the costs thereof regard shall be had to the part of such case which has been proved at the trial, which shall be certified by the judge before whom the same shall be tried, and the costs of each part of the case shall be given according as either party has succeeded or failed therein, regard being had to the notice of objections as well as the counts in the declaration, and without regard to the general result of the trial.

Penalty for using unauthorized the name of a Patentee, &c.

VII. And be it enacted, That if any person shall write, paint, or print, or mould, cast or carve, or engrave or stamp upon any thing made, used, or sold by him, for the sole making or selling of which he hath not or shall not have obtained Letters-patent, the name, or any imitation of the name, of any other person who hath or shall have obtained Letters-patent for the sole making and vending of such thing, without leave in writing of such Patentee or his assigns, or if any person shall, upon such thing, not having been purchased from the Patentee or some person who purchased it from or under such Patentee, or not having had the licence or consent in writing of such Patentee or his assigns, write, paint, print, mould, cast, carve, engrave, stamp or otherwise mark the word "Patent," the words "Letters Patent," or the words "By the King's Patent," or any words of the like kind, meaning or import, with a view of imitating or counterfeiting the stamp, mark or other device of the Patentee, or shall in any other manner imitate or counterfeit the stamp or mark or other device of the Patentee, he shall for every such offence be liable to a penalty of fifty pounds, to be recovered by action of debt, bill, plaint, process or information, in any of His Majesty's Courts of Record at Westminster or in Ireland,

or in the Court of Session in Scotland, one-half to His Majesty, His heirs and successors, and the other to any person who shall sue for the same: Provided always, that nothing herein contained shall be construed to extend to subject any person to any penalty in respect of stamping or in any way marking the word "Patent" upon any thing made, for the sole making or vending of which a Patent before obtained shall have expired.[c]

1 & 2 Vict. c. 94, ss. 12 & 13.

An Act for keeping safely the Public Records.

[Royal Assent, 14th August, 1838.]

Power to order the making of authentic copies of records, which shall be sealed.

XII. And be it enacted, That the Master of the Rolls or Deputy Keeper of the Records may allow copies to be made of any Records in the custody of the Master of the Rolls, at the request and costs of any person desirous of procuring the same; and any copy so made shall be examined and certified as a true and authentic copy by the Deputy Keeper of the Records, or one of the Assistant Record Keepers aforesaid, and shall be sealed or stamped with the seal of the Record Office, and delivered to the party for whose use it was made.

Such copies sealed with the seal of the Record Office to be received in evidence.

XIII. And be it enacted, That every copy of a Record in the custody of the Master of the Rolls certified as aforesaid, and purporting to be sealed or stamped with the seal of the Record Office, shall be received as evidence in all Courts of Justice, and before all legal tribunals, and before either House of Parliament or any Committee of either House, without any further or other proof thereof, in every case in which the original record could have been received there as evidence.

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[c] (1835) 28 Hans. 477; *Sykes* v. *Sykes* (1824), Q. B., shot-belt, 3 B. & C. 543.

2 & 3 Vict. c. 67.

An Act to amend an Act of the Fifth and Sixth Years of the Reign of King William the Fourth, intituled "An Act to amend the Law touching Letters-patent for Inventions."

[Royal Assent, 24th August, 1839.]

[Sect. I. *After reciting Stat. 5 & 6 Will. IV. c. 83, s. 4, repeals so much of the recited Act as requires petitions to be prosecuted with effect before the expiration of the term of the Patent.*]

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

II. And be it further enacted, That it shall be lawful for the Judicial Committee of the Privy Council, in all cases where it shall appear to them that any application for an extension of the term granted by any Letters-patent, the petition for which extension shall have been referred to them for their consideration, has not been prosecuted with effect before the expiration of the said term from any other causes than the neglect or default of the petitioner, to entertain such application and to report thereon as by the said recited Act provided, notwithstanding the term originally granted in such Letters-patent may have expired before the hearing of such application; and it shall be lawful for Her Majesty, if she shall think fit, on the report of the said Judicial Committee recommending an extension of the term of such Letters-patent, to grant such extension, or to grant new Letters-patent for the invention or inventions specified in such original Letters-patent, for a term not exceeding seven years after the expiration of the term mentioned in the said original Letters-patent: Provided always, that no such extension or new Letters-patent shall be granted if a petition for the same shall not have been presented, as by the said recited Act directed, before the expiration of the term sought to be extended, nor in case of petitions presented after the thirtieth day of November, one thousand eight hundred and thirty-nine, unless such petition shall be presented six calendar months at the least before the expiration of such term, nor in any case unless sufficient reason shall be shown to the satisfaction of the said Judicial Committee for the omission to prosecute with effect the said application by petition before the expiration of the said term.

3 & 4 Vict. c. 24, ss. 1 & 2.

An Act to repeal part of an Act of the Forty-third Year of the Reign of Queen Elizabeth, intituled "An Act to avoid trifling and frivolous Suits in Law in Her Majesty's Courts in Westminster," and of an Act of the Twenty-second and Twenty-third Year of the Reign of King Charles the Second, intituled "An Act for laying Impositions on Proceedings at Law," and to make further Provisions in lieu thereof.

[Royal Assent, 3rd July, 1840.]

43 Eliz. c. 6. WHEREAS an Act passed in the forty-third year of the reign of Queen Elizabeth, intituled "An Act to avoid trifling and frivolous Suits in Law in Her Majesty's Courts in Westminster," and another Act in the twenty-second and twenty-third years

22 & 23 Car. II. c. 9. of the reign of King Charles the Second, intituled "An Act for laying Impositions on Proceedings at Law," which recites that many good subjects of this realm have been and daily are undone by such suits, contrary to the intention of the said Statute of Queen Elizabeth; but the same evil, notwithstanding, doth still prevail and increase, and it is expedient to make further provision for the prevention thereof: Now be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That the said recited Act of the forty-third of Elizabeth, so far as it relates to costs in actions of trespass or trespass on the case, and so much of the twenty-second and twenty-third of Charles the Second as relates to costs in personal actions, be and they are hereby repealed.

Recited acts in part repealed.

Costs not to be recovered in actions of trespass or of trespass on the case, where damages recovered are less than forty shillings, unless upon judge's certificate, &c.

II. And be it enacted, That if the plaintiff in any action of trespass or of trespass on the case brought or to be brought in any of Her Majesty's Courts at Westminster or in the Court of Common Pleas at Lancaster, or in the Court of Common Pleas at Durham, shall recover by the verdict of a jury, less damages than forty shillings, such plaintiff shall not be entitled to recover or obtain from the defendant, in respect of

such verdict, any costs whatever, whether it shall be given upon any issue or issues tried or judgment shall have passed by default, unless the judge or presiding officer before whom such verdict shall be obtained shall immediately afterwards certify on the back of the record or on the writ of trial or writ of inquiry that the action was really brought to try a right besides the mere right to recover damages for the trespass or grievance for which the action shall have been brought, or that the trespass or grievance in respect of which the action was brought was wilful and malicious.

5 & 6 Vict. c. 97, s. 2.

An Act to amend the Law relating to Double Costs, Notices of Action, Limitations of Actions and Pleas of the General Issue, under certain Acts of Parliament. [Royal Assent, 10th August, 1842.]

[Sect. I. *repeals the provisions in local and personal Acts giving double and treble costs.*]

Acts giving double or treble costs repealed. Parties to recover *full indemnity as* to all costs.

II. And be it enacted, That so much of any clause, enactment or provision in any public Act or Acts not local or personal, whereby it is enacted or provided that either double or treble costs, or any other than the usual costs between party and party shall or may be recovered, shall be and the same are hereby repealed: Provided always, that, instead of such costs, the party or parties heretofore entitled under such last-mentioned Acts to such double, treble or other costs shall receive such full and reasonable indemnity as to all costs, charges and expences incurred in and about any action, suit or other legal proceeding as shall be taxed by the proper officer in that behalf, subject to be reviewed in like manner and by the same authority as any other taxation of costs by such officer.

7 & 8 Vict. c. 69.

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.

[Royal Assent, 6th August, 1844.]

3 & 4 Will. 4, c. 41.

5 & 6 Will. 4, c. 83.

Whereas the 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," hath been found beneficial to the due administration of justice: and whereas another Act, passed in the sixth year of the said reign, intituled "An Act to amend the Law touching Letters-patent for Inventions," hath been also found advantageous to inventors and to the public: And whereas the Judicial Committee acting under the authority of the said Acts hath been found to answer well the purposes for which it was so established by Parliament, but it is found necessary to improve its proceedings in some respects for the better despatch of business, and expedient also to extend its jurisdiction and powers: And whereas by the laws now in force in certain of Her Majesty's colonies and possessions abroad no appeals can be brought to Her Majesty in Council for the reversal of the judgments, sentences, decrees and orders of any Courts of Justice within such colonies, save only of the Courts of Error or Courts of Appeal within the same, and it is expedient that Her Majesty in Council should be authorized to provide for the admission of appeals from other Courts of Justice within such colonies or possessions: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That it shall be competent to Her Majesty, by any order or orders to be from time to time for that purpose made with the advice of Her Privy Council, to provide for the admission of any appeal or appeals to Her Majesty in Council from any judgments, sentences, decrees or orders of any Court

Her Majesty, by order in Council, may provide for the admission of an appeal from any colony, although there shall not be a Court of Error or

of Justice within any British colony or possession abroad, although such Court shall not be a Court of Errors or a Court of Appeal within such colony or possession; and it shall also be competent to Her Majesty, by any such order or orders as aforesaid, to make all such provisions as to Her Majesty in Council shall seem meet for the instituting and prosecuting any such appeals, and for carrying into effect any such decisions or sentences as Her Majesty in Council shall pronounce thereon: Provided always, that it shall be competent to Her Majesty in Council to revoke, alter and amend any such order or orders as aforesaid as to Her Majesty in Council shall seem meet: Provided also, that any such order as aforesaid may be either general and extending to all appeals to be brought from any such Court of Justice as aforesaid, or special and extending only to any appeal to be brought in any particular case: Provided also, that every such general order in Council as aforesaid shall be published in the London Gazette within one calendar month next after the making thereof; Provided also, that nothing herein contained shall be construed to extend to take away or diminish any power now by law vested in Her Majesty for regulating appeals to Her Majesty in Council from the judgments, sentences, decrees or orders of any Courts of Justice within any of Her Majesty's colonies or possessions abroad.

of Appeal in such colony, and may revoke such orders.

Orders may be either general or special.

General orders to be published.

Nothing herein to affect the present powers for regulating appeals from the colonies.

II. And whereas it is expedient for the further encouragement of inventions in the useful arts to enable the time of monopoly in Patents to be extended in cases in which it can be satisfactorily shown that the expence of the invention hath been greater than the time now limited by law will suffice to reimburse: be it enacted, That if any person having obtained a Patent for any invention shall, before the expiration thereof, present a petition to Her Majesty in Council, setting forth that he has been unable to obtain a due remuneration for his expence and labour in perfecting such invention, and that an exclusive right of using and vending the same for the further period of seven years in addition to the term in such Patent mentioned, will not suffice for his reimbursement and remuneration, then, if the matter of such petition shall be by Her Majesty referred to the Judicial Committee of the Privy Council, the said Committee shall proceed to consider the

On petition, her Majesty may grant an extention of Patent term in certain cases.

same after the manner and in the usual course of its proceedings touching Patents; and if the said Committee shall be of opinion, and shall so report to Her Majesty, that a further period greater than seven years extension of the said Patent term ought to be granted to the petitioner, it shall be lawful for Her Majesty, if She shall so think fit, to grant an extension thereof for any time not exceeding fourteen years, in like manner and subject to the same rules as the extension for a term not exceeding seven years is now granted under the powers of the said Act of the sixth year of the reign of His late Majesty.

Her Majesty may grant extension for a lesser term than that prayed.

III. Provided always and be it enacted, That nothing herein contained shall prevent the said Judicial Committee from reporting that an extension for any period not exceeding seven years should be granted, or prevent Her Majesty from granting an extension for such lesser term than the petition shall have prayed.

As to extension of term where Patentees have assigned their Patent rights.

IV. And whereas doubts have arisen touching the power given by the said recited Act of the sixth year of the reign of His late Majesty in cases where the Patentees have wholly or in part assigned their right, be it enacted, That it shall be lawful for Her Majesty, on the report of the Judicial Committee, to grant such extension as is authorized by the said Act and by this Act, either to an assignee or assignees, or to the original Patentee or Patentees, or to an assignee or assignees and original Patentee or Patentees conjointly.

Disclaimer and memorandum of alteration under 5 & 6 Will. IV. c. 83, may be made, notwithstanding original Patentee may have assigned his Patent right.

V. And be it enacted, That in case the original Patentee or Patentees hath or have departed with his or their whole, or any part of his or their interest by assignment to any other person or persons, it shall be lawful for such Patentee, together with such assignee or assignees, if part only hath been assigned, and for the assignee or assignees if the whole hath been assigned, to enter a disclaimer and memorandum of alteration under the powers of the said recited Act, and such disclaimer and memorandum of such alteration, having been so entered and filed as in the said recited Act mentioned, shall be valid and effectual in favour of any person or persons in whom the rights under the said Letters-patent may then be or thereafter become legally vested; and no objection shall be made in any proceeding whatsoever on the ground that

the party making such disclaimer or memorandum of such alteration had not sufficient authority in that behalf.

Disclaimer and memorandum of alteration already made to be deemed valid.

VI. And be it enacted, That any disclaimer or memorandum of alteration before the passing of this Act, or by virtue of the said recited Act, by such Patentee, with such assignee or by such assignee as aforesaid, shall be valid and effectual to bind any person or persons in whom the said Letters-patent might then be or have since become vested; and no objection shall be made in any proceeding whatsoever that the party making such disclaimer or memorandum of alteration had not authority in that behalf.

New Letters-patent granted under 5 & 6 Will. IV. to assignees before the passing of this act declared valid.

VII. And be it enacted, That any new Letters-patent which, before the passing of this Act, may have been granted under the provisions of the above-recited Act of the sixth year of the reign of His late Majesty to an assignee or assignees, shall be as valid and effectual as if the said Letters-patent had been made after the passing of this Act, and the title of any party to such new Letters-patent shall not be invalidated by reason of the same having been granted to an assignee or assignees: Provided always, that nothing herein contained shall give any validity or effect to any Letters-patent heretofore granted to any assignee or assignees where any action or proceeding in *scire facias* or suit in equity shall have been commenced at any time before the passing of this Act, wherein the validity of such Letters-patent shall have been or may be questioned.

Proviso.

Judicial Committee may appoint clerk of *Privy Council* to take proofs in matters referred to them.

VIII. Provided always and be it enacted, That in the case of any matter or thing being referred to the Judicial Committee, it shall be lawful for the said Committee to appoint one or other of the Clerks of the Privy Council to take any formal proofs required to be taken in dealing with the matter or thing so referred, and shall, if they so think fit, proceed upon such Clerk's report to them as if such formal proofs had been taken by and before the said Judicial Committee.

[*The remaining sections of this Act are inapplicable to the subject of Letters-patent.*]

12 & 13 Vict. c. 109.

The Petty Bag Office and Enrolment in Chancery Amendment Act.

An Act to amend an Act to regulate certain Offices in the Petty Bag in the High Court of Chancery, the Practice of the Common Law side of that Court, and the Enrolment Office of the said Court.

[Royal Assent, 1st August, 1849.]

Certificates of enrolment in the Petty Bag Office.

XII. And be it enacted, That the Clerk of the Petty Bag shall, upon request and payment of the proper fees payable in respect thereof, indorse or write upon every Specification which at any time heretofore has been enrolled in the Petty Bag Office (provided the enrolment shall then be in his custody), and upon every deed, instrument in writing and document which at any time heretofore has been, or at any time hereafter shall be enrolled in the Petty Bag Office, a certificate stating that such Specification, deed, instrument in writing or document has been or was enrolled in the said Petty Bag Office, and the day of such enrolment, and shall cause such certificate to be sealed or stamped with the said Chancery Common Law Seal; and every such certificate purporting or appearing to be so sealed or stamped shall be admitted and received in evidence, as well before either House of Parliament as also before any Committee thereof, and also by and before all courts, tribunals, judges, justices and other persons whomsoever, without further proof, and as sufficient *prima facie* evidence that the Specification, deed, instrument in writing or document therein mentioned was duly enrolled in the Petty Bag Office on the day mentioned in such certificate.

Copies of documents sealed to be received in evidence without further proof.

XIII. And be it enacted, That every office copy issued from the Petty Bag Office shall be sealed with the said Chancery Common Law Seal for the time being; and every document sealed with such seal and purporting to be a copy of any record or other document of any description shall be deemed to be a true copy of such record or other document, and shall, without further proof, be admissible and admitted and received in evidence, as well before either House of Parliament as also before any Committee thereof, and also by and before all courts, tribunals, judges, justices, officers and

other persons whomsoever, in like manner and to the same extent and effect as the original record or other document would or might be admissible or admitted or received if tendered in evidence, as well for the purpose of proving the contents of such record or other document, as also proving such record or other document to be a record or document of or belonging to the said Court of Chancery, but not further or otherwise.

[Sect. XIV. *provides that writs, &c. issued out of the Petty Bag Office shall be sealed with the Chancery Common Law Seal.*]

Specifications to be enrolled in the Enrolment Office.

XV. And be it enacted, That every Specification or instrument in writing for describing or ascertaining any invention, and to be enrolled in Chancery in pursuance of Letters-patent under the Great Seal, shall be enrolled in the Enrolment Office of the Court of Chancery; and every Disclaimer and Memorandum of alteration to be enrolled in pursuance of an Act passed in the sixth year of the reign of His late Majesty King William the Fourth, intituled "An Act to amend the Law touching Letters-patent for Inventions," shall also be enrolled in the said Enrolment Office, whether the Specification of the said invention to which such Disclaimer or Memorandum of alteration shall relate shall or shall not have been enrolled in the said Enrolment Office; and the enrolment of every such Disclaimer and Memorandum of alteration in the said Enrolment Office shall be and be deemed to be the enrolment thereof in the proper office in pursuance of the provisions of the said Act.

5 & 6 Will. IV. c. 83.

Certificates of enrolment to be given, and when sealed, to be admitted as evidence.

XVIII. And be it enacted, That the Clerk of the said Enrolment Office, or his deputy or assistant, shall, upon request and payment of the proper fees payable in respect thereof, indorse or write upon every deed, Specification, instrument in writing and document which at any time heretofore has been, or at any time hereafter shall be enrolled in the said Enrolment Office, a certificate that such deed, Specification, instrument in writing or document has been or was enrolled in Chancery, and the day on which such enrolment was made, and shall cause such certificate to be sealed and stamped with the said seal of the Chancery Enrolment Office; and every such certificate purporting or appearing to be so sealed or stamped shall be admitted and received in evidence by all Courts and other tribunals, judges, justices and others without further

proof, and as sufficient *primâ facie* evidence that the deed, Specification, document or instrument in writing therein mentioned was duly enrolled in the Court of Chancery on the day and at the time mentioned in such certificate.

Copies of enrolments stamped with seal of Enrolment Office to be admitted in evidence.

XIX. And be it enacted, That every document or writing sealed or stamped, or purporting or appearing to be sealed or stamped, with the said seal of the Chancery Enrolment Office, and purporting to be a copy of any enrolment or other record, or of any other document or writing of any description whatsoever, including any drawings, maps or plans thereunto annexed or indorsed thereon, shall be deemed to be a true copy of such enrolment, record, document or writing, and of such drawing, map or plan (if any) thereunto annexed, and shall without further proof be admissible and admitted evidence, as well before either House of Parliament as also before any Committee thereof, and also by and before all Courts, tribunals, judges, justices, officers and other persons whomsoever, in like manner and to the same extent and effect as the original enrolment, record, document or writing could or might be admissible or admitted in evidence, as well for the purpose of proving the contents of such enrolment, record, document or writing, and the drawing, map or plan (if any) thereunto annexed, as also proving such enrolment, record, document or writing to be an enrolment, record, document or writing of or belonging to the said Court of Chancery, and that such enrolment, record, document or writing was made, acknowledged, prepared, filed or entered on the day and at the time when the original enrolment, record, document or writing shall purport to have been made, acknowledged, prepared, filed, or entered.

[Sect. XX. *declares the forging or altering of any seal or document made under the provisions of the Act to be felony.*

Sect. XXIV. *entitles solicitors to practise as attornies on the Common Law side of the Court of Chancery.*

Sect. XXV. *allows the same costs on the Common Law side of the Court of Chancery as in her Majesty's superior Courts of Common Law.*

Sect. XXVI. *enables writs to be tested in term time or vacation.*

Sect. XXVII. *declares that writs may be made returnable in term time or vacation.*

Sect. XXVIII. *declares that proceedings of the Court may be entered in term time or vacation.*

Sect. XXIX. *enacts that writs of* scire facias *may be directed to the sheriff of any county.*]

Declarations to be delivered and not filed.

XXX. And be it enacted, That in case any defendant in any action, suit or proceeding already or hereafter to be commenced shall appear on the Common Law side of the Court of Chancery, in person or by attorney, to answer in such action, suit or proceeding, it shall not be necessary to file any declaration, but the plaintiff or prosecutor or his attorney shall deliver the declaration to such defendant or his attorney, and shall also at the same time, in any action of *scire facias* to repeal Letters-patent for inventions, deliver to such defendant or his attorney the notice of objections (if any) required by the provisions of an Act passed in the sixth year of the reign of His late Majesty King William the Fourth, intituled "An Act to amend the Law touching Letters-patent for Inventions;" and it shall not be necessary at any time hereafter to file any notice of objections required by the said last-mentioned Act, but only to deliver the same to the defendant or his attorney as required by this Act; and that on the traverse of an inquisition found, the traverse shall be filed in the Petty Bag Office, and the traverser or his attorney shall deliver a copy thereof to the opposite party or his attorney.

Pleadings to be delivered and not filed.

XXXI. And be it enacted, That in any such action, suit or proceeding as aforesaid, no demurrer nor any plea or pleading subsequent to the declaration or traverse shall be filed in the said Office of the Petty Bag, or otherwise in the said Court of Chancery; and that in every such action, suit or proceeding every such demurrer, plea and subsequent pleading shall be delivered by the party demurring or pleading, or his attorney, to the opposite party or his attorney; and that the issue in any such action, suit or proceeding shall be delivered only, and not filed, and shall or may be made up and delivered by either party or his attorney to the opposite party or his attorney.

Issues may be tried in any of the Superior Courts.

XXXII. And be it enacted, That in case any issue respecting any matter of fact to be tried by the country has at any time heretofore been or shall at any time hereafter be joined in any action, suit or proceeding on the Common Law side of the Court of Chancery, then and in every such case the

record shall be made up and filed in the Office of the Petty Bag, and it shall and may be lawful to try such issue in fact in any one of the three Courts of Queen's Bench, Common Pleas or Exchequer of Pleas; and in every such case the writ of *venire facias juratores* for summoning a jury to try such issue shall or may be made returnable, and returned in such of the said three courts as the issue is intended to be tried in; and a transcript of the said record in Chancery containing such issue, shall or may thereupon be sent or taken into the Court in which such writ of *venire facias* shall be made returnable, in like manner as records containing issues may now be sent or taken from the Common Law side of the said Court of Chancery into the Court of Queen's Bench, and it shall not be necessary to issue any writ of *millimus* or other writ for the sending or taking such transcript into either of the said Courts; and in case such writ of *venire facias* shall be made returnable in either of the said Courts of Common Pleas or Exchequer of Pleas, such Court shall, upon the transcript of the said record being brought into such Court, proceed to try such issue either at bar or *nisi prius* as such Court shall think fit, and in like manner as such issue would or might have been tried in the Court of Queen's Bench in case such writ of *venire facias* had been made returnable in that Court, and the said transcript or the original record had been taken or deemed to be taken by the Lord Chancellor into that Court; and upon any such transcript as aforesaid being taken or brought into either of the said Courts of Common Pleas or Exchequer of Pleas, such Courts shall or may issue such writs, make such rules, and proceed therein in all respects for the trial or other lawful determination of the issue therein contained, in like manner as the Court of Queen's Bench could or might have done if such transcript or the original record had been taken into the Court of Queen's Bench, and with full power to set aside or vacate any trial, verdict or other proceeding, in like manner as could or might have been done by the said Court of Queen's Bench.

Record of issue to be filed in the Office of the Petty Bag.

XXXIII. And be it enacted, That in case any issue or issues in Law, or issues both in fact and in Law, shall be joined in any action, suit or proceeding on the Common Law side of the Court of Chancery, then and in such case the record of such issue or issues shall be made up and filed in the Office of

the Petty Bag, and a transcript of the said record shall or may thereupon be sent or taken into any one of the three Courts of Queen's Bench, Common Pleas or Exchequer; and such Court shall, upon the transcript being brought into any such Court, proceed to hear and determine the same in like manner as issues in Law, or issues in Law and fact, from the Common Law side of the said Court of Chancery have heretofore been heard and determined in the Court of Queen's Bench.

Superior Courts of Common Law to have the same powers as in actions pending in their Courts.

XXXIV. And be it enacted, That the said Courts of Queen's Bench, Common Pleas and Exchequer, and the judges thereof respectively, shall have the same power and authority in respect of the transcript of any record brought before them as aforesaid, and the pleadings, issues and matters therein contained, as they have in respect of the record in any action, suit or proceeding commenced or pending in such Court, and the pleadings, issues and matters in such record contained: Provided always, that nothing herein contained shall authorize the giving final judgment in any case in which the Court of Queen's Bench has not heretofore had such authority.

Superior Courts to give same judgment as Queen's Bench.

XXXV. And be it enacted, That, upon the trial or determination of any such issue or issues as aforesaid had or completed in any action, suit or proceeding from the Common Law side of the Court of Chancery, the Court in which such issue or issues shall be so tried or determined shall proceed to give judgment thereon, and execute such judgment in like manner as could or might have been done by the Court of Queen's Bench before the passing of the said recited Act or of this Act.

A transcript of proceedings in Courts of Common Law may be taken into Chancery.

XXXVI. And be it enacted, That, upon the trial or determination of any issue or issues by the said superior Courts of Common Law, or upon any rule or order being made or judgment given in any action, suit or proceeding in which the transcript of the record shall be brought before them as aforesaid, a transcript of such judgment, rule or order, and of the proceedings of the Court of Common Law upon such issue or issues, may be taken into the said Court of Chancery, to the end that judgment may be given or such other proceeding had in Chancery according to the law or custom of England; and no writ of *mittimus* or other writ shall be necessary for the purpose of remanding or taking a transcript of

the proceedings in the superior Courts of Common Law into the said Court of Chancery.

Costs to be taxed.

XXXVII. And be it enacted, That in all cases where any party shall be entitled to the costs of any such issues, or of any other proceedings or matters provided for by this Act, in any of the said Courts, such costs shall be taxed and regulated by one of the masters of the said Court respectively, who shall indorse his Allocatur on the rule or order, as the case may be, or upon the postea, before the same shall be taken or returned into the Court of Chancery as aforesaid.

Writs and proceedings to be prepared by parties or their attornies.

XXXVIII. And be it enacted, That every writ which shall or may at any time after this Act shall come into operation, lawfully issue out of the said Office of the Petty Bag under the said Chancery Common Law Seal, and every record and proceeding whatsoever on the Common Law side of the said Court of Chancery, shall be prepared, engrossed and issued by the party requiring or conducting the same, subject nevertheless to such rules and regulations as shall or may be made, and for the time being in force, by virtue of this Act or otherwise for regulating the practice of the Common Law side of the said Court of Chancery, and also subject to the payment of such lawful fees as shall or may be payable for or in respect thereof; and upon payment of such fees and complying with such rules, such writs, records and proceedings shall (when necessary, and if lawful and regular) be duly sealed.

Judges may dispose of matters arising in or incident to any action on the Common Law side of the Court of Chancery.

XXXIX. And be it enacted, That in every action, suit and proceeding now pending, or which at any time hereafter shall be commenced or pending, in the said Court of Chancery on the Common Law side thereof, it shall be lawful for the superior Courts of Common Law and the judges thereof respectively, and they are hereby respectively required, to hear and determine all such matters or applications arising in or incident to any such action, suit or proceeding as aforesaid, as before the passing of this Act might have been heard and determined by the Lord Chancellor and the Master of the Rolls, or either of them, and also to transact, do and perform all such business, matters and things in, about, touching or concerning any action, suit or proceeding on the Common Law side of the said Court of Chancery, as by virtue of any orders or regulations for the time being in force by virtue of this Act may be transacted, done or performed by such judge;

subject nevertheless and according to the provisions of this Act and the laws, rules and regulations for the time being in force for the regulation of the said Court and the practice and and proceedings thereof.

[Sect. XL. *empowers the Master of the Rolls to make orders for the custody, &c. of the records.*

Sect. XLI. *empowers the Lord Chancellor to make general rules and orders.*

Sect. XLIV. *provides that parties or their attornies shall cause their names to be entered in a book at the Petty Bag Office.*

Sect. XLV. *enacts that affidavits may be sworn before the Clerk of the Petty Bag.*]

Saving the jurisdiction of the Lord Chancellor and Master of the Rolls.

XLVI. And be it enacted, That nothing in this Act expressed or contained shall take away or in anywise diminish or prejudice the jurisdiction or any of the powers, rights or privileges of the Lord Chancellor as judge of the said Court of Chancery or otherwise howsoever, or the jurisdiction or any of the powers, rights or privileges of the Master of the Rolls as the keeper of the records of the said Court, or as a master or judge of the said Court, or otherwise.

[Sect. XLVII. *provides that forms of writs shall be settled and approved by the Lord Chancellor, with the advice and assistance of the Master of the Rolls.*

Sect. XLVIII. *provides that Courts of Common Law shall take cognizance of such writs, and make Rules and Regulations with reference thereto.*]

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14 Vict. c. 8.

An Act to extend the Provisions of the Designs Act, 1850, and to give Protection from Piracy to Persons exhibiting new Inventions in the Exhibition of the Works of Industry of all Nations in One thousand eight hundred and fifty-one.

[Royal Assent, 11th April, 1851.]

Whereas it is expedient that such protection as hereinafter mentioned should be afforded to persons desirous of exhibiting new inventions in the Exhibition of the Works of Industry of all Nations in one thousand eight hundred and fifty-one; Be it therefore enacted by the Queen's most excellent Majesty,

by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, as follows :—

Proprietors of new inventions to be allowed to exhibit them without prejudice to Letters-patent to be thereafter granted.

I. Any new invention for which Letters-patent might lawfully be granted may at any time during the year one thousand eight hundred and fifty-one, but not afterwards, be publicly exhibited in any place previously certified by the Lords of the Committee of Privy Council for Trade and Foreign Plantations to be a place of exhibition within the meaning of the Designs Act, 1850, without prejudice to any Letters-patent to be thereafter during the term of the Provisional Registration hereinafter mentioned, granted for such invention to the true and first inventor thereof: Provided always, that such invention have, previously to such public exhibition thereof, been provisionally registered in manner hereinafter mentioned; and provided also that the same be not otherwise publicly exhibited or used by or with the consent of the inventor prior to the granting of any such Letters-patent as aforesaid, except as hereinafter mentioned: Provided also, that no sale or transfer, or contract for sale or transfer, of the right to or benefit of any invention so provisionally registered, or of the rights acquired under this Act or to be acquired under any Letters-patent to be granted for such invention, shall be deemed a use of such invention, and the publication of any account or description of such invention in any catalogue, paper, newspaper, periodical or otherwise, shall not affect the validity of any Letters-patent to be during such term granted as aforesaid.

Inventions to be provisionally registered, and not to be used before granting of the Letters-patent.

Public trial of agricultural or horticultural implements under the direction of the Commissioners, not to prejudice Letters-patent.

II. The public trial or exhibition of any such invention as aforesaid (being an invention for purposes of agriculture or horticulture) which shall be certified by the Lords of the said Committee to have taken place under the direction of the Commissioners for the Exhibition of 1851, for purposes connected with the exhibition thereof in such place of public exhibition as aforesaid, whether such trial or exhibition take place before or after the passing of this Act, shall not prevent the provisional registration of such invention under this Act, nor prejudice or affect the validity of any Letters-patent to be granted for such invention during such term as aforesaid.

Certificate of invention to be granted for pro-

III. Her Majesty's Attorney-General, or such person or persons as he may from time to time appoint to issue certifi-

cates under this Act, on being furnished with a description in writing, signed by or on behalf of the person claiming to be the true and first inventor within this realm of any new invention intended to be exhibited in such place of public exhibition as aforesaid, and on being satisfied that such invention is proper to be so exhibited, and that the description in writing so furnished describes the nature of the said invention so intended to be exhibited, and in what manner the same is to be performed, shall give a certificate in writing under the hand or hands of such Attorney-General, or the person or persons appointed as aforesaid for the provisional Registration of such invention.

Provisional Registration.

IV. The Registrar of Designs, acting under the Designs Act, 1850, upon receiving such certificate, and being furnished with the name and place of address of the person by or on whose behalf the Registration is desired, shall register such certificate, name and place of address, and the invention to which any certificate so registered relates shall be deemed to be provisionally registered, and the Registration thereof shall continue in force for the term of one year from the time of the same being so registered; and the Registrar shall certify under his hand and seal that such invention has been provisionally registered, and the date of such Registration and the name and place of address of the person by or on whose behalf the Registration was effected: Provided always, that if any invention so provisionally registered be not actually exhibited in such place of public exhibition as aforesaid, or if the same invention be in use by others at the time of the said Registration, or if the person by or on whose behalf the said Registration has been effected be not the first and true inventor thereof, such Registration shall be absolutely void.

Certificate of invention to be registered.

V. The description in writing of any invention so provisionally registered shall be preserved in such manner and subject to such regulations as the Attorney-General shall direct, and any invention so provisionally registered and exhibited at such place of public exhibition as aforesaid shall have the words "Provisionally registered" marked thereon or attached thereto, with the date of the said Registration.

Description to be preserved, and invention to be marked with the words "Provisionally registered."

VI. Such provisional Registration as aforesaid shall during

Provisional Registration to con-

for same benefits as under the Designs Act, 1850.

the term thereof confer on the inventor of such invention, with respect thereto, all the protection against piracy and other benefits which, by the Designs Act, 1850, are conferred upon the proprietors of Designs provisionally registered thereunder, with respect to such Designs; and so long as such provisional Registration continues in force, the penalties and provisions of the Designs Act, 1842, for preventing the piracy of Designs, shall extend to the acts, matters and things next hereinafter mentioned as fully and effectually as if those penalties and provisions had been re-enacted in this Act and expressly extended to such acts, matters and things; that is to say, to the making, using, exercising or vending the invention so provisionally registered, to the practising the same or any part thereof, to the counterfeiting, imitating or resembling the same, to the making additions thereto or subtraction from the same, without the consent in writing of the person by or on whose behalf the said invention was so provisionally registered.

Letters-patent thereafter granted to be as valid as if inventions were not registered or exhibited.

VII. All Letters-patent to be during the term of any such provisional Registration granted in respect of any invention so provisionally registered, shall, notwithstanding the Registration thereof, and notwithstanding the exhibition thereof in such place of public exhibition or otherwise as aforesaid, be of the same validity as if such invention had not been so registered or exhibited; and it shall be lawful for the Lord High Chancellor, if he think fit, on the grant of any Letters-patent to any inventor in respect of any invention provisionally registered under this Act, to cause such Letters-patent to be sealed as of the day of such provisional Registration, and to bear date as of the day of such provisional Registration, the Act of the eighteenth year of King Henry the Sixth or any other Act notwithstanding.

Proprietors of *new and original* Designs exhibited to be entitled to benefits of Designs Acts, although Designs have been previously published elsewhere than in the United Kingdom, if not publicly sold or used.

VIII. Notwithstanding anything contained in the Designs Act, 1850, and the two Acts therein referred to and called the Designs Act, 1842, and the Designs Act, 1843, the protection intended to be by those Acts extended to the proprietors of new and original Designs shall be extended to the proprietors of all new and original Designs which shall be provisionally registered and exhibited in such place of public exhibition as aforesaid, notwithstanding that such Designs may

have been previously published or applied elsewhere than in the United Kingdom of Great Britain and Ireland: Provided that such Design, or any article to which the same has been applied, have not been publicly sold or exposed for sale previously to such exhibition thereof as aforesaid.

The Designs Act, 1850, and this Act, to be construed as one Act.

IX. All the provisions of the Designs Act, 1850, and the provisions incorporated therewith relating or applicable to the Designs to be provisionally registered thereunder, or to the proprietors of such Designs, except the provision for extending the term of any such provisional Registration, shall, so far as the same are not repugnant to or inconsistent with the provisions of this Act, apply to the inventions to be provisionally registered under this Act, and to the inventors thereof; and the said Designs Act and this Act shall be construed together as one Act.

Short title.

X. This Act may be cited as "The Protection of Inventions Act, 1851."

14 & 15 Vict. c. 82.

An Act to simplify the Forms of Appointment to certain Offices, and the manner of passing Grants under the Great Seal. [Royal Assent, 7th August, 1851.]

[Sect. I. *repeals so much of 27 Hen. VIII. c.* 11, *as relates to warrants for passing grants, &c., under the Great Seal.*

Sect. II. *dispenses with Signet and Privy Seal bills as authorities for passing grants under the Great Seal.*

Sect. III. *abolishes the offices of Clerks to the Signet and Privy Seal.*

Sect. V. *transfers the duties of the Signet Office not superseded by this Act to the office of Secretary of State.*]

Lord Chancellor and Secretary of State may make Rules concerning the passing of Letters-patent.

VII. It shall be lawful for the Lord High Chancellor or Lord Keeper or Lords Commissioners of the Great Seal of the United Kingdom from time to time after the passing of this Act to frame and establish such further rules and regulations to be observed on the passing of Letters-patent under the Great Seal of the United Kingdom as shall seem to them expedient.

Commencement of Act.

X. This Act shall, save where herein otherwise provided, commence from and after the thirty-first day of December, one thousand eight hundred and fifty-one.

15 Vict. c. 6.

An Act for extending the Term of the Provisional Registration of Inventions under "The Protection of Inventions Act, 1851."

[Royal Assent, 20th April, 1852.]

14 Vict. c. 8.

Whereas by "The Protection of Inventions Act, 1851," it was provided that the provisional Registration of any new invention registered thereunder should continue in force for the term of one year from the time of the same being so registered: and whereas it is expedient that the same should be extended: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same, as follows:

Provisional Registration under the recited Act to continue in force till 1st February, 1853.

I. The Registration of every invention provisionally registered under the said Act shall continue until the first day of February, one thousand eight hundred and fifty-three, in like manner and with the like effect and consequences as if every such Registration had been continued in force till that day by the said Act instead of for the term of one year from the time of the invention being registered as therein mentioned.

15 & 16 Vict. c. 83.

An Act for amending the Law for granting Patents for Inventions. [Royal Assent, 1st July, 1852.]

Whereas it is expedient to amend the Law concerning Letters-patent for inventions; 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 pre-

sent Parliament assembled, and by the authority of the same, as follows:

Certain persons constituted Commissioners of Patents for inventions, three of whom may not, the Chancellor or Master of the Rolls being one.

I. The Lord Chancellor, the Master of the Rolls, Her Majesty's Attorney-General for England, Her Majesty's Solicitor-General for England, the Lord Advocate, Her Majesty's Solicitor-General for Scotland, Her Majesty's Attorney-General for Ireland, and Her Majesty's Solicitor-General for Ireland, for the time being respectively, together with such other person or persons as may be from time to time appointed by Her Majesty, as hereinafter mentioned, shall be Commissioners of Patents for inventions; and it shall be lawful for Her Majesty from time to time, by Warrant under Her Royal Sign Manual, to appoint such other person or persons as She may think fit to be a Commissioner or Commissioners as aforesaid; and every person so appointed shall continue such Commissioner during Her Majesty's pleasure; and all the powers hereby vested in the Commissioners may be exercised by any three or more of them, the Lord Chancellor or Master of the Rolls being one.

Seal of the Commissioners.

II. It shall be lawful for the Commissioners to cause a Seal to be made for the purposes of this Act, and from time to time to vary such Seal, and to cause to be sealed therewith all the Warrants for Letters-patent under this Act, and all instruments and copies proceeding from the Office of the Commissioners, and all Courts, judges and other persons whomsoever shall take notice of such Seal, and receive impressions thereof in evidence, in like manner as impressions of the Great Seal are received in evidence, and shall also take notice of and receive in evidence, without further proof or production of the originals, all copies or extracts, certified under the Seal of the said Office, of or from documents deposited in such Office.

Power to Commissioners to make Rules and Regulations, which shall be laid before Parliament.

III. It shall be lawful for the Commissioners from time to time to make such Rules and Regulations (not inconsistent with the provisions of this Act) respecting the business of their Office, and all matters and things which under the provisions herein contained are to be under their control and direction, as may appear to them necessary and expedient for the purposes of this Act: and all such Rules shall be laid before both Houses of Parliament within fourteen days after

the making thereof, if Parliament be sitting, and if Parliament be not sitting, then within fourteen days after the next meeting of Parliament; and the Commissioners shall cause a Report to be laid annually before Parliament of all the proceedings under and in pursuance of this Act.

Commissioners to report annually to Parliament.

Treasury to provide offices.

IV. It shall be lawful for the Commissioners of Her Majesty's Treasury to provide and appoint from time to time proper places or buildings for an Office or Offices for the purposes of this Act.

Commissioners, with consent of the Treasury, to appoint clerks, &c.

V. It shall be lawful for the Commissioners, with the consent of the Commissioners of the Treasury, from time to time to appoint for the purposes of this Act such clerks and officers as the Commissioners may think proper; and it shall be lawful for the Commissioners from time to time to remove any of the clerks and officers so appointed.

Petition and declaration to be accompanied with a Provisional Specification.

VI. Every Petition for the grant of Letters-patent for an invention, and the Declaration required to accompany such petition, shall be left at the Office of the Commissioners, and there shall be left therewith a statement in writing, hereinafter called the Provisional Specification, signed by or on behalf of the applicant for Letters-patent, describing the nature of the said invention; and the day of the delivery of every such Petition, Declaration and Provisional Specification shall be recorded at the said Office, and indorsed on such Petition, Declaration and Provisional Specification, and a Certificate thereof given to such applicant or his agent; and all such Petitions, Declarations and Provisional Specifications shall be preserved in such manner as the Commissioners may direct, and a registry thereof and of all proceedings thereon kept at the Office of the Commissioners.

Every application to be referred to one of the Law Officers.

VII. Every application for Letters-patent made under this Act shall be referred by the Commissioners, according to such regulations as they may think fit to make, to one of the Law Officers.

The Provisional Specification to be referred to the Law Officer who, if satisfied, may give a certificate of his allowance, which shall be filed.

VIII. The Provisional Specification shall be referred to the Law Officer, who shall be at liberty to call to his aid such scientific or other person as he may think fit, and to cause to be paid to such person by the applicant such remuneration as the Law Officer shall appoint; and if such Law Officer be satisfied that the Provisional Specification describes the nature of

the invention, he shall allow the same, and give a Certificate of his allowance, and such Certificate shall be filed in the Office of the Commissioners, and thereupon the invention therein referred to may, during the term of six months from the date of the application for Letters-patent for the said invention, be used and published without prejudice to any Letters-patent to be granted for the same, and such protection from the consequences of use and publication is hereinafter referred to as Provisional Protection: Provided always, that in case the Title of the invention or the Provisional Specification be too large or insufficient, it shall be lawful for the Law Officer to whom the same is referred to allow or require the same to be amended.

Inventor may deposit, in lieu of a Provisional Specification, a Complete Specification, such deposit to confer for a limited time the like rights as Letters-patent.

IX. The applicant for Letters-patent for an invention, instead of leaving with the Petition and Declaration a Provisional Specification as aforesaid, may, if he think fit, file with the said Petition and Declaration an instrument in writing under his hand and seal (hereinafter called a Complete Specification), particularly describing and ascertaining the nature of the said invention, and in what manner the same is to be performed, which Complete Specification shall be mentioned in such Declaration, and the day of the delivery of every such Petition, Declaration and Complete Specification shall be recorded at the Office of the Commissioners, and indorsed on such Petition, Declaration and Specification, and a Certificate thereof given to such applicant or his agent, and thereupon, subject and without prejudice to the provisions hereinafter contained, the invention shall be protected under this Act for the term of six months from the date of the application, and the applicant shall have during such term of six months the like powers, rights and privileges as might have been conferred upon him by Letters-patent for such invention, issued under this Act, and duly sealed as of the day of the date of such application; and during the continuance of such powers, rights and privileges under this provision, such invention may be used and published without prejudice to any Letters-patent to be granted for the same; and where Letters-patent are granted in respect of such invention, then in lieu of a condition for making void such Letters-patent in case such invention be not described and ascertained by a subsequent Specification, such Letters-

patent shall be conditioned to become void if such Complete Specification, filed as aforesaid, does not particularly describe and ascertain the nature of the said invention, and in what manner the same is to be performed; and a copy of every such Complete Specification shall be open to the inspection of the public, as hereinafter provided, from the time of depositing the same, subject to such regulation as the Commissioners may make.

Letters-patent granted to the first inventor not to be invalidated by Protection obtained in fraud of the first inventor.

X. In case of any application for Letters-patent for any invention, and the obtaining upon such application of Provisional Protection for such invention, or of Protection for the same, by reason of the deposit of a Complete Specification as aforesaid in fraud of the true and first inventor, any Letters-patent granted to the true and first inventor of such invention shall not be invalidated by reason of such application, or of such Provisional or other Protection as aforesaid, or of any use or publication of the invention subsequent to such application, and before the expiration of the term of such Provisional or other Protection.

Commissioners to cause Protections to be advertised.

XI. Where any invention is provisionally protected under this Act, or protected by reason of the deposit of such Complete Specification as aforesaid, the Commissioners shall cause such Provisional Protection or such other Protection as aforesaid to be advertised in such manner as they may see fit.

Application for Letters-patent to be advertised, and also oppositions to the same.

XII. The applicant for Letters-patent, so soon as he may think fit after the invention shall have been provisionally protected under this Act, or where a Complete Specification has been deposited with his Petition and Declaration, then so soon as he may think fit after such deposit, may give Notice at the Office of the Commissioners of his intention of proceeding with his application for Letters-patent for the said invention, and thereupon the said Commissioners shall cause his said application to be advertised in such manner as they may see fit; and any persons having an interest in opposing the grant of Letters-patent for the said invention shall be at liberty to leave Particulars in writing of their objections to the said application at such place and within such time and subject to such regulations as the Commissioners may direct.

Specification and objections to be referred to Law Officer.

XIII. So soon as the time for the delivery of such objections shall have expired, the Provisional Specification or Com-

plete Specification (as the case may be) and Particulars of objection (if any) shall be referred to the Law Officer to whom the application has been referred.

Power to Law Officer to order by or to whom costs shall be paid.

XIV. It shall be lawful for the Law Officer to whom any application for such Letters-patent is referred, if he see fit, by Certificate under his hand, to order by or to whom the costs of any hearing or inquiry upon any objection, or otherwise in relation to the grant of such Letters-patent, or in relation to the Provisional (or other) Protection acquired by the applicant under this Act, shall be paid, and in what manner and by whom such costs are to be ascertained; and if any costs so ordered to be paid be not paid within four days after the amount thereof shall be so ascertained, it shall be lawful for such Law Officer to make an order for the payment of the same, and every such order may be made a rule of one of Her Majesty's Superior Courts at Westminster or Dublin, and may be recorded in the Books of Council and Session in Scotland to the effect that execution may pass thereupon in common form.

Power to Law Officer to cause a Warrant to be made for sealing of Letters-patent.

XV. It shall be lawful for such Law Officer, after such hearing, if any, as he may think fit, to cause a Warrant to be made for the sealing of Letters-patent for the said invention, and such Warrant shall be sealed with the Seal of the Commissioners, and shall set forth the tenor and effect of the Letters-patent thereby authorized to be granted, and such Law Officer shall direct the insertion in such Letters-patent of all such restrictions, conditions and provisoes as he may deem usual and expedient in such grants, or necessary in pursuance of the provisions of this Act; and the said Warrant shall be the Warrant for the making and sealing of Letters-patent under this Act according to the tenor of the said Warrant: Provided always, that the Lord Chancellor shall and may have and exercise such powers, authority and discretion in respect to the said Warrant, and the Letters-patent therein directed to be made under this Act, as he now has and might now exercise with respect to the Warrant for the issue under the Greal Seal of Letters-patent for any invention, and with respect to the making and issuing of such Letters-patent; and the writ of *scire facias* shall lie for the repeal of any Letters-patent issued under this Act, in the like cases as the

Chancellor to have same powers in respect to Warrant, &c., *as he now has.*

Writ of *scire facias.*

same would lie for the repeal of Letters-patent which may now be issued under the Great Seal.

Nothing to affect the prerogative of the Crown in granting or withholding grant of Letters-patent.

XVI. Provided also, That nothing herein contained shall extend to abridge or affect the prerogative of the Crown in relation to the granting or withholding the grant of any Letters-patent; and it shall be lawful for Her Majesty, by Warrant under Her Royal Sign Manual, to direct such Law Officer to withhold such Warrant as aforesaid, or that any Letters-patent for the issuing whereof he may have issued a Warrant as aforesaid shall not issue, or to direct the insertion in any Letters-patent to be issued in manner herein provided of any restrictions, conditions or provisoes which Her Majesty may think fit in addition to or in substitution for any restrictions, conditions or provisoes which would otherwise be inserted therein under this Act; and it shall also be lawful for Her Majesty, by like Warrant, to direct any Complete Specification which may have been filed under the provision hereinbefore contained, and in respect of the invention described in which no Letters-patent may have been granted, to be cancelled, and thereupon the Protection obtained by the filing of such Complete Specification shall cease.

Letters-patent to be made subject to avoidance on non-fulfilment of certain conditions.

XVII. All Letters-patent for inventions granted under the provisions hereinbefore contained shall be made subject to the condition that the same shall be void, and that the powers and privileges thereby granted shall cease and determine, at the expiration of three years and seven years respectively from the date thereof, unless there be paid, before the expiration of the said three and seven years respectively, the sum or sums of money and stamp duties in the Schedule to this Act annexed; and the payment of the said sums of money and stamp duties respectively shall be indorsed on the Warrant for the said Letters-patent; and such Officer of the Commissioners as may be appointed for this purpose shall issue under the Seal of the Commissioners a Certificate of such payment, and shall indorse a receipt for the same on any Letters-patent issued under the authority of the said Warrant; and such Certificate, duly stamped, shall be evidence of the payment of the several sums respectively.

Letters-patent issued under the Great Seal to be

XVIII. The Commissioners, so soon after the sealing of the said Warrant as required by the applicant for the Letters-

patent, shall cause to be prepared Letters-patent for the invention, according to the tenor of the said Warrant, and it shall be lawful for the Lord Chancellor to cause such Letters-patent to be sealed with the Great Seal of the United Kingdom, and such Letters-patent so sealed shall extend to the whole of the United Kingdom of Great Britain and Ireland, the Channel Islands, and the Isle of Man; and in case such Warrant so direct, such Letters-patent shall be made applicable to Her Majesty's colonies and plantations abroad, or such of them as may be mentioned in such Warrant; and such Letters-patent shall be valid and effectual as to the whole of such United Kingdom, and the said islands and isle, and the said colonies or plantations, or such of them as aforesaid, and shall confer the like powers, rights and privileges as might, in case this Act had not been passed, have been conferred by several Letters-patent of the like purport and effect passed under the Great Seal of the United Kingdom, under the Seal appointed to be used instead of the Great Seal of Scotland, and under the Great Seal of Ireland respectively, and made applicable to England, the dominion of Wales, the town of Berwick-upon-Tweed, the Channel Islands, and Isle of Man, and the said colonies and plantations, or such of them as aforesaid, to Scotland, and to Ireland respectively, save as herein otherwise provided: Provided always, that nothing in this Act contained shall be deemed or taken to give any effect or operation to any Letters-patent to be granted under the authority of this Act in any colony in which such or the like Letters-patent would be invalid by the Law in force in the same colony for the time being: Provided always, that a transcript of such Letters shall, so soon after the sealing of the same and in such manner as the Commissioners shall direct, be transmitted to the Director of Chancery in Scotland, and be recorded in the records of Chancery in Scotland, upon payment of such fees as the Commissioners shall appoint, in the same manner and to the same effect in all respects as Letters-patent passing under the Seal appointed by the Treaty of Union to be used in place of the Great Seal of Scotland have heretofore been recorded, and extracts from the said records shall be furnished to all parties requiring the same, on payment of such fees as the Commissioners shall direct,

valid for the whole of the United Kingdom, the Channel Islands and the Isle of Man.

Nothing to give effect to any Letters-patent granted in any colony.

and shall be received in evidence in all courts in Scotland to the like effect as the Letters-patent themselves.

No Letters-patent to be issued after three months from date of Warrant.

XIX. Provided always, That no Letters-patent, save as hereinafter mentioned in the case of Letters-patent destroyed or lost, shall issue on any Warrant granted as aforesaid, unless application be made to seal such Letters-patent within three months after the date of the said Warrant.

No Letters-patent (except in lieu of those lost, &c.) to be issued after expiration of protection given by this Act.

XX. Provided also, That no Letters-patent (save Letters-patent issued in lieu of others destroyed or lost) shall be issued or be of any force or effect unless the same be granted during the continuance of the Provisional Protection under this Act, or, where a Complete Specification has been deposited under this Act, then unless such Letters-patent be granted during the continuance of the protection conferred under this Act by reason of such deposit, save that where the application to seal such Letters-patent has been made during the continuance of such Provisional or other Protection as aforesaid, and the sealing of such Letters-patent has been delayed by reason of a *caveat* or an application to the Lord Chancellor against or in relation to the sealing of such Letters-patent, then such Letters-patent may be sealed at such time as the Lord Chancellor shall direct.

Letters-patent may be granted to personal representatives of the applicant during the term of Protection, or within three months after applicant's decease.

XXI. Provided also, That where the applicant for such Letters-patent dies during the continuance of the Provisional Protection, or the Protection by reason of the deposit of a Complete Specification (as the case may be), such Letters-patent may be granted to the executors or administrators of such applicant during the continuance of such Provisional or other Protection, or at any time within three months after the death of such applicant, notwithstanding the expiration of the term of such Provisional or other Protection, and the Letters-patent so granted shall be of the like force and effect as if they had been granted to such applicant during the continuance of such Provisional or other Protection.

If Letters-patent be destroyed or lost, other Letters-patent may be issued.

XXII. Provided also, That in case any such Letters-patent shall be destroyed or lost, other Letters-patent of the like tenor and effect, and sealed and dated as of the same day, may, subject to such regulations as the Commissioners may direct, be issued under the authority of the Warrant in pursuance of which the original Letters-patent were issued.

Letters-patent may be dated as of the day of the application.

XXIII. It shall be lawful (the Act of the eighteenth year of King Henry the Sixth, chapter one, or any other Act, to the contrary notwithstanding,) to cause any Letters-patent to be issued in pursuance of this Act to be sealed and bear date as of the day of the application for the same, and in case of such Letters-patent for any invention provisionally registered under the "Protection of Inventions Act, 1851," as of the day of such Provisional Registration, or, where the Law Officer to whom the application was referred, or the Lord Chancellor, thinks fit and directs, any such Letters-patent as aforesaid may be sealed and bear date as of the day of the sealing of such Letters-patent, or of any other day between the day of such application or Provisional Registration and the day of such sealing.

Letters-patent where antedated to be of the same validity as if sealed on the day of the date.

XXIV. Any Letters-patent issued under this Act, sealed and bearing date as of any day prior to the day of the actual sealing thereof, shall be of the same force and validity as if they had been sealed on the day as of which the same are expressed to be sealed and bear date: Provided always, that save where such Letters-patent are granted for any invention, in respect whereof a Complete Specification has been deposited upon the application for the same under this Act, no proceeding at Law or in Equity shall be had upon such Letters-patent in respect of any infringement committed before the same were actually granted.

Letters-patent obtained in United Kingdom for patented foreign inventions not to continue in force after the expiration of the foreign Patent.

XXV. Where, upon any application made after the passing of this Act, Letters-patent are granted in the United Kingdom for or in respect of any invention first invented in any foreign country or by the subject of any foreign power or State, and a Patent or like privilege for the monopoly or exclusive use or exercise of such invention in any foreign country is there obtained before the grant of such Letters-patent in the United Kingdom, all rights and privileges under such Letters-patents shall (notwithstanding any term in such Letters-patent limited) cease and be void immediately upon the expiration or other determination of the term during which the Patent or like privilege obtained in such foreign country shall continue in force, or where more than one such Patent or like privilege is obtained abroad, immediately upon the expiration or determination of the term which shall first

expire or be determined of such several Patents or like privileges: Provided always, that no Letters-patent for or in respect of any invention for which any such Patent or like privilege as aforesaid shall have been obtained in any foreign country, and which shall be granted in the said United Kingdom after the expiration of the term for which such Patent or privilege was granted or was in force, shall be of any validity.

Letters-patent not to prevent the use of inventions in foreign ships resorting to British ports;

XXVI. No Letters-patent for any invention (granted after the passing of this Act) shall extend to prevent the use of such invention in any foreign ship or vessel, or for the navigation of any foreign ship or vessel, which may be in any port of Her Majesty's dominions, or in any of the waters within the jurisdiction of any of Her Majesty's Courts, where such invention is not so used for the manufacture of any goods or commodities to be vended within or exported from Her Majesty's dominions: Provided always, that this enactment shall not extend to the ships or vessels of any foreign State of which the laws authorize 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 ships or vessels, or in or about the navigation of British ships or 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 of goods or commodities to be vended within or exported from the territories of such foreign state.

except ships of foreign states in whose ports British ships are prevented from using foreign inventions.

Specifications to be filed instead of being enrolled.

XXVII. All Letters-patent to be granted under this Act (save only Letters-patent granted after the filing of a Complete Specification) shall require the Specification thereunder to be filed in the High Court of Chancery, instead of requiring the same to be enrolled, and no enrolment shall be requisite.

Specifications, &c. to be filed in such office as Lord Chancellor shall direct.

XXVIII. Every Specification to be filed in pursuance of the condition of any Letters-patent shall be filed in such Office of the Court of Chancery as the Lord Chancellor shall from time to time appoint, and every Provisional Specification and Complete Specification left or filed at the Office of the Commissioners on the application for any Letters-patent shall

forthwith after the grant of the Letters-patent, or if no Letters-patent be granted then immediately on the expiration of six months from the time of such application, be transferred to and kept in the said Office appointed for filing Specifications in Chancery; and in case reference is made to drawings in any Specification deposited or filed under this Act, an extra copy of such drawings shall be left with such Specification.

As to filing extra copies of drawings.

XXIX. The Commissioners shall cause true copies of all Specifications (other than Provisional Specifications), disclaimers and memoranda of alterations filed under or in pursuance of this Act, and of all Provisional Specifications after the term of the Provisional Protection of the invention has expired, to be open to the inspection of the public at the Office of the Commissioners, and at an Office in Edinburgh and Dublin respectively, at all reasonable times, subject to such regulations as the Commissioners may direct; and the Commissioners shall cause a transcript of the said Letters-patent to be transmitted for enrolment in the Court of Chancery, Dublin, and shall cause the same to be enrolled therein, and the transcript or exemplification thenceforward shall have the like effect to all intents and purposes as if the original Letters-patent had been enrolled in the Court of Chancery in Dublin, and all parties shall have all their remedies by *scire facias* or otherwise, as if the Letters-patent had been granted to extend to Ireland only.

Copies of Specifications to be open to inspection at Office of Commissioners, and at Edinburgh and Dublin.

XXX. The Commissioners shall cause to be printed, published and sold, at such prices and in such manner as they may think fit, all Specifications, Disclaimers and Memoranda of alterations deposited or filed under this Act, and such Specifications (not being Provisional Specifications), Disclaimers and Memoranda respectively shall be so printed and published as soon as conveniently may be after the filing thereof respectively, and all such Provisional Specifications shall be so printed and published as soon as conveniently may be after the expiration of the Provisional Protection obtained in respect thereof; and it shall be lawful for the Commissioners to present copies of all such publications to such public libraries and museums as they may think fit, and to allow the person depositing or filing any such Specification, Disclaimer or Memorandum of alteration to have such number, not ex-

Specifications and other documents to be printed and published.

As to presenting copies of publications to public libraries, &c.

ceeding twenty-five, of the copies thereof so printed and published, without any payment for the same, as they may think fit.

Enrolments, &c. may be removed to the Office for Specifications.

XXXI. It shall be lawful for the Lord Chancellor and the Master of the Rolls to direct the enrolment of Specifications, Disclaimers and Memoranda of alterations heretofore or hereafter enrolled or deposited at the Rolls Chapel Office, or at the Petty Bag Office, or at the Enrolment Office of the Court of Chancery, or in the custody of the Master of the Rolls as keeper of the public records, to be transferred to and kept in the office appointed for filing Specifications in Chancery under this Act.

Commissioners to cause indexes to be made to old Specifications, &c.; such Specifications, &c. may be printed and published.

XXXII. The Commissioners shall cause indexes to all Specifications, Disclaimers and Memoranda of alterations heretofore or to be hereafter enrolled or deposited as last aforesaid to be prepared in such form as they may think fit, and such indexes shall be open to the inspection of the public at such place or places as the Commissioners shall appoint, and subject to the *regulations* to be made by the Commissioners, and the Commissioners may cause all or any of such indexes, Specifications, Disclaimers and Memoranda of alterations to be printed, published and sold in such manner and at such prices as the Commissioners may think fit.

Copies of Specifications, &c. as printed by Queen's printers to be evidence.

XXXIII. Copies, printed by the printers to the Queen's Majesty, of Specifications, Disclaimers and Memoranda of alterations shall be admissible in evidence, and deemed and taken to be *primâ facie* evidence of the existence and contents of the documents to which they purport to relate in all Courts and in all proceedings relating to Letters-patent.

Register of Patents to be kept.

XXXIV. There shall be kept at the Office appointed for filing Specifications in Chancery under this Act a book or books, to be called "The Register of Patents," wherein shall be entered and recorded in chronological order all Letters-patent granted under this Act, the deposit or filing of Specifications, Disclaimers and Memoranda of alterations filed in respect of such Letters-patent, all Amendments in such Letters-patents and Specifications, all Confirmations and Extensions of such Letters-patent, the expiry, vacating or cancelling such Letters-patent, with the dates thereof respectively, and all other matters and things affecting the validity of such Letters-

patent as the Commissioners may direct, and such Register, or a copy thereof, shall be open at all convenient times to the inspection of the public, subject to such regulations as the Commissioners may make.

A Register of proprietors to be kept at the office for filing Specifications.

XXXV. There shall be kept at the office appointed for filing Specifications in Chancery under this Act a book or books, entitled "The Register of Proprietors," wherein shall be entered, in such manner as the Commissioners shall direct, the assignment of any Letters-patent, or any share or interest therein, any licence under Letters-patent, and the district to which such licence relates, with the name or names of any person having any share or interest in such Letters-patent or licence, the date of his or their acquiring such Letters-patent, share and interest, and any other matter or thing relating to or affecting the proprietorship in such Letters-patent or licence; and a copy of any entry in such book, certified under such seal as may have been appointed or as may be directed by the Lord Chancellor to be used in the said office, shall be given to any person requiring the same, on payment of the fees hereinafter provided; and such copies so certified shall be received in evidence in all Courts and in all proceedings, and shall be *primâ facie* proof of the assignment of such Letters-patent, or share or interest therein, or of the licence or proprietorship, as therein expressed: provided always, that until such entry shall have been made the grantee or grantees of the Letters-patent shall be deemed and taken to be the sole and exclusive proprietor or proprietors of such Letters-patent, and of all the licences and privileges thereby given and granted; that certified duplicates of all entries made in the said Register of proprietors shall forthwith be transmitted to the office of the Commissioners in Edinburgh and Dublin, where the same shall also be open to the inspection of the public; and any writ of *scire facias* to repeal such Letters-patent may be issued to the sheriff of the county or counties in which the grantee or grantees resided at the time when the said Letters-patent were granted; and in case such grantee or grantees do not reside in the United Kingdom it shall be sufficient to file such writ in the Petty Bag Office, and serve notice thereof in writing at the last known residence or place of business of

such grantee or grantees; and such Register or a copy shall be open to the inspection of the public at the office of the Commissioners, subject to such regulations as the Commissioners may make; provided always, that, in any proceeding in Scotland to repeal any Letters-patent, service of all writs and summonses shall be made according to the existing forms and practice; provided also, that the grantee or grantees of Letters-patent to be hereafter granted may assign the Letters-patent for England, Scotland or Ireland respectively as effectually as if the Letters-patent had been originally granted to extend to England or Scotland or Ireland only, and the assignee or assignees shall have the same rights of action and remedies, and shall be subject to the like actions and suits as he or they should and would have had and been subject to upon the assignment of Letters-patent granted to England, Ireland or Scotland before the passing of this Act.

Power for more than twelve persons to have a legal interest in Letters-patent.

XXXVI. Notwithstanding any proviso that may exist in former Letters-patent, it shall be lawful for a larger number than twelve persons hereafter to have a legal and beneficial interest in such Letters-patent.

Falsification or forgery of entries a misdemeanor.

XXXVII. If any person shall wilfully make or cause to be made any false entry in the said Register of proprietors, or shall wilfully make or forge, or cause to be made or forged, any writing falsely purporting to be a copy of any entry in the said book, or shall produce or tender, or cause to be produced or tendered, in evidence any such writing, knowing the same to be false or forged, he shall be guilty of a misdemeanor, and shall be punished by fine and imprisonment accordingly.

Entries may be expunged.

XXXVIII. If any person shall deem himself aggrieved by any entry made under colour of this Act in the said Register of proprietors, it shall be lawful for such person to apply, by motion, to the Master of the Rolls or to any of the Courts of Common Law at Westminster in term time, or by summons to a Judge of any of the said Courts in vacation, for an order that such entry may be expunged, vacated or varied; and upon any such application the Master of the Rolls, or such Court or Judge respectively, may make such order for expunging, vacating or varying such entry, and as to the costs of such application, as to the said Master of the Rolls or to such

Court or Judge may seem fit; and the officer having the care and custody of such Register, on the production to him of any such order for expunging, vacating or varying any such entry, shall expunge, vacate or vary the same, according to the requisitions of such order.

Provisions of 5 & 6 Will. IV. c. 83, and of 7 & 8 Vict. c. 69, as to Disclaimers and Memoranda of alterations to apply to Patents under this Act.

XXXIX. All the provisions of the Acts of the session holden in the fifth and sixth years of King William the Fourth, chapter eighty-three, and of the session holden in the seventh and eighth years of Her Majesty, chapter sixty-nine, respectively, relating to Disclaimers and Memoranda of alterations in Letters-patent and Specifications, except as hereinafter provided, shall be applicable and apply to any Letters-patent granted, and to any Specification filed under the provisions of this Act: provided always, that all applications for leave to enter a Disclaimer or Memorandum of alteration shall be made, and all caveats relating thereto shall be lodged at the office of the Commissioners, and shall be referred to the respective Law officers in the said first-recited Act mentioned: provided also, that every such Disclaimer or Memorandum of alteration shall be filed in the office appointed for filing Specifications in Chancery under this Act, with the Specification to which the same relates, in lieu of being entered or filed and enrolled as required by the said first-recited Act, or by the Act of the session holden in the twelfth and thirteenth years of Her Majesty, chapter one hundred and nine, and the said Acts shall be construed accordingly: provided also, that such filing of any Disclaimer or Memorandum of alteration, in pursuance of the leave of the law officer in the first-recited Act mentioned, certified as therein mentioned, shall, except in cases of fraud, be conclusive as to the right of the party to enter such Disclaimer or Memorandum of alteration under the said Acts and this Act; and no objection shall be allowed to be made in any proceeding upon or touching such Letters-patent, Specification, Disclaimer or memorandum of alteration, on the ground that the party entering such Disclaimer or Memorandum of alteration had not sufficient authority in that behalf; provided also, that no action shall be brought upon any Letters-patent in which or on the Specification of which any Disclaimer or Memorandum of alteration shall have been filed in respect of any infringement

Applications for Disclaimers and caveats to be at office of Commissioners.

committed prior to the filing of such Disclaimer or Memorandum of alteration, unless the law officer shall certify in his fiat that any such action may be brought, notwithstanding the entry or filing of such Disclaimer or Memorandum of alteration.

Provisions of 5 & 6 Will. IV. c. 83, 2 & 3 Vict. c. 67, and 7 & 8 Vict. c. 69, as to confirmation and prolongation, to apply to Patents under this Act.

XL. All the provisions of the said Act of the fifth and sixth years of King William the Fourth, for the confirmation of any Letters-patent, and the grant of new Letters-patent, and all the provisions of the said Act, and of the Acts of the session holden in the second and third years of Her Majesty, chapter sixty-seven, and of the session holden in the seventh and eighth years of Her Majesty, chapter sixty-nine, respectively, relating to the prolongation of the term of Letters-patent, and to the grant of new Letters-patent for a further term, shall extend and apply to any Letters-patent granted under the provisions of this Act, and it shall be lawful for her Majesty to grant any new Letters-patent, as in the said Acts mentioned; and in the granting of any such new Letters-patent Her Majesty's Order in Council shall be a sufficient warrant and authority for the sealing of any new Letters-patent, and for the insertion in such new Letters-patent of any restrictions, conditions and provisions in the said order mentioned; and the Lord Chancellor, on the receipt of the said Order in Council, shall cause Letters-patent, according to the tenor and effect of such order, to be made and sealed in the manner herein directed for Letters-patent issued under the warrant of the law officer: provided always, that such new Letters-patent shall extend to and be available in and for such places as the original Letters-patent extended to and were available in: provided also, that such new Letters-patent shall be sealed and bear date as of the day after the expiration of the term of the original Letters-patent which may first expire.

In actions for infringement of Letters-patent, particulars to be delivered, and no evidence allowed not mentioned therein.

XLI. 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 plaintiff shall deliver with his declaration particulars of the breaches complained of in the said action, and the defendant, on pleading thereto, shall deliver with his pleas, and the prosecutor in any proceedings by *scire facias* to repeal Letters-patent shall deliver with his declaration,

particulars of any objections on which he means to rely at the trial in support of the pleas in the said action or of the suggestions of the said declaration in the proceedings by *scire facias* respectively; and at the trial of such action or proceeding by *scire facias* no evidence shall be allowed to be given in support of any alleged infringement or of any objection impeaching the validity of such Letters-patent which shall not be contained in the particulars delivered as aforesaid: provided 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 plaintiff or defendant or prosecutor respectively to amend the particulars delivered as aforesaid, upon such terms as to such judge shall seem fit: provided also, that at the trial of any proceeding by *scire facias* to repeal Letters-patent the defendant shall be entitled to begin and to give evidence in support of such Letters-patent, and in case evidence shall be adduced on the part of the prosecutor impeaching the validity of such Letters-patent, the defendant shall be entitled to the reply.

Courts of Common Law may grant injunction in case of infringement.

XLII. In any action in any of Her Majesty's Superior Courts of Record at Westminster and in Dublin for the infringement of Letters-patent, it shall be lawful for the Court in which such action is pending, if the Court be then sitting, or if the Court be not sitting then for a Judge of such Court, on the application of the plaintiff or defendant respectively, to make such order for an injunction, inspection or account, and to give such direction respecting such action, injunction, inspection and account, and the proceedings therein respectively, as to such Court or Judge may seem fit.

Particulars to be regarded in taxation of costs.

XLIII. In taxing the costs in any action in any of Her Majesty's Superior Courts at Westminster or in Dublin, commenced after the passing of this Act for infringing Letters-patent, regard shall be had to the particulars delivered in such action, and the plaintiff and defendant respectively shall not be allowed any costs in respect of any particulars unless certified by the Judge before whom the trial was had to have been proved by such plaintiff or defendant respectively, without regard to the general costs of the cause; and it shall

be lawful for the Judge before whom any such action shall be tried to certify on the record that the validity of the Letters-patent in the declaration mentioned came in question; and the record, with such certificate, being given in evidence in any suit or action for infringing the said Letters-patent, or in any proceeding by *scire facias* to repeal the Letters-patent, shall entitle the plaintiff in any such suit or action, or the defendant in such proceeding by *scire facias* on obtaining a decree, decretal order or final judgment, to his full costs, charges and expenses, taxed as between attorney and client, unless the Judge making such decree or order, or the Judge trying such action or proceeding, shall certify that the plaintiff or defendant respectively ought not to have such full costs: provided always, that nothing herein contained shall affect the jurisdiction and forms of process of the Courts in Scotland in any action for the infringement of Letters-patent or in any action or proceeding respecting Letters-patent hitherto competent to the said Courts: provided also, that when any proceedings shall require to be taken in Scotland to repeal any Letters-patent, such proceedings shall be taken in the form of an action of reduction at the instance of Her Majesty's Advocate, or at the instance of any other party having interest with concurrence of Her Majesty's Advocate, which concurrence Her Majesty's Advocate is authorized and empowered to give upon just cause shown only.

Payments and stamp duties on Letters-patent to be as in Schedule.

XLIV. There shall be paid in respect of Letters-patent applied for or issued as herein mentioned, the filing of Specifications and Disclaimers, certificates, entries and searches, and other matters and things mentioned in the Schedule to this Act, such fees as are mentioned in the said Schedule; and there shall be paid unto and for the use of Her Majesty, Her heirs and successors, for or in respect of the warrants and certificates mentioned in the said Schedule, or the vellum, parchment or paper on which the same respectively are written, the stamp duties mentioned in the said Schedule; and no other stamp duties shall be levied, or fees, except as hereinafter mentioned, taken in respect of such Letters-patent and Specifications, and the matters and things in such Schedule mentioned.

Duties to be under management of Commissioners of Inland Revenue.

XLV. The stamp duties hereby granted shall be under the care and management of the Commissioners of Inland Revenue; and the several rules, regulations, provisions, penalties, clauses and matters contained in any Act now or hereafter to be in force with reference to stamp duties shall be applicable thereto.

All monies received to be paid to the Consolidated Fund.

XLVI. The fees to be paid as aforesaid shall from time to time be paid into the receipt of the Exchequer, and be carried to and made part of the Consolidated Fund of the United Kingdom.

Not to prevent payment of fees to Law officers in cases of opposition, &c.

XLVII. Provided always, That nothing herein contained shall prevent the payment as heretofore to the Law Officers in cases of opposition to the granting of Letters-patent, and in cases of Disclaimers and Memoranda of alterations, of such fees as may be appointed by the Lord Chancellor and Master of the Rolls as the fee to be paid on the hearing of such oppositions, and in the case of Disclaimers and Memoranda of alterations respectively, or of such reasonable sums for office or other copies of documents in the office of the Commissioners, as the Commissioners may from time to time appoint to be paid for such copies, and the Lord Chancellor and Master of the Rolls, and the Commissioners, are hereby respectively authorized and empowered to appoint the fees to be so paid in respect of such oppositions, Disclaimers and Memoranda of alterations respectively, and for such office or other copies.

Fees and salaries of officers.

XLVIII. It shall be lawful for the Commissioners of Her Majesty's Treasury from time to time to allow such fees to the Law Officers and their clerks (for duties under this Act in respect of which fees may not be payable to them under the provisions lastly hereinbefore contained) as the Lord Chancellor and Master of the Rolls may from time to time appoint, and to allow such salaries and payments to any clerks and officers to be appointed under this Act, and such additional salaries and payments to any other clerks and officers in respect of any additional duties imposed on them by this Act, as the said Commissioners of the Treasury may think fit.

Sums for defraying salaries and expenses under this Act to be paid out of monies

XLIX. It shall be lawful for the Commissioners of Her Majesty's Treasury to allow from time to time the necessary sums for providing offices under this Act, and for the fees,

to be provided by Parliament.

salaries and payments allowed by them as aforesaid, and for defraying the current and incidental expenses of such office or offices; and the sums to be so allowed shall be paid out of such monies as may be provided by Parliament for that purpose.

Power to Treasury to grant compensation to persons affected by this Act.

L. And whereas divers persons by virtue of their offices or appointments are entitled to fees or charges payable in respect of Letters-patent as heretofore granted within the United Kingdom of Great Britain and Ireland, or have and derive in respect of such Letters-patent, or the procedure for the granting thereof, fees or other emoluments or advantages:

It shall be lawful for the said Commissioners of the Treasury to grant to any such persons who may sustain any loss of fees, emoluments or advantages by reason of the passing of this Act, such compensation as, having regard to the tenure and nature of their respective offices and appointments, such Commissioners deem just and proper to be awarded; and all such compensations shall be paid out of such monies as may be provided by Parliament for that purpose: provided always, that in case any person to whom any yearly sum by way of compensation shall be awarded and paid shall, after the passing of this Act, be appointed to any office or place of emolument under the provisions of this Act, or in the public service, then and in every such case the amount of such yearly sum shall in every year be diminished by so much as the emoluments of such person for such year from such office or place shall amount to, and provision in that behalf shall be made in the award to him of such yearly sum.

Account of salaries, fees and compensation allowances to be laid before Parliament.

LI. An account of all salaries, fees, allowances, sums and compensations to be appointed, allowed or granted under this Act shall, within fourteen days next after the same shall be so appointed, allowed or granted respectively, be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not then sitting, then within fourteen days after the next meeting of Parliament.

Not to extend to Patents applied for before commencement of Act.

LII. Letters-patent may be granted in respect of applications made before the commencement of this Act, in like manner and subject to the same provisions as if this Act had not been passed.

As to Letters-patent granted before commencement of this Act in England, Scotland or Ireland.

LIII. Where Letters-patent for England or Scotland or Ireland have been granted before the commencement of this Act, or are in respect of any application made before the commencement of this Act hereafter granted for any invention, Letters-patent for England or Scotland or Ireland, may be granted for such invention in like manner as if this Act had not been passed: provided always, that in lieu of all the fees or payments and stamp duties now payable in respect of such Letters-patent, or in or about obtaining a grant thereof, there shall be paid in respect of such Letters-patent for England or Scotland or Ireland on the sealing of such respective Letters-patent a sum equal to one-third part of the fees and stamp duties which would be payable according to the Schedule to this Act in respect of Letters-patent issued for the United Kingdom under this Act, on or previously to the sealing of such Letters-patent; and at or before the expiration of the third year and the seventh year respectively of the term granted by such Letters-patent for England or Scotland or Ireland, sums equal to one-third part of the fees and stamp duties payable at the expiration of the third year and the seventh year respectively of the term granted by Letters-patent issued for the United Kingdom under this Act; and the condition of such Letters-patent for England or Scotland or Ireland shall be varied accordingly; and such fees shall be paid to such persons as the Commissioners of Her Majesty's Treasury shall appoint, and shall be carried to and form part of the said consolidated fund.

Forms in Schedule may be used.

LIV. The several forms in the Schedule to this Act may be used for and in respect of the several matters therein mentioned, and the Commissioners may, where they think fit, vary such forms as occasion may require, and cause to be printed and circulated such other forms as they may think fit to be used for the purposes of this Act.

Interpretation of Terms.

LV. In the construction of this Act the following expressions shall have the meanings hereby assigned to them, unless such meanings be repugnant to or inconsistent with the context; (that is to say,)

The expression "Lord Chancellor" shall mean the Lord Chancellor, or Lord Keeper of the Great Seal, or Lords Commissioners of the Great Seal:

The expression "the Commissioners" shall mean the Commissioners for the time being acting in execution of this Act:

The expression "Law Officer" shall mean Her Majesty's Attorney-General or Solicitor-General for the time being for England, or the Lord Advocate, or Her Majesty's Solicitor-General for the time being for Scotland, or Her Majesty's Attorney-General or Solicitor-General for the time being for Ireland:

The expression "invention" shall mean any manner of new manufacture the subject of Letters-patent and grant of privilege within the meaning of the Act of the twenty-first year of the reign of King James the First, chapter three:

The expressions "Petition," "Declaration," "Provisional Specification," "Warrant," and "Letters-patent" respectively, shall mean instruments in the form and to the effect in the Schedule hereto annexed, subject to such alterations as may from time to time be made therein under the powers and provisions of this Act.

Short title.

LVI. In citing this Act in other Acts of Parliament, instruments and proceedings, it shall be sufficient to use the expression "The Patent Law Amendment Act, 1852."

Commencement of Act.

LVII. This Act shall commence and take effect from the first day of October, one thousand eight hundred and fifty-two.

The SCHEDULE to which this Act refers.

Fees to be paid.

	£	s.	d.
On leaving Petition for Grant of Letters-patent..	5	0	0
On Notice of intention to proceed with the application	5	0	0
On sealing of Letters-patent	5	0	0
On filing Specification	5	0	0
At or before the expiration of the third year ..	40	0	0
At or before the expiration of the seventh year..	80	0	0
On leaving Notice of objections	2	0	0
Every search and inspection	0	1	0

	£	s.	d.
Entry of Assignment or Licence	0	5	0
Certificate of Assignment or Licence	0	5	0
Filing application for Disclaimer	5	0	0
Caveat against Disclaimer	2	0	0

STAMP DUTIES TO BE PAID.

On Warrant of Law Officer for Letters-patent ..	5	0	0
On certificate of payment of the fee payable at or before the expiration of the third year ..	10	0	0
On certificate of payment of the fee payable at or before the expiration of the seventh year ..	20	0	0

FORMS.

PETITION.

No. ——.

To the Queen's most excellent Majesty.

The humble petition of [*here insert name and address of petitioner*] for, &c.

Showeth,

That your petitioner is in possession of an invention for [*the title of the invention,*] which invention he believes will be of great public utility; that he is the true and first inventor thereof; and that the same is not in use by any other person or persons, to the best of his knowledge and belief.

Your petitioner therefore humbly prays, that your Majesty will be pleased to grant unto him, his executors, administrators and assigns, your royal Letters-patent for the United Kingdom of Great Britain and Ireland, the Channel Islands, and the Isle of Man, [*colonies to be mentioned, if any,*] for the term of fourteen years, pursuant to the statutes in that case made and provided.

And your petitioner will ever pray, &c.

DECLARATION.

No. ——,

I, ——, of ——, in the county of ——, do solemnly and

sincerely declare, that I am in possession of an invention for, &c.

[*the title as in petition,*]

which invention I believe will be of great public utility; 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; [*where a complete specification is to be filed with the petition and declaration, insert these words:*— "and that the instrument in writing under my hand and seal, hereto annexed, particularly describes and ascertains the nature of the said invention and the manner in which the same is to be performed;"] and I make this declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the session of Parliament held in the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits,' and to make other Provisions for the Abolition of unnecessary Oaths."

A. B.

Declared at ——, this —— day of ——, A.D. ——, before me,

A Master in Chancery,
or
Justice of the Peace.

PROVISIONAL SPECIFICATION.

No. ——.

I, ——, do hereby declare the nature of the said invention for

[*insert title as in petition*],

to be as follows

[*here insert description*].

Dated this —— day of ——, A.D. ——.

[*To be signed by applicant or his agent.*]

Reference.

[*To be endorsed on the petition.*]

Her Majesty is pleased to refer this petition to —— to consider what may be properly done therein.

——, Clerk of the Commissioners.

Warrant.

In humble obedience to Her Majesty's command referring to me the petition of ——, of ——, to consider what may be properly done therein, I do hereby certify as follows; That the said petition sets forth that the petitioner

[*allegations of the petition*].

And the petitioner most humbly prays

[*prayer of the petition*].

That in support of the allegations contained in the said petition, the declaration of the petitioner has been laid before me, whereby he solemnly declares that

[*allegations of the declaration*].

That there has also been laid before me a Provisional Specification signed ——, and also a Certificate —— [*or* "a Complete Specification, and a Certificate of the filing thereof"], whereby it appears that the said invention was provisionally protected [*or* "protected"] from the —— day of ——, A.D. ——, in pursuance of the statute.

That it appears that the said application was duly advertised.

Upon consideration of all the matters aforesaid, and as it is entirely at the hazard of the said petitioner whether the said invention is new or will have the desired success, and as it may be reasonable for Her Majesty to encourage all arts and inventions which may be for the public good, I am of opinion, that Her Majesty may grant Her Royal Letters-patent unto the petitioner, his executors, administrators and assigns, for his said invention within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man [*colonies to be mentioned, if any*] for the term of fourteen

years, according to the statute in that case made and provided, if Her Majesty shall be graciously pleased so to do, to the tenor and effect following

[*see the Form of Letters-patent inserted in p.* 167].

Given under my hand, this —— day of ——, A.D. ——.

(Seal of the Commissioners.)

16 Vict. c. 5.

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. [21st February, 1853.]

15 & 16 Vict. c. 83.

WHEREAS it is expedient that the fees payable in respect of Letters-patent for inventions under the Patent Law Amendment Act, 1852, and mentioned in the Schedule to such Act, be converted into stamp duties: be it enacted, therefore, 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:

Sects. 17, 44, 45, 46 and 53, and part of Schedule of recited Act repealed.

I. Sections seventeen, forty-four, forty-five, forty-six and fifty-three of the said Patent Law Amendment Act, 1852, and so much of the Schedule to the said Act as relates to fees and stamp duties to be paid under the said Act, shall be repealed.

Letters-patent to be made subject to avoidance on nonpayment of stamp duties expressed in Schedule to this Act annexed.

II. All Letters-patent for inventions to be granted under the provisions of the said Patent Law Amendment Act, 1852 (except in the cases provided for in the fourth section of this Act), shall be made subject to the condition that the same shall be void, and that the powers and privileges thereby granted shall cease and determine, at the expiration of three years and seven years respectively from the date thereof, unless there be paid before the expiration of the said three years and seven years respectively the stamp duties in the

Schedule to this Act annexed expressed to be payable before the expiration of the third year and of the seventh year respectively, and such Letters-patent, or a duplicate thereof, shall be stamped with proper stamps showing the payment of such respective stamp duties, and shall, when stamped, be produced before the expiration of such three years and seven years respectively at the office of the Commissioners; and a certificate of the production of such Letters-patent or duplicate so stamped, specifying the date of such production, shall be endorsed by the Clerk of the Commissioners on the Letters-patent or duplicate, and a like certificate shall be endorsed upon the Warrant for such Letters-patent filed in the said office.

Stamp duties mentioned in the Schedule to this Act to be payable.

III. There shall be paid unto and for the use of Her Majesty, Her heirs and successors, for or in respect of Letters-patent applied for or issued under the provisions of the said Patent Law Amendment Act, 1852, Warrants, Specifications, Disclaimers, Certificates and entries, and other matters and things mentioned in the Schedule to this Act, or the vellum, parchment or paper on which the same respectively are written, the stamp duties mentioned in the said Schedule; and no other stamp duties shall be levied in respect of such Letters-patent, Warrants, Specifications, Disclaimers, Certificates, entries, matters and things; and the stamp duty mentioned in the said Schedule on office copies of documents shall be in lieu of such sums as by the said Patent Law Amendment Act, 1852, are authorized to be appointed to be paid for such office copies.

As to payment of stamp duties on Letters-patent for England, Scotland or Ireland respectively.

IV. Where Letters-patent for England or Scotland or Ireland have been granted before the commencement of the said Patent Law Amendment Act, 1852, or have been since the commencement of the said Act, or hereafter may be granted for any invention, in respect of any application made before the commencement of the said Act, Letters-patent for England or Scotland or Ireland may be granted for such invention in like manner as if the said Act had not been passed: provided always, that in lieu of all fees or payments and stamp duties which were at the time of the passing of the said Act payable in respect of such Letters-patent as last aforesaid, or in or about

obtaining a grant thereof, and in lieu of all other stamp duties whatsoever, there shall be paid in respect of such Letters-Patent as last aforesaid on the sealing thereof stamp duties equal to one-third part of the stamp duties which would be payable under this Act in respect of Letters-patent issued for the United Kingdom under the said Patent Law Amendment Act, 1852, on or previously to the sealing of such Letters-patent as last aforesaid, and before the expiration of the third year and the seventh year respectively of the term granted by such Letters-patent for England, Scotland or Ireland, stamp duties equal to one third part of the stamp duties payable under this act before the expiration of the third year and the seventh year respectively of the term granted by Letters-patent issued for the United Kingdom under the said Patent Law Amendment Act, 1852, and the condition of such Letters-patent for England or Scotland or Ireland shall be varied accordingly.

Duties to be under the management of the Commissioners of Inland Revenue;

V. The stamp duties hereby granted shall be under the care and management of the Commissioners of Inland Revenue; and the several rules, regulations, provisions, penalties, clauses and matters contained in any Act now or hereafter to be in force with reference to stamp duties shall be applicable thereto.

who are to provide the proper stamps for the purpose.

VI. The said Commissioners of Inland Revenue shall prepare stamps impressed upon adhesive paper, of the amounts following, that is to say, two-pence, four-pence, eight-pence and one shilling, to be used only in respect of the stamp duties on the office copies of documents and on the certificates of searches and inspections mentioned in the Schedule to this Act; such adhesive stamps of proper amounts to be affixed by the Clerk of the Commissioners of Patents for Inventions to such office copies of documents and certificates of searches and inspections as aforesaid; and immediately after such affixing he shall obliterate or deface such stamps by impressing thereon a seal to be provided for that purpose, but so as not to prevent the amount of the stamp from being ascertained; and no such office copy or certificate shall be delivered out until the stamps thereon shall be obliterated or defaced as aforesaid.

Conditions of Letters-patent already granted under recited Act to be satisfied by payment of stamp duties, &c., under this Act.

VII. The condition contained in any Letters-patent granted under the said Patent Law Amendment Act, 1852, and before the passing of this Act, for making such Letters-patent void at the expiration of three years and seven years respectively from the date thereof, unless there be paid, before the expiration of the said three years and seven years respectively, the sums of money and stamp duties by the said Patent Law Amendment Act, 1852, required in this behalf, shall be deemed to be satisfied and complied with by payment of the like stamp duties as would have been required if such Letters-patent had been granted after the passing of this Act, and had been made subject to the condition required by this Act in lieu of the said condition therein contained; and the provision hereinbefore contained concerning the endorsement on the Letters-patent or duplicate, and on the Warrant for the same Letters-patent, of a certificate of the production of the Letters-patent or duplicate properly stamped, shall be applicable in the case of such Letters-patent granted before the passing of this Act.

Power to Commissioners to purchase the Indexes of existing Specifications prepared by Mr. Woodcroft.

VIII. And whereas by the said Patent Law Amendment Act, 1852, the Commissioners are directed to cause indexes to all Specifications heretofore or hereafter to be enrolled or deposited to be prepared in such form as they may think fit, which indexes are to be open to the inspection of the public: and whereas the existing Specifications so directed to be indexed as aforesaid are in number fifteen thousand and upwards, and it would require some years to make indexes thereof on a proper arrangement and classification: and whereas Mr. *Bennett Woodcroft* has already made complete indexes of such Specifications, which the Commissioners have examined and approved of, and it is expedient that such indexes be purchased for the use of the public:

It shall be lawful for the Commissioners, with the consent of the Commissioners of her Majesty's Treasury, to purchase the said indexes of the said *Bennett Woodcroft* for a sum not exceeding one thousand pounds, and to pay the purchase money for the same out of the monies in their hands which have arisen from fees received in respect of Letters-patent under the said Patent Law Amendment Act, 1852, and di-

rected by the said Act to be paid into the receipt of the Exchequer; and after the purchase of such indexes the provisions of the said Act shall be applicable thereto as if such indexes had been prepared under the said recited enactment.

As to the word "duplicate."

IX. The word "duplicate" shall be construed to mean in this Act such Letters-patent as may be issued under the twenty-second section of the Patent Law Amendment Act, 1852, in case of any Letters-patent being destroyed or lost.

This Act, and 15 & 16 Vict. c. 83, to be construed together.

X. This Act and the Patent Law Amendment Act, 1852, shall be construed together as one Act.

The SCHEDULE of Stamp Duties to be paid to which this Act refers.

	£	s.	d.
On petition for grant of Letters-patent	5	0	0
On certificate of record of notice to proceed ..	5	0	0
On Warrant of Law Officer for Letters-patent ..	5	0	0
On the sealing of Letters-patent..	5	0	0
On Specification	5	0	0
On the Letters-patent, or a duplicate thereof, before the expiration of the third year	50	0	0
On the Letters-patent, or a duplicate thereof, before the expiration of the seventh year ..	100	0	0
On certificate of record of notice of objections ..	2	0	0
On certificate of every search and inspection ..	0	1	0
On certificate of entry of assignment or licence .	0	5	0
On certificate of assignment or licence	0	5	0
On application for Disclaimer	5	0	0
On caveat against Disclaimer	2	0	0
On office copies of documents, for every ninety words	0	0	2

16 & 17 Vict. c. 115.

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.*

[20th August, 1853.]

15 & 16 Vict. c. 83.

WHEREAS it is expedient 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: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sect. 33 and part of sect. 28 of recited Act repealed.

I. Section thirty-three of the said Act, and such part of section twenty-eight of the said Act as directs that in case reference is made to drawings in any Specification deposited or filed under the said Act an extra copy of such drawings should be left with such Specification, shall be repealed.

Copies of Provisional Specifications to be open to inspection at the Commissioners' Office.

II. The Commissioners shall cause true copies of all Provisional Specifications left at the Office of the Commissioners to be open to the inspection of the public, at such times, after the date of the record thereof respectively, as the Commissioners shall by their order from time to time direct.

A copy of every Specification, &c., under the hand of the Patentee or applicant, to be left at Commissioners' Office.

III. A true copy, under the hand of the Patentee or applicant, or agent of the Patentee or applicant, of every Specification and of every Complete Specification, with the drawings accompanying the same, if any, shall be left at the Office of the Commissioners on filing such Specification or Complete Specification.

Copies or extracts of Letters-patent, &c., certified and sealed, filed at Commissioners' Office, to be received in evidence.

IV. Printed or manuscript copies or extracts, certified and sealed with the Seal of the Commissioners, of Letters-patent, Specifications, Disclaimers, Memoranda of alterations, and all other documents recorded and filed in the Commissioners' Office, or in the Office of the Court of Chancery appointed

for the filing of Specifications, shall be received in evidence in all proceedings relating to Letters-patent for inventions in all Courts whatsoever within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, and Her Majesty's colonies and plantations abroad, without further proof or production of the originals.

Certified printed copies of Specifications, &c., under Seal of Commissioners, to be transmitted to the Director of Chancery in Scotland, and to the Court of Chancery in Ireland, which shall be evidence, without production of originals.

V. Certified printed copies, under the Seal of the Commissioners, of all Specifications and Complete Specifications, and fac-simile printed copies of the drawings accompanying the same, if any, Disclaimers and Memoranda of alterations filed or hereafter to be filed under the said Patent Law Amendment Act, shall be transmitted to the Office of the Director of Chancery in Scotland and to the Enrolment Office of the Court of Chancery in Ireland within twenty-one days after the filing thereof respectively, and the same shall be filed in the Office of Chancery in Scotland and Ireland respectively, and certified copies or extracts from such documents shall be furnished to all persons requiring the same, on payment of such fees as the Commissioners shall direct; and such copies or extracts shall be received in evidence in all Courts in Scotland and in Ireland respectively in all proceedings relating to Letters-patent for inventions, without further proof or production of the originals.

Lord Chancellor, in certain cases, may seal Letters-patent after the expiration of Provisional Protection.

VI. Where Letters-patent have not been sealed during the continuance of the Provisional Protection on which the same is granted, provided the delay in such sealing has arisen from accident, and not from the neglect or wilful default of the applicant, it shall be lawful for the Lord Chancellor, if he shall think fit, to seal such Letters-patent at any time after the expiration of such Provisional Protection, whether such expiration has happened before or shall happen after the passing of this Act, and to date the sealing thereof as of any day before the expiration of such Provisional Protection, and also to extend the time for the filing of the Specification thereon; and where the Specification, in pursuance of the condition of any Letters-patent, has not been filed within the time limited by such Letters-patent, provided the delay in such filing has arisen from accident, and not from the neglect or wilful default of the Patentee, it shall be lawful for the Lord Chancellor, if he shall think fit, to extend the time for

the filing of such Specification, whether the default in such filing has happened before or shall happen after the passing of this Act: Provided always, that, except in any case that may have arisen before the passing of this Act, it shall not be lawful for the Lord Chancellor to extend the time for the sealing of any Letters-patent, or for the filing of any Specification, beyond the period of one month.

Removing doubts as to provisions of 15 & 16 Vict. c. 83, respecting the making and sealing of new Letters-patent for a further term.

VII. And whereas doubts have arisen whether the provision of the Patent Law Amendment Act, 1852, for the making and sealing new Letters-patent for a further term, in pursuance of Her Majesty's Order in Council, in the cases mentioned in section forty of the said Act, extends to the making and sealing of new Letters-patent in the manner by such Act directed, where such new Letters-patent are granted by way of prolongation of the term of Letters-patent issued before the commencement of the said Act: And whereas it is expedient that such new Letters-patent granted by way of prolongation shall be granted according to the provisions of the said Patent Law Amendment Act: Be it declared and enacted, That where Her Majesty's Order of Council for the sealing of new Letters-patent shall have been made after the commencement of the said Act, the said provision of the said Act for making and sealing in manner aforesaid of new Letters-patent shall extend, and shall as from the commencement of the said Act be deemed to have extended, to the making and sealing in manner aforesaid of new Letters-patent for a further term, as well where the original Letters-patent were made before as where such original Letters-patent have been issued since the commencement of the said Act.

15 & 16 Vict. c. 83, and this Act, to be construed as one Act.

VIII. This Act and the Patent Law Amendment Act, 1852, shall be construed together as one Act.

Rules and Regulations

WITH REFERENCE TO

PROCEEDINGS IN THE CASE OF LETTERS-PATENT.

First Set of Rules and Regulations *under the Act* 15 & 16 *Vict. c.* 83, *for the passing of Letters-patent for Inventions.*

By the Right Honourable Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, the Right Honourable Sir John Romilly, Master of the Rolls, Sir Frederic Thesiger, Her Majesty's Attorney-General, and Sir Fitz Roy Kelly, her Majesty's Solicitor-General, being four of the Commissioners of Patents for Inventions under the said Act.

Whereas a commodious Office is forthwith intended to be provided by the Crown as the Great Seal Patent Office; and the Commissioners of her Majesty's Treasury have, under the powers of the said Act, appointed such Office as the Office also for the purposes of the said Act:

I. All Petitions for the grant of Letters-patent, and all Declarations and Provisional Specifications, shall be left at the said Commissioners' Office, and shall be respectively written upon sheets of paper of twelve inches in length by eight inches and a half in breadth, leaving a margin of one inch and a half on each side of each page, in order that they may be bound in the books to be kept in the said Office.

II. The drawings accompanying Provisional Specifications shall be made upon a sheet or sheets of parchment, paper or cloth, each of the size of twelve inches in length by eight inches and a half in breadth, or of the size of twelve inches in breadth by seventeen inches in length, leaving a margin of one inch on every side of each sheet.

III. Every Provisional Protection of an invention allowed by the Law Officer shall be forthwith advertised in the London Gazette, and the advertisement shall set forth the name and address of the Petitioner, the title of his invention, and the date of the application.

IV. Every invention protected by reason of the deposit of a Complete Specification shall be forthwith advertised in the London Gazette, and the advertisement shall set forth the name and address of the Petitioner, the title of the invention, the date of the application, and that a Complete Specification has been deposited.

V. Where a Petitioner applying for Letters-patent after Provisional Protection, or after deposit of a Complete Specification, shall give notice in writing at the Office of the Commissioners of his intention to proceed with his application for Letters-patent, the same shall forthwith be advertised in the London Gazette, and the advertisement shall set forth the name and address of the Petitioner and the title of his invention; and that any persons having an interest in opposing such application are to be at liberty to leave Particulars in writing of their objections to the said application at the Office of the Commissioners within twenty-one days after the date of the Gazette in which such notice is issued.

VI. The Lord Chancellor having appointed the Great Seal Patent Office to be the Office of the Court of Chancery for the filing of Specifications, the said Great Seal Patent Office and the Office of the Commissioners shall be combined; and the Clerk of the Patents for the time being shall be the Clerk of the Commissioners for the purposes of the Act.

VII. The Office shall be open to the public every day, Christmas Day and Good Friday excepted, from ten to four o'clock.

VIII. The charge for office or other copies of documents in the Office of the Commissioners shall be at the rate of twopence for every ninety words.

(Signed) St. Leonards, C.
John Romilly, M. R.
Fred. Thesiger, A. G.
Fitz Roy Kelly, S. G.

Dated the 1st Oct., 1852.

By the Right Honourable Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, and the Right Honourable Sir John Romilly, Master of the Rolls.

Ordered, that there shall be paid to the Law Officers and to their clerks the following fees:—

By the Person opposing a Grant of Letters-patent.

	£	s.	d.
To the Law Officer	2	12	6
To his clerk	0	12	6
To his clerk for summons	0	5	0

By the Petitioner on the Hearing of the Case of Opposition.

To the Law Officer	2	12	6
To his clerk	0	12	6
To his clerk for summons	0	5	0

By the Petitioner for the Hearing, previous to the Fiat of the Law Officer allowing a Disclaimer or Memorandum of Alteration in Letters-patent and Specification.

To the Law Officer	2	12	6
To his clerk	0	12	6

By the Person opposing the Allowance of such Disclaimer or Memorandum of Alteration on the Hearing of the Case of Opposition.

To the Law Officer	2	12	6
To his clerk	0	12	6

By the Petitioner for the Fiat of the Law Officer allowing a Disclaimer or Memorandum of Alteration in Letters-patent and Specification.

To the Law Officer	3	3	0
To his clerk	0	12	6

(Signed) St. Leonards, C.
John Romilly, M. R.

Dated the 1st Oct., 1852.

Ordered by the Right Honourable Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain.

I. All Specifications in pursuance of the conditions of Letters-patent, and all Complete Specifications accompanying Petitions and Declarations before grant of Letters-patent, shall be filed in the Great Seal Patent Office.

II. All Specifications in pursuance of the conditions of Letters-patent, and all Complete Specifications accompanying Petitions for the grant of Letters-patent, shall be respectively written bookwise upon a sheet or sheets of parchment, each of the size of twenty-one inches and a half in length by fourteen inches and three fourths of an inch in breadth; the same may be written upon both sides of the sheet, but a margin must be left of one inch and a half on every side of each sheet.

III. The drawings accompanying such Specifications shall be made upon a sheet or sheets of parchment, each of the size of twenty-one inches and a half in length by fourteen inches and three fourths of an inch in breadth, or upon a sheet or sheets of parchment, each of the size of twenty-one inches and a half in breadth by twenty-nine inches and a half in length, leaving a margin of one inch and a half on every side of each sheet.

IV. The charge for office or other copies of documents in the Great Seal Patent Office shall be at the rate of twopence for every ninety words.

(Signed) St. Leonards, C.

Dated the 1st Oct., 1852.

Note.—*It is recommended to applicants and Patentees to make elevation drawings according to the scale of one inch to a foot.*

SECOND SET OF RULES AND REGULATIONS *under the Act* 15 *&* 16 *Vict. c.* 83, *for the passing of Letters-patent for Inventions.*

By the Right Honourable Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain, the Right Honourable Sir John Romilly, Master of the Rolls, Sir Frederic Thesiger, Her Majesty's Attorney-General, and Sir Fitz Roy Kelly, Her Majesty's Solicitor-General, being four of the Commissioners of Patents for Inventions under the said Act.

I. The Office of the Directory of Chancery in Scotland, being the Office appointed by the Act for the recording of transcripts of Letters-patent, shall be the Office of the Commissioners in Edinburgh for the filing of copies of Specifications, Disclaimers, Memoranda of alterations, Provisional Specifications and certified duplicates of the Register of Proprietors.

II. All such transcripts, copies and certified duplicates shall be bound in books and properly indexed, and shall be open to the inspection of the public at the said Office every day from ten to three o'clock.

III. The charge for office copies of such transcripts, copies and certified duplicates, recorded and filed in the said Office shall be at the rate of twopence for every ninety words.

IV. The Enrolment Office of the Court of Chancery in Dublin, being the Office appointed by the Act for the enrolment of transcripts of Letters-patent, shall be the Office of the Commissioners in Dublin for the filing of copies of Specifications, Disclaimers, Memoranda of alterations, Provisional Specifications and certified duplicates of the Register of Proprietors.

V. All such transcripts, copies and certified duplicates shall be bound in books and properly indexed, and shall be open to the inspection of the public at the said Enrolment Office every day, Christmas Day and Good Friday excepted, from ten to three o'clock.

VI. The charge for office copies of such transcripts, copies and certified duplicates, enrolled and filed as aforesaid, shall be at the rate of twopence for every ninety words.

VII. *No Warrant is to be granted for the sealing of any Letters-patent which contains two or more distinct substantive inventions.*[a]

VIII. A provision is to be inserted in all Letters-patent in respect whereof a Provisional and not a Complete Specification shall be left on the application for the same, requiring the Specification to be filed within six months from the date of the application.

IX. No amendment or alteration, at the instance of the applicant, will be allowed in a Provisional Specification after the same has been recorded, except for the correction of clerical errors or of omissions made *per incuriam*.

X. The Provisional Specification must state distinctly and intelligibly the whole nature of the invention, so that the Law Officer may be apprised of the improvement, and of the means by which it is to be carried into effect.

(Signed) St. Leonards, C.
John Romilly, M. R.
Fred. Thesiger, A. G.
Fitz Roy Kelly, S. G.

Dated the 15th Oct., 1852.

Ordered by the Right Honourable Edward Burtenshaw, Lord St. Leonards, Lord High Chancellor of Great Britain.

Every application to the Lord Chancellor against or in relation to the sealing of Letters-patent shall be by notice, and such notice shall be left at the Commissioners' Office, and shall contain particulars in writing of the objections to the sealing of such Letters-patent.

(Signed) St. Leonards, C.

Dated the 15th of Oct., 1852.

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[a] Rescinded by Third Set of Rules and Regulations. See p. 480.

THIRD SET OF RULES AND REGULATIONS *under the Act* 15 & 16 *Vict. c.* 83, *for the passing of Letters-Patent for Inventions, and under the Act of the* 16 & 17 *Vict. c.* 115.

By the Right Honourable Robert Monsey, Lord Cranworth, Lord High Chancellor of Great Britain, the Right Honourable Sir John Romilly, Master of the Rolls, Sir Alexander James Edmund Cockburn, Her Majesty's Attorney-General, and Sir Richard Bethell, Her Majesty's Solicitor-General, being four of the Commissioners of Patents for Inventions under the said Act of the 15 & 16 Vict. c. 83.

It is ordered as follows:—

Rule VII. of the Second Set of Rules and Regulations of the Commissioners, dated the 15th October, 1852, is hereby rescinded.

I. Every application for Letters-patent, and every title of invention and Provisional Specification, must be limited to one invention only, and no Provisional Protection will be allowed or Warrant granted where the title or the Provisional Specification embraces more than one invention.

II. The title of the invention must point out distinctly and specifically the nature and object of the invention.

III. The copy of the Specification or Complete Specification directed by the Act 16 & 17 Vict. c. 115, s. 3, to be left at the Office of the Commissioners on filing the Specification or Complete Specification shall be written upon sheets of brief or foolscap paper, briefwise, and upon one side only of each sheet. The extra copy of drawings, if any, left with the same, must be made as heretofore, and according to the directions contained in Rule III. of the Lord Chancellor, dated the 1st October, 1852.

IV. The copy of the Provisional Specification to be left at the Office of the Commissioners on depositing the same shall be written upon sheets of brief or foolscap paper, briefwise, and upon one side only of each sheet. The extra copy of

drawings, if any, left with the same, must be made as heretofore, and according to the directions contained in Rule II. of the Commissioners, dated the 1st October, 1852.

V. All Specifications, copies of Specifications, Provisional Specifications, Petitions, Notices and other documents left at the Office of the Commissioners, and the signatures of the Petitioners or agents thereto, must be written in a large and legible hand.

VI. In the case of all Petitions for Letters-patent left at the Office of the Commissioners after the 31st day of December, 1853, the notice of the applicant of his intention to proceed for Letters-patent for his invention shall be left at the Office of the Commissioners eight weeks at the least before the expiration of the term of Provisional Protection thereon, and no notice to proceed shall be received unless the same shall have been left in the Office eight weeks at the least before the expiration of such Provisional Protection; and the application for the Warrant of the Law Officer and for the Letters-patent must be made at the Office of the Commissioners twelve clear days at the least before the expiration of the term of Provisional Protection, and no Warrant or Letters-patent shall be prepared unless such application shall have been made twelve clear days at the least before the expiration of such Provisional Protection: Provided always, that the Lord Chancellor may in either of the above cases, upon special circumstances, allow a further extension of time, on being satisfied that the same has become necessary by accident, and not from the neglect or wilful default of the applicant or his agent.

(Signed) CRANWORTH, C.
JOHN ROMILLY, M. R.
A. E. COCKBURN, A. G.
RICHARD BETHELL, S. G.

Dated the 12th of Dec., 1853.

RULES TO BE OBSERVED IN PROCEEDINGS *before the Judicial Committee of the Privy Council under the Act of the 5th and 6th of Will. IV., intituled "An "Act to amend the Law touching Letters-patent "for Inventions"* (*cap.* 83).

I. A party intending to apply by Petition, under Section 2 of the said Act, shall give public notice by advertising in the London Gazette three times, and in three London papers, and three times in some country paper published in the town where or near to which he carries on any manufacture of anything made according to his Specification, or near to or in which he resides, in case he carries on no such manufacture, or published in the county where he carries on such manufacture, or where he lives, in case there shall not be any paper published in such town, that he intends to petition His Majesty under the said Section, and shall in such advertisements state the object of such Petition, and give notice of the day on which he intends to apply for a time to be fixed for hearing the matter of his Petition, (which day shall not be less than four weeks from the date of the publication of the last of the advertisements to be inserted in the London Gazette,) and that on or before such day, notice must be given of any opposition intended to be made to the Petition; and any person intending to oppose the said application shall lodge notice to that effect at the Council Office, on or before such day so named in the said advertisements, and having lodged such notice shall be entitled to have from the Petitioner four weeks' notice of the time appointed for the hearing.

II. A party intending to apply by Petition, under Section 4 of the said Act, shall, in the advertisements directed to be published by the said Section, give notice of the day on which he intends to apply for a time to be fixed for hearing the matter of his Petition (which day shall not be less than four weeks from the date of the publication of the last of the advertisements to be inserted in the London Gazette), and that on or before such day Caveats must be entered; and any

person intending to enter a Caveat shall enter the same at the Council Office, on or before such day so named in the said advertisements; and having entered such Caveat, shall be entitled to have from the Petitioner four weeks' notice of the time appointed for the hearing.

III. Petitions under Sections 2 and 4 of the said Act must be presented within one week from the insertion of the last of the advertisements required to be published in the London Gazette.

IV. All Petitions must be accompanied with affidavits of advertisements having been inserted according to the provisions of Section 4 of the said Act, and the 1st and 2nd of these Rules, and the matters in such affidavits may be disputed by the parties opposing upon the hearing of the Petitions.

V. All persons entering Caveats under Section 4 of the said Act, and all parties to any former suit or action touching Letters-patent, in respect of which Petitions shall have been presented under Section 2 of the said Act, and all persons lodging notices of opposition under the 1st of these Rules, shall respectively be entitled to be served with Copies of Petitions presented under the said Sections, and no application to fix a time for hearing shall be made without affidavit of such service.

VI. All parties served with Petitions shall lodge at the Council Office, within a fortnight after such service, notice of the grounds of their objections to the granting of the prayers of such Petitions.

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

VIII. The Master of the High Court of Chancery, or other Officer to whom it may be referred to tax Costs incurred in the matter of any Petition presented under the said Act, shall allow or disallow in his discretion all payments made to persons of science or skill examined as witnesses to matters of opinion chiefly.

COUNCIL OFFICE, WHITEHALL,
18*th November*, 1835.

IX. A party applying for an extension of a Patent, under Section 4 of the said Act, must lodge at the Council Office four printed or written copies of his Specification, for the use of the Judicial Committee. If such Specification shall have been printed in some Publication, lodging four copies of the Publication containing the same will be deemed sufficient. In the event also of the Applicant's Specification not having been published as aforesaid, and if the expense of making four copies of any Drawing therein contained or referred to would be considerable, the lodging of one copy only of such Drawing will be deemed sufficient.

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

The Judicial Committee will hear the Attorney-General, or other Counsel, on behalf of the Crown, against granting any application made under either the 2nd or 4th Section of the said Act, in case it shall be thought fit to oppose the same on such behalf.

COUNCIL OFFICE,
December 21st, 1835.

PRIVY COUNCIL.

Table of Costs and Fees.

At the Court at Buckingham Palace, the 11th day of August, 1842.

Present, the Queen's Most Excellent Majesty in Council.

WHEREAS there was this day read at the Board a Representation from the Judicial Committee of the Privy Council, dated the 10th August, instant, and in the words following: viz.—

"The Lords of the Judicial Committee having taken into consideration the scale on which the costs of Appeals and other matters referred by your Majesty to this Committee, are usually taxed by the Masters of the Court of Queen's Bench or other persons to whom their Lordships have from time to time referred the same, their Lordships agree humbly to represent to your Majesty, that it is expedient that the scale of costs hitherto allowed in the said proceedings before this Committee should be reduced; and their Lordships recommend that, provisionally, and until further consideration, such costs in all Appeals or matters, not being Appeals from the Courts of Ecclesiastical or Admiralty Jurisdiction, should be taxed and allowed by all such taxing officers as shall hereafter be directed to ascertain and report the same to the Board, according to the Schedule hereunto annexed; and that this rate of charges should be observed by Solicitors conducting business before this Committee."

Her Majesty, having taken this representation into consideration, was pleased, by and with the advice of Her Privy Council, to approve thereof, and of what is therein recommended, and to order, as it is hereby ordered, that the same be duly and punctually observed, complied with and carried into execution. Whereof all persons whom it may concern are to take notice, and govern themselves accordingly.

C. C. GREVILLE.

I.—*The Schedule of Fees above referred to as allowed to Solicitors conducting business before the Judicial Committee.*

	£	s.	d.
Retaining Fee	0	13	4
Perusing official Copy of Proceedings	2	2	0
(This fee to be raised at the discretion of the Clerk of Appeals.[a])			
Attendances at the Council Office or elsewhere, on ordinary business, such as to enter an Appeal or an Appearance, to make a search, to lodge a Petition or Affidavit, or to retain Counsel ..	0	10	0
Instructions for Petition of Appeal	0	10	0
Drawing Petition or Case, per folio	0	2	0
Drawing Appendix, per folio	0	1	0
Copying, per folio	0	0	6
Drawing small Petitions for Orders, &c. ..	0	10	0
Instructions for Case	1	0	0
Attending Consultation	1	0	0
Correcting Proof Sheets, per printed sheet ..	0	10	6
Correcting Foreign or Indian Proof Sheets, per printed sheet	1	1	6
Attending at Council Chamber on a Petition ..	1	6	8
Attending Council Chamber all day on an Appeal not called on	2	6	8
Attending a Hearing	3	6	8
Attending a Judgment	1	6	8
Sessions Fee (for the legal year) equal to four term fees	3	3	0
Attending Taxation	2	2	0
Attending at Council Office on Committee Report, and on the drawing up of Minutes	1	1	0

II.—*Table of Council Office Fees on Appeals and Petitions to the Queen in Council.*

	£	s.	d.
Lodging Petition of Appeal	1	1	0
Entering	1	1	0

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[a] This fee has commonly been allowed at the rate of 6*s.* 8*d.* for the perusal of three brief sheets or twenty-five folios.

	£	s.	d.
Lodging Case	1	1	0
Entering Appearance	0	10	0
Setting down Case	0	10	0
Summons	0	10	0
Committee Report	1	10	0
Order of Her Majesty in Council	3	2	6
Committee Order	1	12	6
Lodging Affidavit	1	1	0
Lodging Petition	1	1	0
Setting down Motion	1	1	0
Notice to put off	0	10	0
Notice to attend	0	10	0
Searching Books for Information for Parties ..	0	10	0
Certificate delivered to Parties	0	10	0
Copies of Papers (each side)	0	5	0
Committee References	2	2	0
Lodging Caveat	1	1	0
Subpœna to Witnesses	0	10	0
Fee for Taxation (Appeals)	3	3	0
Fee for Taxation (Petitions)	1	1	0

III.—*Fees on hearing Appeals in Prize Causes.*

HEARING A CAUSE.

	£	s.	d.
To the Successful Party	5	15	6
To the Unsuccessful Party	2	2	0
Where both Parties may succeed, although the sentence may have been in part reversed ..	3	18	9
Desertion of Appeal	2	17	9

SENTENCE TAKEN BY CONSENT OR IN PŒNAM.

To the Successful Party, to whom the fees of interlocutory are charged by Registrar	4	15	6
Where Counsel is heard, cause not determined, each Party	2	2	0
Motion by Counsel, Gaining Party	1	1	0
Hearing an Admission of Allegations or Act on Petition, Gaining Party	2	2	0
If part admitted and part rejected, each Party ..	1	1	0

Forms and Precedents.

Scire Facias to repeal Letters-Patent.

New Orders in Chancery.

The Orders relating to the Practice on the Common Law side of the Court of Chancery, dated the 29th of December, 1848, have been amended since the passing of 12 & 13 Vict. c. 109, by order of the Lord Chancellor and Master of the Rolls, dated 3rd August, 1849, rescinding the 11th and 12th of the General Orders of 1848, and, as amended, are as follows:—

1. All former Rules and Orders regulating the practice and proceedings of the Petty Bag Office, so far as the same were now in force and are consistent with the said Act of Parliament and with these Orders, are to remain in full force and effect.

2. These Orders, as to all suits, matters and proceedings now pending or hereafter to be commenced, are (so far as the same are applicable to the state of such matters and proceedings) to take effect on the 1st day of January, 1849.

3. In the Office of the Petty Bag the Office is to be opened and closed on the same days, the vacations are to be observed at the same time, and the Clerk is to attend in the Office during the same hours, as are for the same purposes and in relation to the same matters appointed by the General Rules of the Court of Chancery in the Office of the Clerks of Records and Writs, subject, nevertheless, to such alterations as for some special reasons may be at any time made by the Lord Chancellor with the advice and assistance of the Master of the Rolls.

4. The Clerk of the Petty Bag is to have the care and custody of the Common Law Seal, and is to use and employ the same for sealing such several writs and all such documents and writings as are by the said Act authorized to be sealed with the said Seal.

5. Affidavits, affirmations and declarations to be used in any proceeding on the Common Law side of the Court are to be sworn, affirmed or declared before the Clerk of the Petty Bag or before a Master Extraordinary of the High Court of Chancery, and are to be filed in the Office of the Petty Bag.

6. Every writ, rule or document issued or delivered out of the Petty Bag Office is to be tested or dated on the day on which the writ is sealed or the rule or document is made.

7. Every writ returned by the Sheriff is to be immediately filed, and thereupon the day and hour of the filing are to be endorsed on the writ.

8. The Clerk of the Petty Bag, upon receiving the return of the transcript of the verdict of the jury, and proceedings or judgment of any Court of Common Law upon any issue in Law or in fact, is to file the same in the Petty Bag Office, and is to cause an entry to be made of such verdict and proceedings or judgment, and such transcript is to be annexed to the original record in the Petty Bag Office, and thereupon the judgment of the Court of Common Law is to be entered on or annexed to the same record, in conformity with the judgment of the Court from which the transcript is returned.

9. Every solicitor whose name is duly enrolled as such in the High Court of Chancery may act as an attorney in any action, suit or proceeding pending on the Common Law side of the same Court, and is to be therein named and treated as the attorney of the party by whom he is retained.

10. Any party changing or ceasing to employ his attorney in the course of an action, suit or proceeding, is to cause an entry of such change or cessation of employment to be made and entered with the Clerk of the Petty Bag, and to cause notice of such change or cessation of employment and of such entry to be served on every party to the action, suit or proceeding; and until such entry and notice shall have been made and served, the former attorney is to be deemed and taken for all purposes of the action, suit or proceeding, to be and remain the attorney of the party.

13. The proceedings and trial in an action of *Scire facias* may take place and be had in such one of Her Majesty's Superior Courts of Common Law as may be chosen by the party applying to have the writ sealed.

14. A writ of *scire facias* to repeal Letters-patent is not to be sealed—1. Until the *fiat* of the Attorney-General is filed in the Petty Bag Office; 2. Until the name of some one of Her Majesty's Superior Courts of Common Law is endorsed or written thereon; 3. Until a true copy of the writ and of any drawings or plans annexed thereto (to be verified by affidavit) has been filed in the Petty Bag Office.

15. If such writ has been sealed before the 1st of January, 1849, and the record of the action has not been carried or transmitted into the Court of Queen's Bench, the name of some one of Her Majesty's Superior Courts of Common Law is to be endorsed on the writ, and a memorandum thereof entered with the Clerk of the Petty Bag Office before any subsequent proceeding is taken in the action.

16. The trial and any proceedings in an action of *scire facias* are to take place in the Court of Common Law, the name of which is endorsed or written on the writ.

17. A bond of indemnity against costs to be incurred in the prosecution of an action of *scire facias* may (if so desired by the Attorney-General) be taken in the name of the Clerk of the Petty Bag, but the same is not to be deposited or filed in the Office of the Petty Bag unless the intended obligors, and the sums for which they are to give security, be named by the Attorney-General.

18. A bond of indemnity, filed in the Petty Bag Office, may, at the request of the Attorney-General, be put in suit under such circumstances and upon such terms and conditions as the Lord Chancellor and the Master of the Rolls may approve of.

19. An appeal is to be entered by or on behalf of any Defendant who has been summoned by the Sheriff within eight days after the writ of *scire facias* has been returned and filed.

The clerk of the Petty Bag Office is, until further orders, to receive and take the several fees payable, and to account for the same and pay the amount thereof into the Suitors' Fee Fund, in the same manner and at the same times as the Clerks of Records and Writs receive and pay the fees received by them in their Office.

Action for the Infringement of Letters-Patent.

Declaration.

In the Exchequer of Pleas.

The —— day of ——, A.D. ——.

City and County of Bristol. } To wit. W. C. C. by ——, his attorney, sues A. F. for that the said W. C. C. was the first and true inventor of certain new manufactures, that is to say, of certain improvements, first, in machinery for rolling or crushing ground; second, for cutting and threshing agricultural products, and third, an improved adaptation of horse power to threshing machinery, which may also be applied to other uses: and thereupon her Majesty Queen Victoria, by Letters-patent under the Great Seal of England, granted the said W. C. C. the sole privilege to make, use, exercise and vend the said invention within England for the term of fourteen years from the 30th day of April, A.D. 1844, subject to a condition that the said W. C. C. should, within six calendar months next after the date of the said Letters-patent, cause to be enrolled in the High Court of Chancery an instrument in writing under his hand and seal, particularly describing and ascertaining the nature of his said invention, and in what manner the same was to be and might be performed; and the said W. C. C. did within the time prescribed fulfil the said condition, and the Defendant has during the said term infringed the said Patent right, and the Plaintiff claims 50*l.*

Particulars of Breaches.

Exchequer of Pleas.

Between J. C., J. C. and F. C. . . . . *Plaintiffs;*
and
C. P., H. P., J. G. P. and E. P. *Defendants.*

The particulars of the breaches complained of in the said action are, that the Defendants, on or about the thirtieth day of December, one thousand eight hundred and fifty-two, at their factory at ——, in the county of Lancaster, used ma-

chinery in the manufacture of carpets (being terry fabrics), in imitation of the invention described in the Specification of the Letters-patent granted to Thomas Thompson and mentioned in the Declaration.

Dated this twenty-second day of February, 1853.

W. and H. Plaintiff's Attornies.

To Messrs. B. M. and D., Defendant's Attornies.

Form of Pleas in ordinary Cases.

In the ——.

The —— day of ——, A.D. ——.

C. D. ats. A. B. } The Defendant by his attorney says that—

1. He is not guilty.

2. And for a second plea the Defendant says, that the Plaintiff was not the true and first inventor of the supposed invention in the Declaration mentioned, as alleged.

3. And for a third plea the Defendant says, that Her said Majesty did not grant unto the Plaintiff the sole privilege to make, use, exercise and vend the said invention within [England, *or as the case may be*], as alleged.

4. And for a fourth plea the Defendant says, that the Plaintiff did not within six calendar months next after the date of the said alleged Letters-patent cause *to be enrolled in the High Court of Chancery* [*or* to be filed in the office appointed for filing Specifications in Chancery] an instrument in writing, under his hand and seal, particularly describing and ascertaining the nature of his said invention, and in what manner the same was to be and might be performed as alleged.

5. And for a fifth plea the Defendant says, that the said supposed invention in the Declaration mentioned was not, at the time of granting the said alleged Letters-patent, new as to the public use and exercise thereof, but on the contrary thereof had been and was wholly and in part publicly and generally practised, used and vended within [England, *or as the case may be*] before the date and grant of the said Letters-patent.

6. And for a sixth plea the Defendant says, that the said alleged Letters-patent were not nor are Letters-patent for the sole working or making of any manner of manufacture within this realm, according to the true intent of the Statutes in such case made and provided.

7. And for a seventh plea the Defendant says, that the said invention in the Declaration mentioned was not, at the time of granting the said alleged Letters-patent, nor has the same at any time from thence hitherto, nor is the same of any public or general use, benefit or advantage whatsoever, nor was nor is the same in fact any improvement whatsoever or in any way beneficial to the public.

Notice of Objections.

Exchequer of Pleas.

Between J. C., J. C. and F. C. ....*Plaintiffs*;
and
C. P., H. P. and J. G. P...*Defendants*.

TAKE NOTICE, that at the trial of this action the Defendants will rely upon the objections hereinafter mentioned, and, besides denying the allegations contained in the Declaration, will object, contend and insist—

That T. T. was not the true and first inventor thereof.

That the invention was not an invention of certain improvements in weaving figured fabrics.

That the said invention was not new at the time of the making of the said Letters-patent.

That the said invention was not an invention of any manner of new manufacture.

That the said T. T., after the date of the said Letters-patent, caused a Specification to be enrolled in Chancery, but did not thereby, or by any other instrument in writing under his hand and seal enrolled in Chancery, particularly describe and ascertain the nature of the invention, and in what manner the same is to be performed.

That the said Specification did not distinguish between the matters and things therein mentioned which were intended to be claimed as new and those which were old.

That the said Letters-patent are void, by reason of the variances between the description of the invention in the Specification and the Title of the invention in the said Letters-patent.

That the invention is not capable of being applied or being adapted to the production of carpets and other terry goods having raised or looped surfaces, as in the Specification stated.

That the use and publication of the invention and the several parts thereof, prior to the date of the said Letters-patent, upon which the Defendants intend to rely in support of the foregoing objections, respectively are as follows, and no others :—

That the invention and the several parts thereof were respectively, prior to the date of the said Letters-patent, published at or in the Cities of London and Westminster, and elsewhere in England, by the printing and publishing of a certain book hereinafter named, mentioning and describing the said invention and the several parts thereof respectively; that is to say, Volume 13 of Newton's London Journal, published by Mr. Newton, Chancery Lane, London, from page 313 to page 333, both inclusive, and the drawings therein referred to and contained in the said volume.

And also by the enrolling and publishing of a certain Specification of William Hill Darker the elder, William Hill Darker the younger, and William Wood, by them enrolled in Chancery at Westminster, in pursuance of the English Letters-patent granted on them on the 4th day of September, 1841, and a certain other Specification of Joseph Lincoln Roberts, by him enrolled in Chancery, in pursuance of Letters-patent granted to him on the 15th day of April, 1837.

That the invention and several parts thereof were also published by the manufacture of articles by the said Joseph Lincoln Roberts, and by the said William Hill Darker the elder, and William Hill Darker the younger, and William Wood, according to the said inventions described in the said Specification respectively, and by the sale and use of the said articles at Manchester, in the county of Lancaster, and Lambeth, in the county of Surrey.

Above are further and better particulars of the Defendants' objections, delivered in pursuance of the order of Mr. Baron

Platt, in support of which the Defendants will avail themselves of all and every or any of the pleas applicable for that purpose.

Dated this 18th day of April, 1853.

Yours, &c.,

B., M. and D.,

Defendants' Attornies.

To Messrs. W. and H.,

Plaintiffs' Attornies.

Pleas to which the above Notice of objections refers, dated 17th March, 1853.

1. Say that Her said Majesty did not by the said supposed Letters-patent make the said supposed grant of privilege in the Declaration mentioned.

2. Say that the said T. T. was not the first and true inventor of the said supposed manufacture and invention, as in the Declaration alleged.

3. Say that the said T. T. did not within six calendar months after the date of the said Letters-patent cause to be enrolled in said Court of Chancery an instrument in writing under his hand and seal, particularly describing and ascertaining the nature of the said supposed invention, and in what manner same was to be and might be performed.

4. Say that the said supposed invention in the Declaration mentioned was not any manner of manufacture.

5. Not Guilty.

Suit in Equity.

Bill for an Injunction and Account.

In Chancery.

Lord Chancellor.

Vice-Chancellor Wood.

Between R. S. N. .....*Plaintiff,*

and

J. G. W. K., G. E. and R. A. G.. *Defendants.*

[Bill of Complaint.]

To the Right Honourable Robert Monsey, Baron Cranworth, of Cranworth, in the county of Norfolk, Lord High Chancellor of Great Britain.

Humbly complaining,

Showeth unto his Lordship R. S. N., of ——, in the county of ——, ropemaker, the above-named Plaintiff, as follows:—

1. Before and at the time of the making of the Letters-patent hereinafter mentioned, the Plaintiff was the sole, true and first inventor of certain improvements in the manufacture of wire ropes, and in the apparatus and arrangements for the manufacture of the same, namely, the improvements described in the Specification hereinafter set forth, and no other persons or person before or at such time made, used, exercised or vended the said improvements or invention in this realm.

2. On the sixth day of March, one thousand eight hundred and forty-three, Her present Majesty Queen Victoria, by Letters-patent of that date, under the Great Seal of the United Kingdom of Great Britain and Ireland, did for herself, Her heirs and successors, give and grant to the Plaintiff, his executors, administrators and assigns, her special licence, full power, sole privilege and authority, that the Plaintiff, his executors, administrators and assigns, or such others as the Plaintiff, his executors, adminstrators or assigns, should at any time agree with, and no others, from time to time, and at all times, should and lawfully might during the term of fourteen years from the date of the said Letters-patent, make, use and vend within England, Wales and the town of Ber-

wick-upon-Tweed the Plaintiff's invention of certain improvements in the manufacture of wire ropes, and in the apparatus and arrangements for the manufacture of the same; and in the said Letters-patent is contained a proviso that the Plaintiff should cause a particular description of the nature of his said invention, and in what manner the same was to be performed, by an instrument in writing, under his hand and seal, to be inrolled in Her Majesty's High Court of Chancery within six calendar months next and immediately after the date of the said Letters-patent.

3. On the sixth day of September, one thousand eight hundred and forty-three, by a certain Specification or instrument in writing, under his hand and seal, and by certain drawings and plans thereunto annexed and therein referred to by figures and letters of reference, all which said instrument in writing, drawings and plans were duly inrolled in this Honourable Court on the said sixth day of September, one thousand eight hundred and forty-three, the Plaintiff did, in pursuance of the said proviso in the said Letters-patent, cause a particular description of the nature of the Plaintiff's said invention, and in what manner the same was to be performed, to be inrolled in Her Majesty's High Court of Chancery; and the said Specification or instrument in writing, after reciting the said Letters-patent, was in the words or figures following (that is to say):—

SPECIFICATION.

"In the manufacture of wire ropes it is of great importance that the individual wires and strands should be free from twist; that is, should be laid into the strands and ropes without being twisted or subject to torsion about their respective axes; it is also important that the tension and draw of the respective wires and strands should be the same throughout the whole strand and rope, and that the joints occasioned by the insertion of fresh wires and strands should be securely made. Several methods of laying wires into strands and strands into ropes are described in the Specification of certain Letters-patent granted to me, and bearing date the 7th day of August, in the year of our Lord 1840; and my present invention relates to certain improvements on the methods therein described, and also to certain other

arrangements for effecting the above-mentioned objects: and I would further remark, that I suppose cores (as described in the Specification of my said former Letters-patent) to be used in all cases for the purpose of keeping the wires and strands equidistant from their respective centres, and giving strength and flexibility to the ropes; and that the arrangements shown in the annexed drawings are those to be employed for making strands of six wires about a core, and ropes of six strands about a core, which number I greatly prefer to any other. The first part of my invention, or one of my said improvements in the manufacture of wire ropes, consists in certain arrangements for laying the wires into strands and the strands into ropes *without twist*; for this purpose I suspend the bobbins on which the wires or strands are wound, so that the centres of gravity of the bobbins shall be below the points of suspension, and as the system of bobbins revolves, each bobbin by its gravity will cause the spindle in which it is supported to revolve in its bearings once for every revolution of the system.

" Figures 1 and 2 represent this plan; *a* is the main shaft, supported in bearings, *c*, c^1, carrying two sets of arms, *b b*. The spindles, *d*, are supported in their bearings, *c*, e^1, in the ends of the arms, *b*, and carry the bobbins, *f*. The bobbins turn on centre-pins, having a screw and nut at one end, by means of which an equal tension is given to each of the wires; or this equal tension may be given by small springs acting on the bobbin. The wires pass from the bobbins through holes in the ends of the spindles, and in the end of the shaft, *a*, and meet beyond the laying-plate, *g*, hereafter described, where they are laid into a strand by the revolution of the system, being drawn by the drum, *h*, and wound upon the drum, *i*. The core round which the wires or strands are laid is wound on a bobbin, *k*, and passes through the shaft, *a*, which is hollow, and through the centre of the laying-plate, *g*. When the system of bobbins, arranged as described above, is driven beyond a certain speed, the spindles with the bobbins have a tendency to fly out in a line with the arms, to prevent which

I connect all the spindles together by means of cranks, *l* (fig. 3), fastened to the end, *e*, of the spindles, and the tie-rod, *m*, the crank-pins moving in holes in the tie-rod, the distance between the holes being equal to the distance between the centres of the respective spindles. Or, I make the crank-pins move in a circular groove, as in fig. 4; or I fix on the ends of the spindles, *e*, grooved pulleys of equal size, as in fig. 5, a pulley of the same size being fixed to the bearing-frame, *c*, and a double pulley on the end of one of the spindles, an endless band being then passed round the pulleys, as there shown; or I fix on the ends of the spindles toothed wheels, as in fig. 6, and to the bearing-frame, *c*, a wheel of the same size; three intermediate wheels working on studs fixed to the arms revolve round the fixed centre wheel, and communicate motion to the spindles. The arrangements represented in figs. 5 and 6 may also be used with advantage when the centre of gravity of the bobbins is in the line of the points of suspension, or when the bobbins do not revolve about their centre by gravity, as above described. Another part of my invention consists in an arrangement for regulating 'the draw,' that is, the length of strand or rope made during a certain number of revolutions of the machine containing the bobbins on which the wires or strands are wound. This is shown in fig. 1, where the strand passes several times round the drawing drum, *h*, to obtain sufficient adhesion to prevent its slipping; the pinion, *n*, on the axle of the pulley, *o*, works into the wheel, *p*, on the axle of the drawing drum, *h*, to which motion is communicated by a belt working round the pulley, *o*, and the cone of pulleys fixed on the end of the shaft, *a*, the belt being kept tight by the pulley, o^1, and the speed being regulated by the cone of pulleys. The strand is coiled away or wound upon the drum, *i*, by the friction of the belt against the pulley, i^{11}, fixed to the axle of the drum, *i*. An index being employed to count the number of revolutions, the length of the strand or rope may be easily ascertained from the diameter or circumference of the drum. A guide, *r*, is used for keeping the strand to one side, so that it always leads fair on to

it, and one part is prevented from riding over another, which, if allowed, would cause an irregularity in the draw. Another part of my invention relates to a peculiar method of inserting fresh wires and strands in laying the wires into strands, and the strands into ropes, and consists in the use of a fixed laying plate of a peculiar form, having an internal and uninterrupted communication between each of the wires or strands. This plate is represented at g^1, fig. 1, and is fixed by means of three rods screwed into the end of the shaft, *a*, or cone of pulleys, at a distance of about three feet, or equal to the length of joint to be made from the end of the shaft, so that it revolves with the shaft. The plate is so made that the holes or slits through which the wires pass are at equal distances from each other and from the centre, which is essential to be attended to in laying the wires regularly. The fresh wire or strand is inserted in the following manner:—Suppose the wires are laid till an end is within three feet of the laying plate, the empty bobbing is replaced by a full one, the core is cut close to the apex of the cone formed by the wires at *g*, the end of the fresh wire is passed through the hole in the end of the spindle, *d*, and shaft, *a*, and passing through the centre of the laying plate takes the place of the core. The machine revolves and lays half the length of the remaining end, which is then taken out of its place and put in the centre, while the new wire is brought from the centre and put in the place occupied by the old one, which now forms the core, so that the two ends cross one another, and are firmly held in their place by friction. After the remaining half of the end is laid, the core is again inserted, and the laying continued. *Having now described the nature of my invention*, and in what manner the same is to be performed, I wish it to be understood that *I do not claim*, as *the invention* secured to me by the above in part recited Letters-patent, *the manufacture of wire ropes* in which the wires are laid into strands, and the strands into ropes, *without twist;* but I claim the improvements in the manufacture of such ropes by the use and *application of the arrangements and apparatus*

herein described. And I also claim the improvements in the manufacture of such ropes, by the use of the arrangements and apparatus herein described, for ensuring the uniform draw of the strand and rope. And I claim lastly the improvements in the manufacture of wire ropes by the use of a laying plate constructed and applied as above described."

4. The said Letters-patent have never been impeached, but the same have from the day of the date thereof remained and the same now are in full force and of valid and sufficient authority, and the said improvements in the manufacture of wire ropes, and in the apparatus and arrangements for the manufacture of the same so invented by the Plaintiff, and for which the said Letters-patent were so granted, were and are very useful and valuable improvements, and the said apparatus and arrangements possess great advantages over any other apparatus and arrangements, and wire rope manufactured according to the said improvements possessed and still possess great advantages over any wire or metallic rope not so manufactured; and from and ever since the day of the date of the said Letters-patent, the Plaintiff has manufactured and sold large quantities of his patent wire rope, made according to and by means of his invention, as described by the said Specification or instrument in writing, and the drawings and plans thereunto annexed; and no apparatus or arrangements for the manufacture of wire rope has or have ever been known or invented which for economy, expedition and effect is or are at all equal to the apparatus and arrangements according to the Plaintiff's said invention, and by their more uniform consistency, and greater durability, and superiority in point of strength, and also by their greater cheapness and their greater aptitude for any modifications, and especially for submarine telegraphic purposes, ropes thereby made became and are publicly and generally known and preferred to all other wire and metallic ropes, and the Plaintiff has derived and still derives large gains and profits from the manufacture and sale of ropes so made as aforesaid; and as well before as after the grant of the said Letters-patent, the Plaintiff laid out and expended divers large sums of money in and about his said invention, and the Plaintiff has also entered into and

come under divers large contracts and liabilities depending for their performance and liquidation on his sole right to make, use and exercise his said improvements.

5. The Defendants have for some time past in C., in the county of S. and elsewhere, carried on the business of rope-makers in copartnership, under the name, style and firm of W. K. and Company.

6. The attention of the Plaintiff was directed to the manufacture of the Defendants by proceedings in this Honorable Court taken against the Defendants by one J. B. W., in respect of another wire rope patent claimed by the said J. B. W.; and the solicitors of the Plaintiff, and through them the Plaintiff himself received, on the seventeenth day of May, one thousand eight hundred and fifty-four, for the first time, information, which led the Plaintiff to suspect that the Defendants were using the said invention of the Plaintiff.

7. A correspondence thereupon took place between the solicitors of the Plaintiff and the solicitors of the Defendants, in which letters passed dated the eighteenth, nineteenth, twenty-fourth and twenty-fifth days of May, in the course of which the solicitors of the Defendants positively denied that the Defendants were using or exercising the invention of the Plaintiff, but they refused to allow the Plaintiff or his agents to inspect their manufacture or premises.

8. The Plaintiff was thereby prevented for a few days instituting proceedings against the Defendants, and was put to difficulty and trouble in obtaining the evidence of the acts and manufacture of the Defendants.

9. The Defendants have, without the leave or licence of the Plaintiff, manufactured or caused to be manufactured in England, and have sold and used for their private profit and emolument, divers large quantities of wire rope made by means of and according to the said invention and improvements of the Plaintiff, and in breach of the said Letters-patent so granted to the Plaintiff as aforesaid; and in particular the Defendants have made and are now making large quantities of such wire rope for a certain Company called "The Mediterranean Submarine Telegraph Company," and the Defendants have entered into a contract with the said Company for the supply to the Company of a large quantity of such rope made by means of and according to the said in-

vention of the Plaintiff, and in breach of the said Letters Patent. And the Defendants threaten and intend to complete and deliver, and to send or allow to be removed out of the country the said rope, in pursuance of the said contract, and the said rope is intended to be of great length, and to be used for the purpose of submarine telegraph communication in the Mediterranean; and the said contract, if completed and carried into execution, will be productive of large profits to the Defendants, and of great loss and injury to the Plaintiff.

10. The Defendants have in manner aforesaid manufactured, and sold and used for the purposes of profit and emolument to themselves, and are now continuing, and threaten and intend to continue, to manufacture, sell and use for such purposes as aforesaid large quantities of wire rope made in violation of the said Letters-patent so granted to the Plaintiff as aforesaid; and the wire rope so manufactured, sold and used by the Defendants, and in particular the said wire rope so made or in the course of being made by them for the said Mediterranean Submarine Telegraph Company, is made by means of apparatus and machinery exactly or wholly, or at least in all material and substantial respects, the same as the invention and improvements mentioned in the said Specification, and the drawings and plans thereunto annexed and so enrolled as aforesaid; and if there are or is any alterations or alteration, the same are or is made with the intent to make the appearance of a difference only, and no such alterations have any material effect whatever, and are merely colourable.

11. The Defendants ought to set forth the accounts required by the interrogators to this bill.

12. The Defendants ought to be restrained by the order and injunction of this Honourable Court from using and exercising, or causing or permitting to be used or exercised, the invention and improvements mentioned in the Plaintiff's said Specification, or any means, apparatus or arrangements for making wire rope merely colourably differing therefrom, and in particular that the Defendants ought to be restrained from completing, or adding to or proceeding with the wire rope so commenced by them for the said Mediterranean Submarine Telegraph Company as aforesaid, and from selling, disposing of, or parting with or using any of such wire rope,

and from making, selling or using, or causing to be made, sold or used any wire rope or other matters made according to the said invention and improvements of the Plaintiff, or only colourably differing therefrom.

PRAYER.

The Plaintiff prays as follows:—

1. That an account may be taken by and under the decree and direction of this Honourable Court of all the gains, profits and emoluments made by the Defendants J. G. W. K., G. E. and R. A. G., or any or one of them, from or by reason of the making or sale, or contract for the sale of the rope so made or caused to be made by them for the said Mediterranean Submarine Telegraph Company as aforesaid; and that a like account may also be taken of all wire rope made by or by the order or for the use of the Defendants, or any or one of them, by means of or according to the invention and improvements of the Plaintiff, or merely colourably differing therefrom, and of all such wire ropes as have been sold or disposed of by or by the order or for the use of the Defendants or any or one of them, and of the gains and profits made thereby; and that the Defendants may be ordered to pay to the Plaintiff what shall be found to be due from the Defendants, or any or one of them, on taking such accounts.
2. That the Defendants J. G. W. K., G. E. and R. A. G., their servants, agents and workmen, may be restrained by the order and injunction of this Honourable Court from using or exercising, or causing or permitting to be used or exercised, the invention and improvements mentioned in the Plaintiff's said Specification, or any means, apparatus or arrangement for making wire rope merely colourably differing therefrom, and in particular that the Defendants may be restrained from completing, or adding to or proceeding with, or from causing or permitting the completion or any addition to or extension of the wire rope so in the course of manufacture by them for the said Mediterranean Sub-

marine Telegraph Company as aforesaid, and from selling, disposing of or parting with, or using, or causing or permitting the sale, parting with, disposition or use of any such wire rope, and from making or selling, or using or causing to be made, used or sold, any wire rope or other matters made according to the Plaintiff's said invention and improvements, or merely colourably differing therefrom.

3. That the Plaintiff may have such further or other relief as the nature of the case may require.

Names of Defendants :—

The Defendants to this Bill of Complaint are—

J. G. W. K.,
G. E. and
R. A. G.

H. M. C.
[*Signature of Counsel.*]

Note.—This Bill is filed, &c.

Writ of Injunction.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to J. G. H., his agents, servants and workmen, greeting: Whereas Mr. W., of counsel for the Complainant in a cause wherein W. M. is Complainant, and you the said J. G. H. are Defendant, on the 25th day of September, 1851, moved and offered divers reasons unto us in Our Court of Chancery, before the Right Honorable Sir George James Turner, that you the Defendant, your agents, servants and workmen, might be restrained by the order and injunction of Our said Court from working, using, putting in practice or vending, or procuring to be made, used, put in practice or vended, during the remainder of the term mentioned in the Letters-patent granted to T. M. in the Complainant's Bill mentioned, any boxes, safes or other depositories made in such or the like manner, or on the same and the like principle, as the said

T. M.'s invention in the said Letters-patent mentioned, or in anywise counterfeiting, imitating or resembling the said invention, in the presence of Mr. S., of counsel for you the said Defendant: WHEREUPON and upon hearing an affidavit of the said Complainant, an affidavit of B. F., an affidavit of J. S. M., an affidavit of J. G., an affidavit of J. W. P., an affidavit of J. O.; an exhibit marked A, being an Office Copy of the Specification of a Patent granted to T. M.; and an exhibit marked X, being a printed pamphlet relating to Tann's fireproof safes, sold by you the said Defendant; an affidavit of J. F., an affidavit of E. T., an affidavit of J. C., an affidavit of W. M., an affidavit of E. C., an affidavit of J. T., an affidavit of A. L., an affidavit of you the said Defendant, an affidavit of H. L., and the exhibits therein referred to, read, and what was alleged by the counsel on both sides, Our said Court did order that an Injunction should be awarded to restrain you the said Defendant J. G. H., your agents, servants and workmen, from making, using, putting in practice or vending, or procuring to be made, used, put in practice or vended, during the remainder of the term mentioned in the Letters-patent granted to T. M. in the Complainant's Bill named, any boxes, safes or other depositories made in such or the like manner, or on the same or the like principle, as the said T. M.'s invention in the said Letters-patent mentioned, or in anywise counterfeiting, imitating or resembling the said invention, until you the said Defendant should fully answer the Complainant's Bill, or Our said Court make other order to the contrary: WE THEREFORE, in consideration of the premises, DO HEREBY strictly enjoin and restrain you the said J. G. H., and your agents, servants and workmen, under the penalty of five hundred pounds, to be levied on your lands, goods and chattels to our use, from making, using, putting in practice or vending, or procuring to be made, used or put in practice or vended, during the remainder of the term mentioned in the Letters-patent granted to T. M. in the Complainant's Bill named, any boxes, safes or other depositories made in such or the like manner, or on the same or the like principle, as the said T. M.'s invention in the said Letters-patent mentioned, or in anywise counter-

feiting, imitating or resembling the said invention, until you the said Defendant shall fully answer the Complainant's Bill, or our said Court make other order to the contrary.

WITNESS Ourself at Westminster, the 7th day of October, in the 15th year of Our reign.

ROMILLY.

ORDER FOR PERPETUAL INJUNCTION.

V. C. Turner.

Monday, the 2nd day of August, in the 16th year of the reign of Her Majesty Queen Victoria, 1852.

Between W. M. . . . *Plaintiff*;
and
J. G. H. . . . *Defendant.*

WHEREAS Mr. R., Mr. W. and Mr. H., of counsel for the Plaintiff, on the 15th day of January last, moved and offered divers reasons unto the Court that the above-named Defendant J. G. H. might stand committed to Her Majesty's prison, called the Queen's Prison, for a breach of the Injunction awarded in this cause, bearing date the 7th day of October, 1851, to restrain the said Defendant J. G. H., and his agents, servants and workmen, from making, using, putting in practice or vending, or procuring to be made, used, put in practice or vended, during the remainder of the term mentioned in the Letters-patent granted to T. M. in the Plaintiff's Bill named, any boxes, safes or other depositories made in such or the like manner, or on the same or the like principle, as the said T. M.'s invention in the said Letters-patent mentioned, or in anywise counterfeiting, imitating or resembling the said invention: Whereupon and upon hearing the order made in this cause for the said Injunction, dated the 25th day of September, 1851, read, and what was alleged by Sir W. P. W. and Mr. S., of counsel for the Defendant, This Court did order, that the said motion should stand over, with liberty to the Plaintiff to bring such action at Law as he might be advised; That it appears by the affidavit of W. M.,

that an action was brought by the Plaintiff in Her Majesty's Court of Queen's Bench against the said Defendant in respect of his infringement of the said Letters-patent; That the said action was tried before the Lord Chief Justice Campbell and a Special Jury, upon the 25th June, 1852; That the said Defendant tendered a Bill of Exceptions to the said Lord Chief Justice's direction to the Jury; That upon the trial of the said action the Jury found a verdict for the Plaintiff upon all the issues: AND WHEREAS the said Mr. R., Mr. W. and Mr. H., of counsel for the Plaintiff, this day renewed their said motion to commit the said Defendant for a breach of the said Injunction: Whereupon, and upon hearing Mr. S., of counsel for the Defendant, and the said affidavit read, and the Defendant by his counsel undertaking to waive his said Bill of Exceptions, and to release errors in the said action at Law and of the action at Law brought by the Plaintiff against the Defendant before the commencement of this suit, and the said Defendant consenting that this cause should be dealt with as on the hearing, and the Plaintiff by his counsel waiving an answer from the said Defendant to the Bill filed in this cause, This Court doth order, that the Injunction awarded in this cause, pursuant to the said Order dated the 25th day of September, 1851, for restraining the Defendant, his agents, servants and workmen, from making, using, putting in practice or vending, or procuring to be made, used, put in practice or vended, during the remainder of the term mentioned in the Letters-patent granted to T. M. in the Complainant's Bill named, any boxes, safes or other depositories made in such or the like manner, or on the same or the like principle, as the said T. M.'s invention in the said Letters-patent mentioned, or in anywise counterfeiting, imitating or resembling the said invention, be, and the same is hereby made perpetual: And it is ordered, that it be referred to the Taxing Master of this Court in rotation to tax the said Plaintiff his costs of this suit, including therein the costs of obtaining the said Order dated the 25th day of September, 1851, of the said motion for the commitment of the Defendant, and of this application, and of the costs of the second action at Law: And it is ordered, that such costs, when taxed, be paid by the Defendant J. G. H. to the Plaintiff W. M.

PETITION FOR EXTENSION OF THE TERM OF A PATENT.

To the Queen's most excellent Majesty in Council.

The humble Petition of Charles Derosne, late of Leicester Square, in the County of Middlesex, but now of No. 7, Rue des Batailles, Chaillot, near Paris, in the Kingdom of France, Gentleman,

Showeth,

THAT His late Majesty King William the Fourth, by Letters-patent dated the 29th day of September, in the first year of His reign, granted to your said Petitioner, his executors, administrators and assigns, the sole use and exercise of his invention, entitled "Certain improvements in extracting sugar or syrups from cane juice and other substances contained in sugar, and in refining sugar and syrups," within that part of the Kingdom of Great Britain and Ireland called England, the dominion of Wales, and the town of Berwick-upon-Tweed, and also in all His said Majesty's Colonies and Plantations abroad, for the term of fourteen years from the date of the said Letters-patent, which term has not yet expired.

That shortly after the granting of the said Letters-patent (your Petitioner then and now residing abroad), your Petitioner, with a view to bring the aforesaid invention into general use both in England and the Colonies, was induced to enter into an arrangement with an English gentleman named Isaac Higgin, then carrying on business as a merchant in the City of London, whereby your Petitioner agreed to give and did secure to the said Isaac Higgin one-third of the gains, profits and advantages which should at any time thereafter be derived from granting licences to use the said invention, in consideration of the said Isaac Higgin undertaking (as far as lay in his power) to introduce the said invention, not only to the refiners in England, but also to the planters in the British Colonies.

That, in consequence of the decease of the said Isaac Higgin in the year 1832, just as he landed in Jamaica, the generally depressed state of the Colonies, and the duty of eight guineas per cwt. charged upon partially refined sugar, your Petitioner has never yet been enabled to introduce the

use of the said invention into the English Colonies, although he knows that it would be of the highest advantage to the planters if it could be so introduced.

That in consequence, also, of his being resident abroad, and of the difficulties thrown in his way by parties disputing his Patent right, he was unable to introduce the general use of his invention into English refineries for nearly five years after the granting of his said Patent, and that in fact he only sold two licences prior to the year 1835, whereby (having sold them mainly with the view of getting the process known) he only realized a sum of 200*l.*

That your Petitioner duly entered with the Clerk of the Patents in England, and on the 16th day of August, 1836, duly enrolled in Her Majesty's High Court of Chancery in England, a Disclaimer or Memorandum of alterations, and thereby (among other things) desired that, instead of the title of the said Patent being for the invention of "certain improvements in extracting sugar or syrups from cane juice and other substances containing sugar, and in refining sugar and syrups," the following words be substituted in lieu thereof; videlicet, the invention of "a certain improvement or certain improvements to be used in the course of the process of extracting sugar or syrup from cane juice and other substances containing sugar, and also to be used in the course of the process of refining sugar and syrup, and for the purpose in either case of removing the colour from or whitening and purifying such sugars or syrups respectively."

That your Petitioner, by his said Disclaimer and Memorandum of alterations, also disclaimed a portion of the said Specification of the said Patent, and amended the said Specification in various particulars.

That your Petitioner has received for licences to use the invention protected by His said late Majesty's Patent of the 29th day of September, 1830, the sum of 8,120*l.* 6*s.* 8*d.*, and no more.

That your Petitioner has paid for law charges in taking out the said Patent, in legal proceedings, in law and equity, to protect the same, and for the share of the said Isaac Higgin out of his profits, and for general professional assistance relating thereto, the sum of 4,500*l.* and upwards.

That your Petitioner is the senior partner in the firm of

Derosne and Cail, and has extensive works at Paris for the manufacture of machines, and he has, at much loss and inconvenience, been obliged from time to time to leave his business abroad and to travel into England for the purpose of introducing the said invention to the London and provincial refiners, to explain its use, and show its beneficial results.

That, to avoid further litigation and subsequent expense, your Petitioner was from time to time induced to take and did take premiums for licences to use the said invention wholly inadequate to the advantages derived and derivable therefrom.

That the usefulness of your Petitioner's invention in the refining of sugars is admitted by everybody, and the cost of refining sugar is much less than heretofore; and therefore, by means of your Petitioner's invention, the refiner is enabled to sell refined sugars at a less price than heretofore, whereby the public has been considerably benefited.

That your Petitioner has advertised in the London Gazette three times, and in three London newspapers, "The Morning Herald," "The Morning Post" and "Standard," and your Petitioner (having neither manufactory nor residence in England) has advertised in each of the following papers; videlicet, "The Liverpool Courier," of the 14th; "Gore's General Advertiser," of the 15th; "The Liverpool Standard," of the 20th; "The Plymouth and Devonport Weekly Journal," of the 15th and 23rd; "The Plymouth, Devonport and Stonehouse Herald," of the 17th; "The Bristol Gazette," of the 15th and 22nd; "Felix Farley's Bristol Journal," of the 17th; "The Eastern Counties Herald," of the 15th; "The Hull Packet," of the 16th, and "Hull Rockingham," of the 17th days of February instant respectively, being papers circulating in the towns at which your Petitioner's invention is carried on under licences from your Petitioner.

That it is your Petitioner's intention to apply to your Majesty in Council for a prolongation of his said term of sole vending and using his said invention.

Your Petitioner therefore humbly prays your Majesty to grant to him new Letters-patent for the sole use and exercise of his said invention (as described in and by the said Disclaimer and Memorandum of alterations) within that part of your Majesty's Kingdom of Great

Britain and Ireland called England, the dominion of Wales, and town of Berwick-upon-Tweed, and also in all your Majesty's Colonies and Plantations abroad, for a term of seven years, or such other term as your Majesty shall please, after the expiration of the said term of fourteen years first above mentioned, according to the form of the Statute in such case made and provided.

And your Petitioner will ever pray, &c.

AFFIDAVIT AS TO INSERTION OF THE ADVERTISEMENTS WITH REFERENCE TO THE ABOVE PETITION.

DANIEL HEATH, Clerk to Thomas Graham, of 1, Mitre Court Chambers, Temple, in the City of London, Gentleman, maketh oath and saith, that he this deponent, by the direction of the said Thomas Graham and on the part of the said Charles Derosne, caused three advertisements to be published in the London Gazette of the said Charles Derosne's intention to apply to Her Majesty in Council for a prolongation of his term of sole using and vending his invention in the said Petition mentioned. And this deponent further saith, that the three said advertisements were in the words and figures or to the purport and effect following; (that is to say,)

" Whereas His late Majesty King William the Fourth did, by his Letters-patent bearing date the 29th day of September, in the first year of His reign, give and grant (for the term therein mentioned) unto me the undersigned Charles Derosne, therein described of Leicester Square, in the county of Middlesex, Gentleman, but now of No. 7, Rue des Batailles, Chaillot, near Paris, in the Kingdom of France, the sole right to make, use, exercise and vend within England, Wales and the town of Berwick-upon-Tweed, and also in all His Majesty's Colonies and Plantations abroad, the invention of 'certain improvements in extracting sugar or syrup from cane juice and other substances containing sugar, and in refining sugar and syrups:' And whereas I the said Charles Derosne, by virtue of the Statute in that case made and provided, duly entered with the Clerk of the Patents in England, and on the 15th day of August, 1836, duly enrolled in Her Majesty's High Court of Chancery, a Disclaimer and Memo-

randum of alterations, and thereby, among other things, desired that, instead of the title of the said Patent being for the invention of 'certain improvements in extracting sugar or syrup from cane juice and other substances containing sugar, and in refining sugar and syrups,' the following words be substituted in lieu thereof; videlicet, the invention of 'a certain improvement or certain improvements to be used in the course of the process of extracting sugar or syrup from cane juice and other substances containing sugar, and also to be used in the course of the process of refining sugar and syrup, for the purpose in either case of removing the colour from or whitening and purifying such sugars or syrups respectively:' Now I the said Charles Derosne do hereby give notice, that I intend forthwith to apply to Her Majesty in Council for a prolongation for the further term of seven years, or such other term, not exceeding seven years, as Her Majesty shall please, of the term of sole using, making and vending the aforesaid invention within that part of the United Kingdom of Great Britain and Ireland called England, the dominion of Wales and town of Berwick-upon-Tweed, and also in all Her Majesty's Colonies and Plantations abroad; and I the said Charles Derosne hereby give further notice, that I intend to apply on the 18th day of March next to the Right Honorable the Lords comprising the Judicial Committee of Her Majesty's Honorable Privy Council for a time to be fixed for hearing the matters of the said Petition for such prolongation of the said term as hereinbefore mentioned; and all persons desirous of being heard in opposition to the prayer of the said Petition are hereby required to enter *caveats* at the Privy Council Office on or before the said 18th day of March next. Charles Derosne, per procuration, Thomas Graham, 1, Mitre Court Chambers, Temple, London, his attorney and agent:" And that the days on which the said advertisement appeared in the London Gazette were Friday the 9th, Tuesday the 13th, and Friday the 16th days of February instant. And this deponent further saith, that he also caused the said advertisement, or the purport and effect thereof, to be inserted in the following London papers; videlicet, "The Morning Herald," of Tuesday the 13th, Thursday the 15th, and Saturday the 17th days of February instant, and in "The Morning Post" and "Standard," of the

16th day of February instant. And this deponent further saith, that the said Charles Derosne, having no manufactory nor residence in England, this deponent caused the said advertisement, or the purport and effect thereof, to be inserted in the following provincial newspapers; (that is to say,) "The Liverpool Courier," of the 14th; "Gore's General Advertiser," of the 15th; "The Liverpool Standard," of the 20th; "The Plymouth and Devonport Weekly Journal," of the 15th and 22nd; "The Plymouth, Devonport and Stonehouse Herald," of the 17th; "The Bristol Gazette," of the 15th and 22nd; "Felix Farley's Bristol Journal," of the 17th; "The Eastern Counties Herald," of the 15th; "The Hull Packet," of the 16th, and "The Hull Rockingham," of the 17th days of February instant, respectively. And this deponent further saith, that he is informed and believes that the said provincial newspapers, or some of them, circulate within the towns and neighbourhood of Liverpool, in the county of Lancaster, Plymouth, in the county of Devon, Goole and Hull, in the county of York, and the city of Bristol. And this deponent further saith, that the only licences granted in England for the use of the said Charles Derosne's invention (other than to London refiners) were granted to persons residing or carrying on business at Liverpool, Plymouth, Goole, Hull and Bristol aforesaid.

I.

ASSIGNMENT *of separate* LETTERS-PATENT *for the Three Kingdoms respectively* (*to a* PURCHASER).

THIS INDENTURE, made on the —— day of ——, 18—, Between [*Patentee*] of, &c., of the one part, and [*Purchaser*] of, &c., of the other part: WHEREAS by Letters-patent[a] under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the —— day of ——, in the year of our Lord 18—, and in the —— year of the reign of Her Majesty Queen Victoria, and duly enrolled in Her Majesty's High Court of Chancery, after reciting, among other things, a petition of the said [*Patentee*], representing

Recital of Letters-patent granted before the Patent Law Amendment Act for England.

[a] For a recital of Letters-patent granted under the present practice, see *post*, p. 519.

that he had invented "Improvements in [*title of invention*]," Her said Majesty did give and grant unto the said [*Patentee*], his executors, administrators and assigns, special licence, full power, sole privilege and authority that he the said [*Patentee*], his executors, administrators and assigns, and every of them, by himself and themselves, or by his and their deputy or deputies, servants or agents, or such others as he the said [*Patentee*], his executors, administrators or assigns, should at any time agree with, and no other person, from time to time and at all times thereafter during the term of years there expressed, should and lawfully might make, use, exercise and vend his said invention within that part of the United Kingdom of Great Britain and Ireland called England, the dominion of Wales and town of Berwick upon Tweed, To have, hold, exercise and enjoy the said licence, powers, privileges and advantages unto the said [*Patentee*], his executors, administrators and assigns, for and during the term of fourteen years from the date of the now being recited Letters-patent: AND WHEREAS in pursuance and performance of a condition in the above recited Letters-patent contained, the said [*Patentee*] did, within the space of six calendar months after the date of the same Letters-patent, cause to be enrolled in Her Majesty's High Court of Chancery in England a particular description in writing under his hand and seal of the nature of his said invention and in what manner the same was to be performed: AND WHEREAS by other Letters-patent sealed at Edinburgh with the Seal appointed by the Treaty of Union to be kept and used instead of the Great Seal of Scotland, bearing date at St. James's, the —— day of ——, in the —— year of Her said Majesty, and duly registered, after reciting, among other things, that the said [*Patentee*] had by his petition represented that he had invented [*title of invention*], her said Majesty did give and grant unto the said [*Patentee*], his executors, administrators and assigns, special permission, licence and full power, sole privilege and authority that he the said [*Patentee*], his executors, administrators or assigns, by themselves or such other persons as he or they should appoint or agree with, and no others, from time to time and at all times thereafter during the term of years therein mentioned might lawfully use, exercise and sell the said invention within that part of the United Kingdom of

Enrolment of Specification in England.

Letters-patent for Scotland.

Great Britain and Ireland called Scotland, To hold, have, exercise and use the said licences, powers, privileges and advantages unto the said [*Patentee*], his executors, administrators or assigns, for and during the term of fourteen years from the date of the now being recited Letters-patent: AND WHEREAS

Enrolment of Specification in Scotland.

in pursuance and performance of a condition in the lastly above recited Letters-patent contained, the said [*Patentee*] did, within the space of four calendar months after the date of the same Letters-patent cause to be enrolled in Her Majesty's Court of Chancery in Scotland a particular description in writing under his hand and seal of the nature of his said invention and in what manner the same was to be performed: AND WHEREAS by other Letters-patent under the Great Seal of Ireland, bearing date at Dublin the —— day of ——, in the —— year of Her said Majesty's reign, and duly enrolled in Her said Majesty's High Court of Chancery in Ireland, after reciting, among other things, the petition of the said [*Patentee*], representing that he had invented [*title of invention*], Her said Majesty did give and grant unto the said [*Patentee*], his executors, administrators and assigns, special licence, full power and sole privilege and authority that he the said [*Patentee*], his executors, administrators and assigns, by himself and themselves and by his and their deputy and deputies, servants and agents, and such other as he the said [*Patentee*], his executors, administrators and assigns, should at any time agree with, and no other, from time to time and at all times thereafter during the term of years therein mentioned, should and might lawfully make, use, exercise and vend the said invention within that part of the United Kingdom of Great Britain and Ireland called Ireland, To have, hold, exercise and enjoy the said licence, power, privileges and advantages unto the said [*Patentee*], his executors, administrators or assigns, for and during the term of fourteen years from the date of the now being recited Letters-patent:

Letters-patent for Ireland.

AND WHEREAS in pursuance and performance of a condition in the lastly above recited Letters-patent contained, the said [*Patentee*] did, within the space of six calendar months after the date of the same Letters-patent, cause to be enrolled in Her Majesty's Court of Chancery in Ireland a particular description in writing under his hand and seal of the nature of his said invention and in what manner the same was to be

Enrolment of Specification in Ireland.

performed: AND WHEREAS the said [*Patentee*] has agreed with the said [*Purchaser*] for the absolute sale to him of the said invention and the said several Letters-patent hereinbefore recited, and the several privileges and rights thereby respectively granted, and of all benefit thereof respectively, including any extension or renewals thereof that may be obtained, and free from incumbrances, at the price of £—: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of £— sterling by the said [*Purchaser*] to the said [*Patentee*] paid immediately before the execution of these presents, the receipt whereof the said [*Patentee*] doth hereby acknowledge and therefrom doth acquit, release and discharge the said [*Purchaser*], his heirs, executors, administrators and assigns for ever by these presents, He the said [*Patentee*] DOTH hereby grant, assign and confirm unto the said [*Purchaser*], his executors, administrators and assigns, ALL those the invention and several Letters-patent hereinbefore mentioned, and all privileges and authorities by the said several Letters-patent respectively granted, and the exclusive use and benefit of the said invention within England, Wales, Berwick upon Tweed, Scotland and Ireland respectively, AND all rights, powers, authorities, privileges, advantages, profits, emoluments and benefits to the said invention, Letters-patent and premises, or any of them, in anywise appertaining or belonging, so far as concerns the use, exercise and enjoyment of the said invention within the countries and places aforesaid, or otherwise under or by virtue of the several above recited Letters-patent, AND all the right, title and interest whatsoever of him the said [*Patentee*] to and in respect of the said same invention, Letters-patent and premises respectively, TO HAVE, hold, use, exercise and enjoy the said invention, Letters-patent and premises unto and by the said [*Purchaser*], his executors, administrators, licencees and assigns, henceforth for all the respective residues of the said respective terms of fourteen years each now unexpired, and also for and during any further term or terms for which any extensions or extension, renewals or renewal, of the said respective Letters-patent, or any of them, may be obtained, in as full, ample and beneficial a manner as the said [*Patentee*] might have done if these presents had not been made: AND

Agreement for sale.

Testatum.

Vendor assigns Letters-patent.

General words.

Habendum.

Vendor's covenants:

the said [*Patentee*], for himself, his heirs, executors and administrators, doth hereby covenant with the said [*Purchaser*], his executors, administrators and assigns, THAT the said [*Patentee*], at the time of the sealing of the said Letters-patent, was the true and first inventor of the said invention, AND that the same[b] then was new as to the public use or knowledge thereof within the realm; AND also that in pursuance of the several provisoes for that purpose contained in the several hereinbefore recited Letters-patent respectively, he the said [*Patentee*] did particularly describe and ascertain the nature of the said invention and in what manner the same is to be performed, by the several hereinbefore recited Specifications or instruments, and did cause the same to be in due time enrolled or registered as aforesaid; AND that the said several Letters-patent expressed to be hereby assigned are good, valid and effectual for the said invention, and are in nowise invalidated, avoided or voidable; AND that the said [*Patentee*] now hath in himself good right and full power and authority by these presents to assign the said several Letters-patent, invention and premises unto the said [*Purchaser*], his executors, administrators and assigns, in manner aforesaid and according to the true intent and meaning of these presents; AND that the said Letters-patent, privileges, invention and premises respectively shall from henceforth be held, used, exercised and enjoyed during the term or terms aforesaid by the said [*Purchaser*], his executors, administrators or assigns, without any lawful denial, intervention, hinderance, prevention or disturbance by any person or persons whomsoever: AND LASTLY, that the said [*Patentee*], his executors and administrators, and every other person having or lawfully claiming or to claim any right, title, interest or authority whatsoever, either at Law or in Equity, to, in or in respect of the said several Letters-patent and premises, or any of them, will and shall from time to time and at all times hereafter

—that Patentee was the first inventor;

—that invention was new;

—and duly specified;

—and that Letters-patent are now valid;

—that vendor has right to assign;

—for quiet enjoyment;

—for further assurance.

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[b] In the case of Letters-patent granted since the Patent Law Amendment Act, say—

"And that the same was at the time of the allowance of the said [*Inventor's*] Provisional Specification of the said invention."

upon every reasonable request and at the costs of the said [*Purchaser*], his executors, administrators or assigns, make, do and execute all such further acts, deeds, applications, petitions, amendments, disclaimers, assurances, matters and things whatsoever, for the better and more effectually assigning, assuring, confirming, renewing or extending the said several Letters-patent, invention, privileges, term or terms of years and premises, or any of them, or the enjoyment thereof respectively, unto or for the benefit of the said [*Purchaser*], his executors, administrators or assigns, or for enabling him, them or any of them to prevent, or to commence, bring or prosecute any actions, suits or other proceedings in respect of any infringement or infringements of the said privileges and premises intended to be hereby assured, or otherwise to secure to him and them the sole and exclusive use and enjoyment of the said invention and premises as by the said [*Purchaser*], his executors, administrators or assigns, shall be devised and required. IN WITNESS, &c.

II.

MORTGAGE OF LETTERS-PATENT.

THIS INDENTURE, made on the —— day of ——, Between [*Mortgagor*], of, &c., of the one part, and [*Mortgagee*], of, &c., of the other part: WHEREAS by Letters-patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the —— day of ——, in the —— year of the reign of Her Majesty Queen Victoria, and duly filed in Her Majesty's High Court of Chancery, after reciting, among other things, that the said [*Mortgagor*] had by his Petition represented to Her Majesty that he was in possession of an invention for [*title of invention*][c], her said

Recital of Letters-patent granted since the Patent Law Amendment Act;

[c] If a Complete Specification was deposited at the time of filing the petition, say—

"And that the said [*Inventor*] had particularly described and ascertained the nature of the said invention, and in what manner the same was to be performed, by an instrument in writing under his hand and seal, and had caused the same to be duly filed in the Great Seal Patent Office."

Recital of Letters-patent founded on Complete Specification.

Majesty did give and grant unto the said [*Mortgagor*], his executors, administrators and assigns, her said Majesty's especial licence, full power, sole privilege and authority that he the said [*Mortgagor*], his executors, administrators and assigns, and every of them, by himself and themselves, or by his and their deputy or deputies, servants or agents, or such others as he the said [*Mortgagor*], his executors, administrators or assigns, should at any time agree with, and no other, from time to time and at all times thereafter during the term thereinafter mentioned, should and lawfully might make, use, exercise and vend his said invention within the United Kingdom of Great Britain and Ireland, the Channel Islands, and the Isle of Man, To have, hold, exercise and enjoy the said licence and privilege unto the said [*Mortgagor*], his executors, administrators and assigns, for and during the term of fourteen years from the —— day of ——, subject, among other conditions, to a condition or proviso therein contained, that if the said [*Mortgagor*] should not particularly describe and ascertain the nature of his said invention, and in what manner the same was to be performed, by an instrument in writing under his hand and seal, and cause the same to be filed in Her Majesty's Great Seal Patent Office within six calendar months next and immediately after the date of the now being recited Letters-patent;[d] and also if the said [*Mortgagor*], his executors, administrators or assigns, should not pay or cause to be paid, before the expiration of three and seven years respectively from the date of the now being recited Letters-patent, the several stamp duties[e] therein mentioned; and if articles of the said invention should not be supplied for Her Majesty's service in manner therein mentioned, that then and in any of the said cases the now being

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[d] If the invention was completely specified in the first instance, this condition will run thus:—

"That if the said instrument in writing thereinbefore mentioned did not particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed."

[e] This was rather differently expressed before the Stat. 16 & 17 Vict. c. 5.

recited Letters-patent, and all liberties and advantages whatsoever thereby granted, should utterly cease, determine and become void: AND WHEREAS[f] in pursuance and performance of the condition in that behalf in the above-recited Letters-patent contained, the said [*Mortgagor*] did particularly describe and ascertain the nature of his said invention, and in what manner the same was to be performed, by an instrument in writing under his hand and seal, and did cause the same to be filed in Her Majesty's Great Seal Patent Office within six calendar months next and immediately after the date of the said Letters-patent: AND WHEREAS the said [*Mortgagee*] hath agreed to advance and lend to the said [*Mortgagor*] the sum of £—, at interest on the security hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and also in consideration of the sum of £— sterling to the said [*Mortgagor*] advanced and lent by the said [*Mortgagee*] immediately before the execution of these presents, the receipt whereof the said [*Mortgagor*] doth hereby acknowledge and from the same doth discharge the said [*Mortgagee*], his executors, administrators and assigns, by these presents, he the said [*Mortgagor*] doth by these presents grant, assign and transfer unto the said [*Mortgagee*], his executors, administrators and assigns, All those the invention and Letters-patent respectively hereinbefore mentioned and recited, and all the licences and privileges by the said Letters-patent granted, and the exclusive use and benefit of the said invention within the United Kingdom of Great Britain and Ireland, and the Channel Islands and Isle of Man, and all rights, powers, authorities, privileges, advantages, profits, emoluments and benefits to the said invention, Letters-patent and premises, or any of them, in anywise appertaining or belonging, so far as concerns the use, exercise and enjoyment of the said invention within the countries and places aforesaid, or otherwise under or by virtue of the said Letters-patent, or any extension or renewal thereof: AND all the right, title, interest, term and terms of years, benefit, property, advantage, claim and demand whatsoever, both at Law

—of filing of Specification.

Testatum.

Assignment of Letters-patent.

General words.

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[f] To be omitted if a Complete Specification was filed in the first instance.

and in Equity, of him the said [*Mortgagor*] to, in, of, upon or in respect of the same invention, Letters-patent and pre-

Habendum. mises, To HAVE, hold, use, exercise and enjoy the said invention, Letters-patent and premises unto and for the said [*Mortgagee*], his executors, administrators and assigns, henceforth, for and during all the residue now unexpired of the said term of fourteen years by the said Letters-patent granted, and for all other the term and interest (if any) of the said [*Mortgagor*] therein: And also for and during any future term or terms for which any extension or renewal of the said Letters-patent, or of any of the privileges thereby granted, may be obtained, in as full and beneficial a manner to all intents and purposes as he the said [*Mortgagor*] might or could have held or enjoyed the same if these presents had not been made, but subject nevertheless to the proviso or agreement for redemption hereinafter contained; that is to say:

Proviso for redemption. PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said [*Mortgagor*], his heirs, executors or administrators, should pay unto the said [*Mortgagee*], his executors, administrators or assigns, the said principal sum of £— on the —— day of ——, and should also duly pay to the said [*Mortgagee*], his executors, administrators or assigns, interest on the said sum of £—, by equal half-yearly payments on each —— day of —— and —— day of —— henceforth, until and up to the time of the payment of the said principal sum, and should make all such payments without any deduction or abatement whatsoever, Then and in such case the said [*Mortgagee*], his executors, administrators and assigns, will or shall, on the request and at the costs of the said [*Mortgagor*], his executors, administrators or assigns, assign and assure the said Letters-patent, and all other the premises hereby assigned or intended so to be, unto the said [*Mortgagor*], his executors, administrators or assigns, or as he or they shall direct, free from all incumbrances made or executed by the said [*Mortgagee*], his executors, administrators or assigns, or any person or persons claiming through or under him or them: PRO-

Power to grant licence and to sell after default. VIDED ALSO, and it is hereby further declared and agreed, that in case the said sum of £— and the interest thereon, or any part thereof respectively, should remain unpaid after the day or time mentioned in the proviso for redemption herein-

before contained, it shall be lawful for the said [*Mortgagee*], his executors, administrators or assigns, without the necessity of the concurrence of the said [*Mortgagor*], his executors or administrators, either to grant such general or special or other exclusive licence or licences to exercise and use the said invention for and during such term or terms of years, upon such conditions, for such consideration by way of fine, premium, royalty or otherwise, and generally in such manner as the said [*Mortgagee*], his executors, administrators or assigns, should think fit: AND ALSO, either without granting any such licence or licences, or after granting the same, absolutely to sell and dispose of the said Letters-patent and premises either by public auction or private contract, and subject to such special conditions or stipulations as the said [*Mortgagee*], his executors, administrators or assigns, shall think fit, with liberty, if deemed expedient, to buy in the same at any auction without being answerable for any loss to be occasioned thereby, and to rescind or vary any contract for sale, and to assign the same when sold to the purchaser or purchasers thereof: AND IT IS HEREBY DECLARED, that the receipt of the said [*Mortgagee*], his executors, administrators or assigns, to any purchaser or licencee for any purchase money, fine, premium, royalty or other moneys payable in respect of the said invention, shall effectually discharge the person or persons paying the same from all responsibility in respect of the application thereof, and that such purchaser shall not be bound to inquire whether the sale made by the said [*Mortgagee*], his executors, administrators or assigns, is consistent with these presents, nor be affected by express notice that the same is contrary thereto: AND IT IS HEREBY DECLARED and agreed, that the said [*Mortgagee*], his executors, administrators and assigns, shall stand possessed of all and every the sums and sum of money which shall or may be received by him or them by virtue of these presents, Upon trust, in the first place, to reimburse himself and themselves the costs and charges (if any) attending the receipt or recovery thereof and otherwise arising in the execution of these present trusts; and in the next place, Upon trust to retain and satisfy unto him the said [*Mortgagee*], his executors, administrators and assigns, the principal sum of £—

Mortgagee's receipts to be discharges.

Application of monies to be received by mortgagee;

—to pay costs;

—and mortgage debt;

hereby intended to be secured, and interest thereon at the rate of £— per centum per annum from the day of the date of these presents, or so much of the said principal and interest monies as shall then be due and owing by virtue thereof:

—residue, if any, to Mortgagor.

And after payment and full satisfaction of the said costs and charges, principal and interest monies, Upon trust to pay the balance or residue of the said monies which shall come to the hands of the said [*Mortgagee*], his executors, administrators or assigns, by virtue of these presents, unto the said [*Mortgagor*], his executors, administrators or assigns, for his or their own use and benefit: And the said [*Mortgagor*] doth hereby for himself, his heirs, executors and administrators, covenant with the said [*Mortgagee*], his executors, administrators and assigns, in manner following (that is to say), That he the said [*Mortgagor*], his heirs, executors, administrators or assigns, will or shall pay unto the said [*Mortgagee*], his executors, administrators or assigns, the said principal sum of £— on the —— day of ——, and all costs, charges and expenses incurred and to be incurred by the said [*Mortgagee*], his executors, administrators or assigns, in maintaining, enforcing or otherwise in relation to the security intended to be hereby made immediately after the same respectively shall have been incurred, and interest after the rate of £— per centum per annum on the said sum of £— from the date of these presents, and on such costs, charges and expenses from the respective times of the same being incurred by payments on each —— day of —— and —— day of ——, until the said principal monies respectively shall have been repaid, and also on the repayment of any principal money: And also that the said [*Mortgagor*],[g] at the time of the sealing of the said Letters-patent, was the true and first inventor of the said invention, And that the same was, at the time of the allowance of the said [*Mortgagor's*] Provisional Specification of the said invention, new as to the public use or knowledge thereof within the realm: And also, that in pursuance of the condition in that behalf in the said Letters-patent contained, the said [*Mortgagor*] did particularly describe and ascertain the nature of the said invention, and in what manner the same was to be

Mortgagor's covenants;

—to pay principal, costs and interest;

—that Patentee was first inventor;

—that invention was new;

—and duly specified;

[g] Or "[*Inventor*]" if the Mortgagor is not the Patentee.

performed, by an instrument in writing under his hand and seal, and did cause the same to be filed in Her Majesty's Great Seal Patent Office within six calendar months from the date of the said Letters-patent: AND that the said Letters-patent are now good, valid and effectual for the said invention, and are in nowise invalidated, avoided or voidable: AND that he the said [*Mortgagor*] now hath in himself good right and full power and authority by these presents to assign the Letters-patent, invention and premises unto the said [*Mortgagee*], his executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these presents: AND also that, immediately after default shall be made in payment of all or any part of the said sum of £—, or any interest thereon, contrary to the true intent and meaning of the proviso or agreement for redemption hereinbefore contained, it shall be lawful for the said [*Mortgagee*], his executors, administrators or assigns, thenceforth during the residue of the said term of fourteen years to use, exercise and enjoy the said invention in such manner as he or they shall think fit, and receive and take for his and their own use, all profits and advantages arising from the Letters-patent and premises hereby assigned and intended so to be, without any lawful denial, interruption, hinderance, prevention or disturbance of or by the said [*Mortgagor*], his executors or administrators, or any other person or persons whomsoever: AND also that the said [*Mortgagor*], his executors or administrators, will and shall, from time to time, so long as any principal sum or interest shall be owing to the said [*Mortgagee*], his executors, administrators or assigns, upon this security, use his and their utmost endeavour to detect any infringement that shall hereafter be made or attempted to be made on any of the rights and privileges granted by or incident to the Letters-patent hereby assigned or intended so to be, or any Letters-patent which shall hereafter be assigned to the said [*Mortgagee*], his executors, administrators or assigns, pursuant to the covenant of the said [*Mortgagor*] hereinafter contained, and will and shall forthwith communicate and divulge the same when discovered to the said [*Mortgagee*], his executors, administrators or assigns: AND also that the said [*Mortgagor*], his executors or administra-

—that Letters-patent are valid;

—that Mortgagor has right to assign;

—for quiet enjoyment after default;

—that Mortgagor will aid in protecting Patent;

tors, shall and will render his and their utmost assistance to the said [*Mortgagee*], his executors, administrators or assigns, for the purpose of enabling him or them to protect or defend the said rights or privileges granted by or incident to the said Letters-patent, or to prosecute any action or proceeding against any person or persons infringing the same as aforesaid: AND moreover, that he the said [*Mortgagor*], his executors and administrators, and every other person having or lawfully claiming or to claim any right, title, interest or authority whatsoever in respect of the said invention, Letters-patent and premises, will and shall from time to time and at all times hereafter, upon every reasonable request of the said [*Mortgagee*], his executors, administrators or assigns, but at the costs of the said [*Mortgagor*], his executors or administrators, until the said Patent or premises shall have been sold under the foregoing power, or the equity to redeem the same shall have been foreclosed or barred, and then at the costs of the person or persons requiring the same, make, do and execute, or cause to be made, done and executed, all such further and other lawful acts, deeds and assurances in the law whatsoever for the more effectually assigning and assuring the Letters-patent and premises hereby assigned or intended so to be, and the right, title and interest of the said [*Mortgagor*], his executors and administrators therein, unto the said [*Mortgagee*], his executors, administrators and assigns, in manner aforesaid, according to the true intent and meaning of these presents, as by the said [*Mortgagee*], his executors, administrators or assigns, or his or their counsel in the law shall be reasonably required: AND further, that in case and so often as it shall happen that any money should be owing on the security of these presents within one calendar month before the time when it shall become necessary under the condition in that behalf contained in the said Letters-patent, to pay any additional Stamp duty or money for the purpose of keeping the said Letters-patent and the privileges thereby granted on foot, he the said [*Mortgagor*], his heirs, executors, administrators or assigns, will or shall, without the necessity of any notice or request to that effect being given to him by or on behalf of the said [*Mortgagee*], his executors, administrators or assigns, pay such Stamp duty or respective Stamp

—for further assurance.

Mortgagor to pay additional Stamp Duties for keeping Patent on foot,

duties or monies, and do, or procure to be done, all such other acts and things as may be necessary to be done for the purpose of keeping such Letters-patent and privileges on foot, and deliver the receipts for evidence of each such payment to the said [*Mortgagee*], his executors, administrators or assigns, at least one calendar month before the last day for making such payment, in default whereof it shall be lawful for (but not incumbent on) the said [*Mortgagee*], his executors, administrators or assigns, to make any such payment or payments, or do or cause to be done any such acts or things, and to add the amount, costs and expenses thereof respectively to the principal monies hereby secured, to be recovered, with such interest as aforesaid, by any of the means or remedies hereby provided for recovering principal or interest monies: AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, the said [*Mortgagor*] doth hereby for himself, his heirs, executors and administrators, covenant with the said [*Mortgagee*], his executors, administrators and assigns, that in case at any time hereafter during the continuance of this security the said invention, or any alteration or improvement therein, should be secured to the said [*Mortgagor*], his executors or administrators, by other Letters-patent for some further term or terms, then and in every such case the said [*Mortgagor*], his executors or administrators, shall and will, at the request of the said [*Mortgagee*], his executors, administrators or assigns, but at the costs of the said [*Mortgagor*], his executors or administrators, assign and assure unto the said [*Mortgagee*], his executors, administrators and assigns, all such Letters-patent so to be granted as aforesaid, and the exclusive right and enjoyment of the said invention, and the alteration or improvement thereby to be secured, and all the right, title and interest of him the said [*Mortgagor*], his executors or administrators therein, for and during all such term and terms, time and times, as in and by such Letters-patent respectively shall be granted and limited, subject nevertheless to such and the same proviso or agreement for redemption as is hereinbefore contained of and concerning the Letters-patent and premises hereby assigned or intended so to be, as by the said [*Mortgagee*], his executors, administrators or assigns,

—and do all requisite acts for preserving Patent;

—in default Mortgagee may do so, and add costs to mortgage debt.

Covenant to assign any extension of Letters-patent.

Mortgagor to enjoy until default.

or his or their counsel in the law, shall be reasonably required: AND IT IS HEREBY DECLARED and agreed, that in the meantime, until default shall be made in payment of all or some part of the said sum of £— and interest, contrary to the proviso or agreement for redemption hereinbefore contained, it shall be lawful for the said [*Mortgagor*], his executors or administrators, to use, exercise and enjoy the said new invention or discovery and any such improvements therein as aforesaid, in such manner as he or they shall think fit, and to receive and take for his and their own use all profits and advantages arising from the Letters-patent and premises hereby assigned, or intended so to be, and covenanted to be assigned as aforesaid, without any interruption whatsoever of, from or by the said [*Mortgagee*], his executors, administrators or assigns, or any person or persons rightfully claiming by, from, under or in trust for him or them, anything hereinbefore contained to the contrary notwithstanding. IN WITNESS, &c.

III.

LICENCE TO USE A PATENTED INVENTION FOR WOVEN FABRICS.

Short recital of title to Letters-patent by assignment;

THIS INDENTURE, made the —— day of ——, Between [*Grantor*] of, &c., of the one part, and [*Licencee*] of, &c., of the other part: WHEREAS by Letters-patent dated the —— day of ——, Her Majesty Queen Victoria granted unto [*Grantor*], his executors, administrators or assigns, for the term of fourteen years, the exclusive privilege of using, exercising and vending within the United Kingdom of Great Britain and Ireland, the Channel Islands and Isle of Man, the invention of a certain method of weaving: AND WHEREAS the said [*Grantor*] hath become entitled to the Patent and the benefit thereof: AND WHEREAS the said [*Grantor*] hath agreed with the said [*Licencee*] to grant to him a licence to use the said invention to the intent and upon the terms herein expressed: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the covenants

—of agreement to grant licence.

Testatum.

and agreements hereinafter entered into by the said [*Licencee*], he the said [*Grantor*] DOTH grant unto the said [*Licencee*] full licence and authority within the limits granted by the said Letters-patent, to use and exercise the said invention so far as the same relates to the weaving or manufacturing of ——, but not further or otherwise ;[a] and to vend all such —— as shall have been woven or manufactured by him during the continuance of this licence or agreement, by means of or according to the principle of the said invention, for and during the unexpired residue of the term granted by the said Letters-patent, if the said [*Licencee*] should so long live, subject nevertheless to the restrictions and provisions hereinafter contained, YIELDING AND PAYING therefore unto the said [*Grantor*], his executors, administrators and assigns, at the times and in the manner hereinafter expressed, the royalties or sums of money hereinafter by the said [*Licencee*] covenanted to be paid: AND the said [*Licencee*] doth hereby for himself, his heirs, executors and administrators, covenant with the said [*Grantor*], his executors, administrators and assigns, in manner following (that is to say):—

Licence to use Patent invention for certain limited purposes.

During continuance of Patent, if Licencee should so long live.

Reddendum of royalties.

Covenants by Licencee.

1. THAT the said [*Licencee*] shall pay to the said [*Grantor*], his executors, administrators and assigns, the following rates and tributes:—For all —— woven or manufactured according to the principles of the said invention, in which no silk shall be used, either in warp or weft, For every shuttle used and employed in weaving the above-mentioned fabrics, for every week of such use, if the said fabric shall not exceed in width —— inches, the sum of —; if above —— inches and not exceeding —— inches the sum of —; and for every additional inch in width above —— inches the further sum of —; and so in proportion for any less period of user than a week: And for all —— woven or manufactured according to the principles of the said invention in which silk shall be used, For every shuttle used and employed in weaving the above-mentioned fabrics, for every week of

To pay royalties.

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[a] Or (as the case may require)—

"To use and exercise the said invention in or for the purpose only of weaving or manufacturing, and for no other purpose."

such user, If the fabric shall not exceed in width ——— inches the sum of —; if above ——— inches and not exceeding ——— inches the sum of —; and for every additional inch in width above ——— inches the further sum of —; and so in proportion for any less period of user than a week; such payments to be made on the first day of every calendar month during the continuance of the licence, the first payment to be made on the first day of the month ensuing the date hereof: *Provided* that the said [*Licencee*] shall in no case, either in silk or cotton, manufacture any webs of a greater width than ——— inches.

Licencee to work only by day.

2. That the said [*Licencee*] shall not use or employ any shuttle in manufacturing according to the principles of the said invention during the night, but only in the usual and ordinary hours of day labour, and for not more than ——— hours in each twenty-four hours.

To give notice of number of shuttles to be employed.

3. That on or before the last day of each calendar month during the continuance of this licence the said [*Licencee*] shall, by notice in writing, inform the said [*Grantor*], his executors, administrators or assigns, or his or their agent in that behalf, of the number of shuttles intended to be used or employed in the ensuing month in the weaving of the said ———, distinguishing those to be used for the weaving of fabrics in which silk shall be used, and of the place or places where such shuttles respectively are intended to be employed.

Notice of increase of number of shuttles.

4. That in case, at the expiration of any calendar month during the continuance of this licence, the said [*Licencee*] shall be desirous of increasing the number of shuttles employed by him for the purpose aforesaid, he shall, previously to such employment, give to the said [*Grantor*], his executors, administrators or assigns, or his or their agent in this behalf, notice in writing of such intention and of the place or places where such increased number of shuttles are intended to be employed; and that the said [*Licencee*] shall be deemed and taken to have used and employed for the purposes aforesaid, from the period of giving any such notice or notices as aforesaid until the expiration of the current calendar month for the time being, all the shuttles which in any such notice or notices as aforesaid he shall have signified his intention to

use and employ, whether he shall in fact have so used or employed them or not.

To deliver account of number of shuttles employed.

5. THAT the said [*Licencee*] shall, within the first three days of each calendar month during the continuance of this licence, give unto the said [*Grantor*], his executors, administrators or assigns, or his or their agent in that behalf, a statement in writing, signed by the said [*Licencee*] or his agent, of the number of shuttles used and employed by the said [*Licencee*] during the preceding calendar month in the weaving of the said ——, distinguishing those used for the weaving fabrics in which silk shall be used, and also specifying and distinguishing the widths manufactured by the said shuttles respectively, and the respective times during which such shuttles shall have been employed.

Proviso in the event of neglect to give notice.

6. THAT if at any time or times during the continuance of this licence the said [*Licencee*] shall use or employ any shuttles for weaving —— by means of or according to the principles of the said invention, without previously giving to the said [*Grantor*], his executors, administrators or assigns, or his or their agent in that behalf, such notice in writing as is hereinbefore agreed to be given of his intention to use the same; or if the said [*Licencee*] shall at any time during the continuance of this licence neglect or refuse to give in such notice as is agreed to be given during the first three days of every calendar month of the shuttles used during the preceding month, then and in such case (and when and so often as the same shall happen) the said [*Licencee*] shall, on the first day of the calendar month next after such use or employment or neglect as aforesaid, pay unto the said [*Grantor*], his executors, administrators or assigns, the sum of £— for each and every shuttle which shall have been so used or employed or of which no notice shall have been given as aforesaid, contrary to the covenant in that behalf hereinbefore contained.

Licencees' workings to be limited to the places specified in his notice.

7. THAT the said [*Licencee*] shall not, at any time or times during the continuance of this licence, use or employ, or knowingly permit or suffer to be used or employed, any shuttle whatever for weaving the said —— according to the principles of the said invention in any place or places other than such as shall have been specified in the notice in

writing which shall have been given by the said [*Licencee*] of his intention in that behalf.

Penalty for working contrary to stipulations.

8. THAT if at any time or times during the continuance of this licence the said [*Licencee*] shall use or employ, or knowingly permit or suffer to be used or employed, any shuttle for weaving the said ——— according to the principles of the said invention in any place or places other than such as shall have been specified in such notice as aforesaid, or otherwise contrary to any of the stipulations herein contained; then and in every such case the said [*Licencee*] shall, on the first day of the calendar month next after such use or employment, pay unto the said [*Grantor*], his executors, administrators or assigns, the sum of £— for each and every shuttle which shall have been so used or employed contrary to any of the stipulations herein contained.

Grantor may inspect Licencee's factories.

9. THAT it shall be lawful for the said [*Grantor*], his executors, administrators or assigns, and his or their agent or agents, at all seasonable times in the day time during the continuance of this licence, to enter into and upon any factory, shop, house or other place where the said [*Licencee*] may be carrying on any manufacture or business, and then and there to inspect any shuttles and machinery which may be employed by the said [*Licencee*] in the weaving of such ——— as aforesaid [or in any other weaving process], and to ascertain the number of shuttles and the width of the fabrics woven therewith.

Materials to be purchased of certain parties.

10. THAT the said [*Licencee*] shall purchase of and from Messrs. ———, or of such other persons as the said [*Grantor*], his executors, administrators and assigns, shall nominate or appoint in that behalf, all the ——— which the said [*Licencee*] shall, during the continuance of this licence, use or employ in the manufacture of the said ——— fabrics as aforesaid, they the said ———, or such other person or persons as aforesaid, selling the same to the said [*Licencee*] at the usual and accustomed price for the time being charged by them or him for such ———, and that the said [*Licencee*] shall not, without the licence and consent of the said [*Grantor*], his executors, administrators and assigns, use or employ in their shuttles any other than the said ——— so purchased.

11. THAT if the said [*Licencee*] shall, at any time or times during the continuance of this licence, use or employ in the manufacture of such ——— as aforesaid any ——— other than such as shall be purchased by him of and from the said ——— or such other person or persons as aforesaid, then and in every such case he the said [*Licencee*] shall, provided the said ——— or such other person or persons as aforesaid shall have been willing to sell the same to him at the usual and accustomed price, pay unto the said [*Grantor*], his executors, administrators and assigns, the sum of — for each and every pound weight of such ——— which he the said [*Licencee*] shall so use as last aforesaid.

Stipulated damages for breach of foregoing conditions.

12. THAT he the said [*Licencee*] will not at any time hereafter assign or transfer or underlet the licence hereby granted, or in any manner exercise or permit the same to be exercised, for the benefit, either wholly or in part, of any person or persons whomsoever, as manufacturer or manufacturers, other than the said [*Licencee*]; and that this licence shall absolutely cease and determine on the said [*Licencee*] making any attempt so to assign or transfer or underlet the same, or becoming bankrupt, or suffering his estate and effects to be vested in assignees in insolvency or bankruptcy or in trustees for the benefit of creditors.

Licence to be void on assignment to pay, &c.

13. THAT all the sums of money hereinbefore agreed to be paid on breach of any stipulation herein contained shall be the stipulated damages for such breach, and not penalties.

Liquidated damages.

IN WITNESS, &c.

IV.

LICENCE TO A FIRM TO USE A PATENTED INVENTION AS TO CERTAIN ARTICLES AND WITHIN A LIMITED DISTRICT, WITH SOME SPECIAL STIPULATIONS.

THIS INDENTURE, made on the —— day of ——, 18—, Between [*Patentee*], of, &c., of the one part, and [*Licencees*], of, &c., of the other part: WHEREAS Her present Majesty Queen Victoria, by Letters-patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date the —— day of ——, did grant unto the said [*Patentee*], his executors, administrators and assigns, the sole privilege during the term of fourteen years, from the —— day of ——, of using and vending within the United Kingdom of Great Britain and Ireland, the Channel Islands and Isle of Man, the invention of "Improvements, &c.:" AND WHEREAS the said [*Patentee*], in pursuance of a proviso in the said Letters-patent contained, did particularly describe and ascertain the nature of his said invention, and in what manner the same was to be performed, by an instrument in writing under his hand and seal, and did cause the same to be filed in Her said Majesty's Great Seal Patent Office on the —— day of ——: AND WHEREAS it has been agreed between the said parties hereto that the said [*Patentee*] shall grant such licence, and the said parties hereto shall enter into such agreements as are hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in consideration of the royalties, conditions and covenants hereinafter reserved and contained on the part of the said [*Licencees*] to be respectively paid, observed and performed, the said [*Patentee*] DOTH give and grant unto the said [*Licencees*] and the survivors and survivor of them, and the executors and administrators of such survivor and their or his assigns, for such time only as they or he shall continue and carry on the said partnership business at —— aforesaid, or at any other place within the distance of —— miles from the General Post Office, London, under the firm of ——, and notwithstanding any change in the said firm by the death or deaths or retirement or admission of any

Short recital of Letters-patent.

Specification.

Agreements for Licence.

Testatum.

Licence limited to continuance of partnership firm.

member or members, full and free licence and permission to make at their or his manufactories in —— aforesaid, or elsewhere within the distance of —— miles from the said General Post Office, and to sell and dispose of —— at —— aforesaid, or elsewhere within the distance aforesaid [*description of articles to be made under licence*], made according to the principle of the above-mentioned invention, and of the kind in the said Specification described, by reference to the figures —— and —— in the drawing to the said Specification annexed, for the term of —— years from the —— day of ——, determinable as hereinafter mentioned, YIELDING and paying therefore unto the said [*Patentee*], his executors, administrators or assigns, the royalty or sum of — for each and every —— which the said [*Licencees*], or the survivors or survivor of them, or the executors or administrators of such survivor or their or his assigns, shall during the continuance of the said term make upon the principle described in the said Specification, [or in case at any time or times during the continuance of the licence hereby granted the said [*Patentee*], his executors, administrators or assigns, should license any other person or persons to make or vend ——, according to the said invention, within any part of England or Wales, at or for a lower royalty or payment than — for each ——, then yielding and paying during such time or part of the term hereby granted as any other person or persons shall be so licensed by the said [*Patentee*], his executors or administrators, at a reduced royalty or payment, a royalty or payment for each —— to be made under the licence hereby granted, a royalty or payment equal to the lowest royalty or payment that shall for the time being be paid or payable by any such other person or persons]: PROVIDED ALWAYS, and it is hereby agreed and declared, that in case the said [*Licencees*], their executors, administrators or assigns, or any of them, should at any time during the continuance of the licence hereby granted make any default in the observance and performance of the several covenants, conditions and agreements herein on their parts contained, or any of them, then and at any time thereafter, and notwithstanding any waiver of any previous breach or default, it shall be lawful for the said [*Patentee*], his executors, administrators or as-

Reddendum of royalty.

Royalty to be reduced if Patentee grant other licences at a reduced rate.

Power to determine licence on nonpayment of royalty or breach of condition.

signs, by notice in writing delivered to the said [*Licencees*], their executors, administrators or assigns, or any of them, or left for them or him at their or his usual or last known place of abode or of business, absolutely to determine, put an end to and annul the licence hereby granted, and every covenant and agreement herein contained by or on the part of the said [*Patentee*], his heirs, executors, administrators or assigns, from the time of the delivery or leaving of such notice: And in consideration of the premises the said [*Licencees*], for themselves, their heirs, executors and administrators, do hereby jointly and severally covenant and agree with the said [*Patentee*], his executors, administrators and assigns, that they the said [*Licencees*], their executors, administrators and assigns, will and shall during the said term stamp every —— which they or any of them shall make or cause to be made according to the principle of the said invention with such fit stamp or mark as the said [*Patentee*], his executors, administrators or assigns, shall from time to time require them to use for that purpose [the said [*Patentee*], his executors, administrators or assigns, paying the cost of preparing the die or dies for such stamp or mark]: And further, that in case the said [*Patentee*], his executors, administrators or assigns, should at any time before the —— day of ——, 18—, give or grant to any other person or persons any licence or authority to make any such —— as aforesaid, and should either directly or through or by any such Licencee or Licencees require the said [*Licencees*], their executors, administrators or assigns, or any of them, so to do, they the said [*Licencees*], their executors, administrators or assigns, will or shall stamp all such —— as shall be brought to them for that purpose with such stamp or mark as aforesaid, or with any different stamp or mark to be from time to time prescribed by the said [*Patentee*], his executors, administrators or assigns, he or they paying the cost of preparing the die or dies for such different stamp or mark; and will or shall at all seasonable hours, on all lawful days, keep at their principal place of business a proper person or persons for the purpose of receiving all such —— for stamping, and will perform all such stamping in a workmanlike manner and with as much care and neatness as they shall bestow on their own goods; And will or shall

Covenant by Licencees to stamp all goods made under the licence.

To stamp articles made under Patent by others, if required;

stamp or mark every such ——— which shall so be brought to them to be stamped, and have the same ready for delivery within twenty-four hours after the same shall be left with them, they the said [*Licencees*], their executors, administrators or assigns, being allowed to charge for the ——— which shall be so stamped or marked by them, when the number thereof that shall be brought to be stamped or marked in any one week for any one person or firm shall be not more than ——— dozen, the sum of — for every dozen which shall be so brought by such person or firm within the week, and so in proportion for any greater or less number than one dozen; and when the number thereof so brought in any one week shall exceed 200 and not exceed ——— dozen, the sum of — per dozen; and when the number so brought in any one week shall exceed ——— dozen and not exceed ——— dozen, the sum of ——— per dozen; and when the number so brought in any one week shall exceed ——— dozen at one time, the sum of — per dozen, for which several payments the parties bringing such ——— to be stamped or marked alone,[a] and not the said [*Patentee*], his executors, administrators or assigns, are to be liable: And further, that the said [*Licencees*], their executors, administrators and assigns, will and shall within three days after the last day of each calendar month henceforth, as to the ——— to be manufactured by them as aforesaid up to the last day of ——— inclusive, and as to the ——— which shall be brought to them to be stamped as aforesaid up to the ——— day of ——— inclusive, and also in case of the determination of the licence hereby granted before the said ——— day of ———, within three days after such determination as to the said ——— to be so manufactured by them as aforesaid, a just and true account in writing of all the ——— which they or any of them or the said firm of ——— for the time being, whether consisting

—being paid for stamping.

Licencees to deliver accounts of articles made, sold and stamped respectively, and of stock on hand.

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[a] Or—"shall not be liable to the said [*Licencees*], their executors, administrators or assigns, but the same sums shall be charged to the said [*Patentee*], his executors, administrators or assigns, and set off in account against them."

This gives the Patentee a better security for the accounts, which are intended to check the accounts of other Licencees.

of or comprising any of the said present members or not, shall have made or caused to be made according to the principle aforesaid during the calendar month or fraction of a month (as the case may be) ending on such respective day, and also a separate, just and true account in writing of all the ——— made according to the principle aforesaid, which they or any of them or the said firm for the time being shall have sold during the same period; and also a separate, just and true account in writing of all the ——— not made under this licence, which during the same period shall have been brought to them for the purpose of being stamped or marked as aforesaid; and also, within three days after the expiration or sooner determination of the licence hereby granted, a just and true account in writing of all the ——— made according to the principle aforesaid, which they or any of them or the said firm for the time being shall on the day of such determination have on hand or in stock: AND also will and shall within three days after the last day of each calendar month after the determination of the licence hereby granted, until the whole of such ——— so remaining on hand or in stock as aforesaid shall have been sold, deliver to the said [*Patentee*], his executors, administrators or assigns, a just and true account of all sales of any such ——— so remaining on hand or in stock as last aforesaid as shall have been effected by them or any of them, or by the said firm for the time being, during the calendar month ending on such respective day, All such respective accounts hereinbefore covenanted to be delivered, to be signed by one of or (if the said [*Patentee*], his executors, administrators or assigns, should so require) by all the members for the time being of the said firm of ——— (whether consisting of or comprising any of the said present members or not) who shall take any part in the conduct of the business of the said firm, and to be verified (if the said [*Patentee*], his executors, administrators or assigns, should so require), by the solemn statutory declaration of some one of the members for the time being of the said firm of ——— who shall be actively engaged in the said business, and also by the solemn statutory declaration of such other person or such other two persons employed by the said firm for the time being in their said business, or employed or engaged to work or manufacture

To deliver account of sales after expiration of licence.

Accounts to be signed and verified by declaration and production of books.

for them, as the said [*Patentee*], his executors, administrators or assigns, shall require to make such declaration, and shall indicate to any member of the said firm for the time being, either by name or by any sufficient general description of the office or employment of such person or persons; and also, if the said [*Patentee*], his executors, administrators or assigns, should so require, by the production and explanation, at the counting-house or place of business of the said firm for the time being, to the said [*Patentee*], his executors, administrators or assigns, or his or their nominee, of all books of account and other documents and vouchers relating to or containing any entry or entries relating to the manufacture, stock taking, sale, stamping or marking of any such —— as aforesaid: AND FURTHER, that they the said [*Licencees*], their executors, administrators or assigns, will and shall on each of the monthly days before named, henceforth until the said —— day of —— inclusive, and also on the day of the determination of the licence hereby granted, in case the same should be sooner determined, pay unto the said [*Patentee*], his executors, administrators or assigns, the royalty or payment of — [or such reduced royalty or payment as aforesaid, in case the same should be reduced under the provision hereinbefore contained] for every such —— as aforesaid which the said [*Licencees*], their executors, administrators or assigns, or any of them, shall during the month or fraction of a month immediately preceeding such respective day (as the case may be) have made or caused to be made according to the principle of the said invention: AND the said [*Patentee*], for himself, his heirs, executors and administrators, doth hereby covenant with the said [*Licencees*], their executors, administrators and assigns, that in case he the said [*Patentee*], his executors or administrators, should at any time or times before the said —— day of —— grant unto any other person or persons any licence or licences to make —— according to the principle of the said invention within the distance, in a straight line, of —— miles from the General Post Office, London, it shall be made a term and condition of every such licence that the person or persons so licensed shall bring every —— which he or they shall manufacture under such licence before the said —— day of —— [*or*, during the continuance of the licence hereby

To pay royalties.

Covenant by Patentee to stipulate with future Licencees that they shall bring articles to present Licencees to be stamped.

granted] unto the said [*Licencees*], their executors, administrators or assigns, or unto the said firm for the time being of ——, to be stamped or marked according to the provisions hereinbefore contained in that behalf, [and shall pay for such stamping or marking after the rate or rates hereinbefore mentioned]: Provided that in case the licence hereby granted or the agreement hereby made should be determined under the proviso hereinbefore contained in that behalf, or by mutual agreement, the person or persons so to be licensed as aforesaid shall, on and from and after such determination, cease to be bound by the foregoing agreement or condition as to stamping or marking. IN WITNESS, &c.

V.

EXCLUSIVE LICENCE TO USE PART OF AN INVENTION (SUBJECT TO CERTAIN SPECIAL LICENCES), IN CONSIDERATION OF A GROSS SUM PAYABLE BY INSTALMENTS.—SPECIAL PROVISION IN CASE PATENT BE DECLARED INVALID.

Parties.

THIS INDENTURE, made on the —— day of ——, Between [*Patentee*], of, &c., of the one part, and [*Licencees*], of, &c., of the other part: WHEREAS, &c. [*recite Letters-patent and Specification as in preceding forms*]: AND WHEREAS the said [*Patentee*] has lately granted or agreed to grant to certain persons certain special and limited licences to use the said invention, which grants or agreements are severally mentioned or referred to in the Schedule hereunder written: AND WHEREAS the said [*Patentee*] has contracted with the said [*Licencees*] for the sale to them of a licence, to or for them the said [*Licencees*], and their respective executors, administrators and assigns, exclusively of all other persons whomsoever, except as hereinafter mentioned, to use, exercise and vend the said invention of the said [*Patentee*], during the residue of the said term of fourteen years granted by the said Letters-patent, throughout the whole of the United Kingdom of Great Britain and Ireland, the Channel Islands and Isle of Man, so far only as it in any respect relates to the preparing of —— and other similar produce (exclusive of ——), at or for the price or

Recital of certain limited licences and agreements.

Agreement for exclusive licence.

sum of £—, to be paid in manner following (that is to say), one equal fifth part thereof immediately before the execution of these presents, the remaining four fifth parts thereof by four equal yearly instalments on each —— day of ——, in the years ——, ——, —— and ——, and the payment of the said several instalments to be secured by the joint and several covenants of the said [*Licencees*]: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £— paid by the said [*Licencees*] to the said [*Patentee*] immediately before the execution of these presents (the receipt whereof the said [*Patentee*] doth acknowledge and therefrom doth release the said [*Licencees*], their heirs, executors, administrators and assigns), and of the further sum of £—, to be paid by the said [*Licencees*] to the said [*Patentee*], his executors, administrators or assigns, by four instalments of £— each, on the —— day of —— in each of the years ——, ——, —— and ——, with interest after the rate of £5 per centum per annum on each of the said instalments from the day on which the same ought to be paid until actually paid, the said [*Patentee*] DOTH hereby absolutely and irrevocably give, grant and confirm unto the said [*Licencees*], their executors, administrators and assigns, and to such person or persons as they the said [*Licencees*] or the survivors or survivor of them, or the executors or administrators of such survivor, or their or his assigns, shall from time to time license, empower or authorize in that behalf, full and free and (except as to the rights of the several persons claiming or to claim under the several licences and agreements mentioned or referred to in the Schedule hereunder written, or under a licence or licences to be granted in pursuance of any of such agreements) exclusive licence and authority to and for them the said [*Licencees*], and the survivors and survivor of them, and the executors or administrators of such survivor, and their and his assigns, and all such persons as they or he respectively shall authorize, during the residue of the said term of fourteen years granted by the hereinbefore recited Letters-patent, and in accordance with and to the full extent of the exclusive rights and privileges granted and conferred to or upon the said [*Patentee*] by the Letters-patent hereinbefore recited, to make, use, exercise and vend the said invention, entitled [*title of invention*], so far

Testatum.

Consideration.

Exclusive licence.

(Subject to certain existing licences.)

Limited to certain uses of the invention.

and to such extent only as it in any respect relates to the preparing ——— and other similar produce (exclusive of ———), but not further or otherwise, throughout all or any parts or part of the United Kingdom of Great Britain and Ireland, the Channel Islands and Isle of Man, in exclusion of the said [*Patentee*], his executors and administrators, and every person or persons claiming under him, them or any of them, save and except only the several persons entitled to the benefit of the several licences and agreements mentioned in the Schedule hereunder written: AND IT IS HEREBY AGREED

Licence not to extend to certain uses of the invention.

and declared, that these presents shall not be construed to operate or extend to license, authorize or empower the said [*Licencees*], their executors, administrators or assigns, or such sub-licencees as aforesaid, or any of them, in any manner to use, exercise or vend the said invention, or any machine, process or operation comprised or included therein, in or for the preparing of ———: AND the said [*Patentee*] doth for himself, his heirs, executors and administrators, covenant and agree with the said [*Licencees*], their executors, administrators and assigns, that, for and notwithstanding any act, deed, matter or thing by him the said [*Patentee*] made, done, committed or executed to the contrary, the said Letters-patent, and the exclusive rights and privileges thereby conferred, are in full force and not void or voidable: AND further, that (save and except and so far as concerns the several licences and agreements mentioned or referred to in the Schedule hereunder written, and any licence to be granted in pursuance of any such scheduled agreement) he the said [*Patentee*] hath not at any time heretofore licensed or empowered, or assumed to license or empower, and will not, nor shall his executors, administrators or assigns, at any time hereafter during the subsistence of the said exclusive privileges hereby granted, or any of them, in any manner license or empower, or assume to license or empower, any person or persons whomsoever (save the said [*Licencees*], their executors, administrators or assigns, or licencees), to make, use, exercise or vend the said invention, so far as the same in any manner relates to the preparing of ——— within the United Kingdom of Great Britain and Ireland, the Channel Islands and Isle of Man: AND will not nor shall do, commit or suffer any act, deed, matter or thing

Covenant by Patentee that Patent is valid.

That Letters-patent are valid.

That no other Licences have been or shall be granted.

Not to avoid Patent.

in breach of any of the conditions contained in the said Letters-patent, or by means whereof the said Letters-patent and the exclusive rights and privileges thereby granted or conferred shall or may be forfeited or avoided; or without the consent in writing of the said [*Licencees*], their executors, administrators and assigns, make or enter, according to any Statute in that behalf, any Disclaimer or Memoranda of alteration in or touching the Title or Specification of the said invention, so far as the same in any way relates to or affects the preparing of ——: AND FURTHER, that the said [*Patentee*] will not, nor shall his executors, administrators or assigns, at any time hereafter during the subsistence of the exclusive privileges granted by the said Letters-patent, in any manner, directly or indirectly, use, exercise or vend the said invention, so far as the same relates to or concerns the preparing or manufacture of —— or other similar produce, in any part of the United Kingdom of Great Britain and Ireland, or of any of the Channel Islands or the Isle of Man: AND also that the said [*Patentee*], his executors and administrators, and any person or persons claiming or to claim any right or interest in the said Letters-patent through, from or under him, will at all times hereafter, at the request, costs and charges of the said [*Licencees*], make, do, execute and perfect all such further acts, deeds and assurances for the further or more satisfactory confirming to the said [*Licencees*], their executors, administrators and assigns, the said licence and privilege intended to be hereby granted as aforesaid, according to the true intent and meaning of these presents, as by the said [*Licencees*], their executors, administrators or assigns, or their counsel, shall be reasonably advised and required: AND FURTHER, that in case the said invention shall, so far as it relates in any respect to the preparing or manufacture of —— or other similar produce, be at any time hereafter, during the continuance of the licence hereby granted, vended, used, exercised, practised, employed or applied to or for such purpose within any of the countries and places aforesaid by any person or persons whomsoever other than and except the said [*Licencees*], their executors, administrators or assigns or licencees, then the said [*Patentee*], his executors, administrators or assigns (having the legal title to sue for or in respect

Not to disclaim, &c., without consent.

Not to use invention.

For further assurance.

To sue for infringement at Licencees' costs.

of any such infringement), will or shall, on the request and at the costs of the said [*Licencees*], their executors, administrators and assigns, bring, commence, prosecute, take, use, enforce and concur in all such actions, suits, proceedings, ways, means and remedies, whether legal or equitable, as by counsel on behalf of the said [*Licencees*], their executors, administrators or assigns, shall be advised, for obtaining damages or compensation for such infringement, and for preventing and restraining the continuance thereof; and as to any compensation or damages which may be obtained or recovered in respect of any such infringement, shall and will stand possessed thereof, In trust for the party or parties at whose request the same shall have been obtained or recovered,

To defend Patent at his own costs.

their executors, administrators or assigns: [AND MOREOVER, that he the said [*Patentee*], his executors, administrators or assigns, or some or one of them, will and shall, at his or their own expense, defend all actions, suits or other proceedings which may at any time or from time to time be commenced, instituted or procured for the purpose of setting aside or invading the said Letters-patent, and protect the same at his or their own expense, and will and shall in all other respects, on the request and at the costs of the said [*Licencees*], their executors, administrators or assigns, maintain and support the same Letters-patent and the rights and privileges expressed to be thereby granted :[1]] AND also shall and will from time to

To produce Letters-patent.

time during the continuance of the licence hereby granted, on the request and at the costs and charges of the said [*Licencees*], their executors, administrators or assigns, produce the said Letters-patent or any of them to the said [*Licencees*], their executors, administrators or assigns, or any of them, or to any person or persons whom they or any of them shall from time to time in that behalf appoint, or in evidence in any action, suit or other proceeding to or in which the said [*Licencees*], their executors, administrators or assigns, or any of them, shall or may be parties or a party, or interested in

Covenants by Licencees.

any manner howsoever: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises the said [*Li-*

---

[1] The propriety of this stipulation in connection with the preceding one is questionable.

cencees], and each four, three and two of them, Do, and each one of them Doth for themselves and himself, and their and his heirs, executors and administrators, jointly and severally covenant and agree with the said [*Patentee*], his executors and administrators, That they the said [*Licencees*], or some or one of them, or their or his heirs, executors or administrators, will and shall at all times hereafter save harmless and keep indemnified the said [*Patentee*], his executors, administrators and assigns, and his and their lands and tenements, goods and chattels, from and against all the costs, damages, losses and expenses of and incident to and consequential upon the bringing, commencing, prosecuting, taking, using or enforcing of any action, suit, proceeding or remedy which is hereinbefore agreed to be brought, commenced, prosecuted, taken, used or enforced at the costs of the said [*Licencees*], their executors, administrators and assigns, or any of them: AND further, that they the said [*Licencees*], or some or one of them, or their or his heirs, executors or administrators, will or shall well and truly pay or cause to be paid unto the said [*Patentee*], his executors, administrators or assigns, as such trustees as aforesaid, the sum of £—, residue of the said purchase-money or sum of £—, by four equal instalments in manner following (that is to say),—the sum of £— on the —— day of ——; the further sum of £— on the —— day of ——; the further sum of £— on the —— day of ——; and the further sum of £— on the —— day of ——: AND further, that in case any of the said instalments should not be duly paid within twenty-one days after the day appointed for the payment thereof, the whole of the said sum of £—, or of such part thereof as for the time being shall remain unpaid, shall immediately thereupon become payable and shall forthwith be paid accordingly: AND further, that in case any of the said instalments should not be duly paid on the day when the same respectively ought to be paid as aforesaid, the same respectively shall carry interest at the rate of £5 per centum per annum from such day until the same respectively shall be paid, and such interest shall be paid accordingly: PROVIDED also and it is hereby further agreed and declared, that in case the said Letters-patent should be decided by a Court of competent jurisdiction in England to be null and void, and the validity thereof as to the essential

To indemnify Patentee against costs of actions for infringement.

To pay remainder of consideration by instalments.

The entire sum to become payable after default in paying any instalment.

Instalments in arrear to bear interest.

Proviso that if Patent invalid, any instalments not then due shall not become payable.

and material parts of the said invention as applicable to ——— and other similar produce, should not forthwith thereupon be restored by a proper Disclaimer or alteration or otherwise, Then and in such case all instalments of the said sum of £— which shall not have become due previously to the day on which the said Letters-patent shall be declared void, shall cease to be payable, and the covenants in these presents contained for the payment of such instalment shall thereupon become null and void: PROVIDED always, and it is hereby agreed, that the proviso lastly hereinbefore contained shall not prejudice the right of the said [*Patentee*], his executors, administrators or assigns, to any or any part of the said instalments or interest which shall have been received by them or which shall have accrued due under the foregoing covenants of the said [*Licencees*] previously to the cesser of liability to pay any further instalments under or by virtue of the said proviso, and shall not prejudice the rights or remedies of the said [*Patentee*], his executors or administrators, under the said covenants or otherwise, to recover such of the said instalments as shall have accrued due previously to such cesser of liability as aforesaid, and the interest thereon: AND further, that the said proviso shall not render the said [*Patentee*], his executors, administrators or assigns or any of them, liable to repay any or any part of the said instalments or interest which shall have been received by him, them or any of them, under or by virtue of the said covenants previous to such cesser of liability as aforesaid; PROVIDED also, and it is hereby agreed, that in the event of the cesser of liability of the said [*Licencees*], their heirs, executors and administrators, to pay any of the said instalments under or by virtue of any of the provisions hereinbefore contained by reason of any act, default, omission, matter or thing which shall be a breach of any of the covenants by the said [*Patentee*] hereinbefore contained, or for which damages might be recovered under or by virtue of the same covenants or any of them, such cesser of liability shall be accepted by the said [*Licencees*], their executors, administrators and assigns, (as or) in full satisfaction or compensation of or for such breach and of or for any damages and costs which might be recovered under or by virtue of such covenants or any of them, or for or in respect of any

Avoidance of Patent not to affect right to instalments previously due.

Cesser of liability to pay instalments to be in satisfaction of any claim for damages.

such act, default, omission, matter or thing as aforesaid, without prejudice nevertheless to the remedies of the said [*Licencees*], their executors, administrators or assigns, under or by virtue of the said covenants or any of them, for or in respect of any breach, act, deed, omission, matter or thing which shall not cause such redemption or cesser of liability as aforesaid: PROVIDED ALSO, and it is hereby further agreed and declared between and by the said respective persons parties to these presents, that, notwithstanding the stipulations hereinbefore contained for determining the liability of the said [*Licencees*], their heirs, executors or administrators, to pay future instalments of the said purchase-money in the events hereinbefore mentioned, the liability of the said [*Licencees*], their heirs, executors and administrators, to pay such instalments shall revive in case the legal decision or decisions determining such liability as aforesaid shall be reversed or overruled by a Court of competent authority; but interest shall not be payable or accrue upon such instalments during the time such decision or decisions shall continue in force: AND FURTHER, that in case it shall be necessary or expedient for the purpose of saving or restoring the validity of the said Letters-patent to make or enter, according to the Statute in that behalf, any Disclaimer or Memorandum of alteration in or touching the title or Specification of the said invention, the said several persons parties hereto, or their respective executors, administrators or assigns, will consent to the making or entry thereof: AND FURTHER, that the said [*Licencees*], their executors, administrators or assigns, or any of them, shall not manufacture machines under or by virtue of the said licence for sale out of Great Britain and Ireland, the Channel Islands and the Isle of Man: AND FURTHER, that any improvements which may be made by any of the said parties hereto in the said Patented Machinery as applicable to —— or other similar produce, which they or he shall not decide upon securing by Letters-patent, shall be by them or him freely communicated to the said other parties hereto, their executors, administrators or assigns, and may be as freely used by the said [*Licencees*] as if the same had been included in the said Letters-patent and in the above recited licence of even date herewith and these presents. IN WITNESS, &c.

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